
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 48/2024**

Precautionary Measure No. 602-24
Joel Jardines Jardines regarding Cuba
August 13, 2024
Original: Spanish

I. INTRODUCTION

1. On May 29, 2024, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures filed by Yanira Duque Monteiro and Teresa Ortiz that are part of the organization Cuba Demanda INC (“the applicants”) urging the Commission to require that the State of Cuba (“the State” or “Cuba”) adopt the necessary measures to protect the rights to life and personal integrity of Joel Jardines Jardines (“the proposed beneficiary”). According to the request, Mr. Jardines is deprived of his liberty in the Aguacate detention center, Quivicán, Mayabeque province, Cuba, and is at risk due to lack of adequate medical attention for a possible tumor in his larynx.

2. Pursuant to the provisions of Article 25 (5) of its Rules of Procedure, the Commission requested additional information from the applicants on June 5, 2024 and received a response on June 11, 2024. On July 18, 2024, it requested information from both parties and received a response from the applicants on July 30, 2024. To date, the State has not submitted information, and the granted period has since expired.

3. Upon analyzing the submissions of fact and law made by the applicants, the Commission considers that the proposed beneficiary is in a serious and urgent situation, given that his rights to life, personal integrity, and health face a risk of irreparable harm. Therefore, pursuant to Article 25 of its Rules of Procedure, the Commission requests that Cuba: a) adopt the necessary measures to protect the rights to life and personal integrity of Joel Jardines Jardines; b) take the necessary measures to ensure his detention conditions comply with applicable international standards. In particular, ensuring that the corresponding medical diagnoses are made, that sufficient and timely medical information is provided; and that his medical treatment is defined, with the prior consent of the proposed beneficiary; c) consult and agree upon the measures to be adopted with the beneficiary and his representatives; and d) report on the actions taken to investigate the alleged events that gave rise to this resolution, so as to prevent such events from reoccurring.

II. SUMMARY OF FACTS AND ARGUMENTS

A. Information provided by the applicants

4. The proposed beneficiary is reportedly being held in Aguacate Prison in Quivicán, Mayabeque Province, Cuba. He alleges that he does not have access to adequate medical attention and has health issues that could worsen his overall condition. According to a report from the Institute of Oncology and Radiobiology of Havana, Cuba, dated July 31, 2020, and clinical summaries attached to the file, the proposed beneficiary reportedly has larynx carcinoma and acute laryngeal obstruction. In December 2020, he underwent an emergency tracheostomy. On November 17, 2021, he was allegedly admitted to the hospital emergency room with syncopal symptoms due to carotid compression secondary to a cervical tumor.

5. According to the clinical summaries from November 2021, attached to the file, the prison physician recommended conducting medical tests and, based on the results, initiating chemotherapy treatment. It was alleged that, to date, the proposed beneficiary had not undergone these tests or initiated any type of intervention to combat his cancer. The medical attention he allegedly receives takes place in the prison infirmary and, on rare occasions, in the emergency room of the Quivicán General Hospital. During these visits,

the proposed beneficiary reportedly receives treatment for symptoms such as vomiting blood, convulsions, difficulty breathing, hypertension and pain. He reports being immediately sent back to the prison after being treated. It was stated that the health care provided is basic, does not include any treatment to combat the tumor or to alleviate symptoms or secondary complications. It was added that the tracheal cannula is not changed or sterilized regularly, and is rusty, which reportedly aggravates his health. Under these conditions, the cannula, rather than aiding his breathing, becomes an instrument that suffocates him. This is also the cause of intense pain, infections, and hemorrhagic and clotted vomiting.

6. On May 13, 2024, the proposed beneficiary allegedly requested medical assistance from the prison authorities because his tracheal cannula had not been changed for five days. However, instead of providing medical help, the Chief of Internal Order allegedly sprayed the proposed beneficiary and other prisoners with toxic tear gas. This action allegedly provoked seizures and a cardiorespiratory arrest in the proposed beneficiary. On May 25, 2024, he reportedly vomited blood three times, fainted, and began to convulse. A few days later, the prison authorities transferred the proposed beneficiary to Ganuza Prison, under false pretenses of taking him to the hospital. He was held in the Ganuza prison for approximately five days. He was then transferred back to the Aguacate prison.

7. In a document attached to the file, it is stated that on June 8, 2024, the proposed beneficiary underwent a medical review in the prison due to persistent difficulty breathing. On that occasion, the cannula and alternating cannula were changed and it was indicated that the proposed beneficiary had asthenia and was vomiting with blood and clots. He has reportedly not seen an oncology specialist since November 2021.

8. After numerous requests from his sister to the prison authorities, an appointment was reportedly scheduled at the Institute of Oncology on July 9, 2024. On that occasion, the oncologist ordered that a CT (computerized axial tomography) be carried out to determine the status of the disease and the treatment to be followed. This examination was scheduled for July 17, 2024. However, to date, the aforementioned test has not been carried out. On July 25, 2024, the proposed beneficiary's sister received a call from the prison physician informing her that the proposed beneficiary was experiencing hemorrhagic vomiting with clots and required vitamin K, which was not available in the prison. The applicants indicated that they have sent the proposed beneficiary's documentation and clinical summaries to a Cuban internal surgery specialist. This specialist reportedly stated that, in metastatic cases such as the one the proposed beneficiary presents, a combined treatment of chemotherapy, radiotherapy, and immunotherapy is required.

9. Regarding internal procedures, it was alleged that the proposed beneficiary has submitted complaints and requests for specialized medical care before the prison authorities. In response, they have shown indifference or physically restrained him. The applicants indicated that, on June 5, 2024, his legal representation filed a request for an Extrapenal License (Medical Leave) with the Provincial Court of Mayabeque, but has not received a response to date. It was noted that, during this time, the proposed beneficiary's health is deteriorating by the day. He presents persistent crises of acute syncope, shortness of breath, asthenia, vomiting with blood (lately with clots), and acute pain. Despite all these symptoms, he has not allegedly received the required medical attention. It was also noted that the prison lacks facilities for treating terminally ill patients, and that the poor detention conditions are allegedly worsening their health.

B. Response from the State

10. On June 18, 2024, the Commission requested information from Cuba. To date, and with the granted period having expired, no response has been received.

III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY, AND IRREPARABLE HARM

11. The mechanism of precautionary measures is part of the Commission's function of overseeing compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general oversight functions are provided for in Article 41 (b) of the American Convention on Human Rights, as well as in Article 18 (b) of the Statute of the IACHR; while the mechanism of precautionary measures is set forth in Article 25 of the Commission's Rules of Procedure. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm to persons.

12. The Inter-American Commission and the Inter-American Court of Human Rights ("the Inter-American Court" or "I/A Court H.R.") have repeatedly stated that precautionary and provisional measures have a dual nature, one protective and the other precautionary.¹ Regarding the protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights.² To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and how vulnerable the persons proposed as beneficiaries would be left in case the measures are not adopted.³ Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under the study of the IACHR. They aim to safeguard the rights at risk until the petition pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, implement the ordered reparations.⁴ In the process of reaching a decision, according to Article 25(2) of its Rules of Procedure, the Commission considers that:

- a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the inter-American system;
- b. "urgent situation" refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

13. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. The information provided should be assessed from a *prima facie* standard of review to determine whether a serious and urgent situation exists.⁵ Similarly,

¹ Inter-American Court of Human Rights (I/A Court H.R.), Matter of the Yare I and Yare II Capital Region Penitentiary Center, Request for Provisional Measures regarding the Bolivarian Republic of Venezuela, Order of March 30, 2006, considerandum 5; Case of Carpio Nicolle et al. v. Guatemala, Provisional Measures, Order of July 6, 2009, considerandum 16 (Available only in Spanish).

² I/A Court H.R., Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center, Provisional Measures regarding Venezuela, Order of February 8, 2008, considerandum 8; Case of Bámaca Velásquez, Provisional measures regarding Guatemala, Order of January 27, 2009, considerandum 45; Matter of Fernández Ortega et al., Provisional measures regarding Mexico, Order of April 30, 2009, considerandum 5; Matter of Milagro Sala, Request for provisional measures regarding Argentina, Order of November 23, 2017, considerandum 5 (Available only in Spanish).

³ I/A Court H.R., Matter of Milagro Sala, Request for provisional Measures regarding Argentina, Order of November 23, 2017, considerandum 5 (Available only in Spanish); Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center, Provisional Measures regarding Venezuela, Order of February 8, 2008, considerandum 9; Matter of the Criminal Institute of Plácido de Sá Carvalho, Provisional Measures regarding Brazil, Order of February 13, 2017, considerandum 6 (Available only in Spanish).

⁴ I/A Court H.R., Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center, Provisional Measures regarding Venezuela, Order of February 8, 2008, considerandum 7; Matter of "El Nacional" and "Así es la Noticia" newspapers, Provisional Measures regarding Venezuela, Order of November 25, 2008, considerandum 23; Matter of Luis Uzcátegui, Provisional Measures regarding Venezuela, Order of January 27, 2009, considerandum 19.

⁵ I/A Court H.R., Matter of Members of the Miskitu Indigenous Peoples of the North Caribbean Coast regarding Nicaragua, Extension of Provisional Measures, Order of August 23, 2018, considerandum 13 (Available only in Spanish); Matter of children and adolescents deprived of liberty in the "Complexo do Tatuapé" of the Fundação CASA, Request for Extension of Provisional Measures regarding Brazil, Order of July 4, 2006, considerandum 23.

the Commission recalls that, by its own mandate, it is not called upon to determine any individual liabilities for the facts alleged. Moreover, in this proceeding, it is not called upon to determine through this mechanism any violation of the rights enshrined in the American Convention or other applicable instruments.⁶ This is better suited to be addressed by the Petition and Case system. The following analysis refers exclusively to the requirements of Article 25 of its Rules of Procedure, which can be resolved without entering into determinations on the merits.⁷

14. Moreover, when assessing the alleged facts, the Commission takes into account the context in Cuba. When assessing the human rights situation in Cuba in 2023, the IACHR decided to include the country in Chapter IV.B of its Annual Report, given that it considers that the country's situation falls within the scope of Article 59, paragraph 6.a.i of its Rules of Procedure.⁸ In its 2023 Annual Report, the Commission assessed the situation of individuals deprived of liberty and highlighted the deplorable detention conditions that characterize Cuban prisons. These include deteriorating building infrastructure, inadequate food, insufficient water and medicine, lack of medical care, and poor hygiene standards.⁹ In addition, the Commission reiterated its concern about the persistence of acts of ill-treatment and torture in Cuba's prisons.¹⁰ In the framework of a follow-up hearing on precautionary measures in favor of beneficiaries deprived of their liberty in Cuba, held by the IACHR on November 7, 2023, the organizations that exert representation for the beneficiaries that are deprived of their liberty in Cuba denounced that the medication sent by family members is not delivered or is only partially delivered. They added that necessary medical examinations and controls are not carried out, even when required for people with chronic illnesses and disabilities.¹¹

15. In analyzing the requirement of *seriousness*, the Commission considers, besides the aforementioned context, the situation faced by the proposed beneficiary while deprived of his liberty. In this sense, the Commission recalls that the proposed beneficiary is in the custody of the State, and therefore has a special position of guarantor, since prison authorities exercise strong control or command over the persons in their custody.¹²

16. In the specific case, the Commission notes that the proposed beneficiary is at serious risk due to health issues. This risk is heightened by the nature of his illness, its potential consequences, and the alleged lack of adequate medical treatment within the framework of his deprivation of liberty. At the time of qualifying the intensity of the risk, the Commission notes that the proposed beneficiary presents laryngeal carcinoma and acute laryngeal obstruction. He has not undergone any type of intervention to combat the disease he has had for over two years. In this regard, clinical reports attached to the file suggest that, as of 2021, the proposed beneficiary should have undergone tests to initiate possible chemotherapy treatment. In addition, the proposed beneficiary reportedly received a prescription in July 2024 to undergo a computerized tomography scan, which to date has not been performed. Additionally, the Commission notes that the proposed beneficiary has been experiencing serious health complications, including acute symptoms of syncope, shortness of breath, asthenia,

⁶ IACHR, Resolution 2/2015, Precautionary Measure No. 455-13, Matter of Nestora Salgado regarding Mexico, January 28, 2015, para. 14; Resolution 37/2021, Precautionary Measure No. 96/21, Gustavo Adolfo Mendoza Beteta and family unit regarding Nicaragua, April 30, 2021, para. 33.

⁷ In this regard, the Court has stated that “[it] cannot, in a provisional measure, consider the merits of any arguments pertaining to issues other than those which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons.” I/A Court H.R., Matter of James et al. regarding Trinidad and Tobago, Provisional Measures, Order of August 29, 1998, considerandum 6 (Available only in Spanish); Case of the Barrios Family v. Venezuela, Provisional Measures, Order of April 22, 2021, considerandum 2 (Available only in Spanish).

⁸ IACHR, 2023 Annual Report, Ch. IV.B. Cuba, OEA/Ser.L/V/II. Doc. 386 rev. 1, approved on December 31, 2023, para. 9.

⁹ *Ibidem*, para. 61.

¹⁰ *Ibidem*, para. 64.

¹¹ *Ibidem*, para. 64.

¹² I/A Court H.R., Case of Mendoza et al. v. Argentina, Preliminary objections, merits and reparations, Judgment of May 14, 2013, Series C No. 260, para. 188; See also: IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, para. 49.

and vomiting blood. Despite these severe symptoms, there has been no reported evidence of effective medical attention to address these risks.

17. Even though there is not enough information to fully assess the detention conditions, being such allegations of a general nature, it is worth considering the seriousness of the lack of medical care for a possibly malignant tumor suffered by the proposed beneficiary, as well as the deterioration of his health or the eventual fatal consequences. In this regard, the Commission finds it particularly serious that the proposed beneficiary lacks access to medical services for the analysis and follow-up of a treatment plan for his health issues. Consequently, the Commission recalls that the State cannot ignore the proposed beneficiary's health conditions and has a reinforced obligation to provide the necessary medical care required by his medical issues.¹³

18. The Commission highlights that the proposed beneficiary's medical situation has been brought to the attention of the state authorities since 2021, through medical reports made at the prison, complaints to the criminal authorities, and judicial request for extrapenal license. In this regard, the Commission expresses concern with the allegations of physical repression attributable to State agents, allegedly in retaliation to the requests for medical attention issued by the proposed beneficiary.

19. In view of the allegations analyzed, the Commission regrets the lack of response from the State, after having solicited its observations on this request. This prevents the Commission from obtaining information from the State on the proposed beneficiary's current state of health. Thus, not having received a response from the State, the Commission does not have elements sufficient to disprove the applicants' submissions or identify information on measures effectively adopted by the State to mitigate the alleged risk faced by Mr. Jardines. In addition, since it is not for the Commission to determine the perpetrators of the risks or if they are attributable to State actors, when assessing this request, it does consider the seriousness of the possible participation of State actors according to the allegations and allegedly place the proposed beneficiaries in a situation of vulnerability.

20. In these circumstances, the Commission considers, based on the applicable *prima facie* standard and in the context of the State of Cuba, that it is sufficiently proven that the rights to life, personal integrity, and health of Joel Jardines Jardines are at serious risk.

21. Regarding the *urgency* requirement, the Commission observes that it has been met inasmuch as, while the proposed beneficiary is being held without the medical care that he requires, and the progression of his disease is likely to cause even greater violations of his rights. The Commission considers that the passage of time without treatment may result in a deterioration of his health, potentially leading to the patient's death. In addition, the Commission has no concrete information from the State that would allow it to assess the actions it is taking to address the alleged risk or that the situation has been duly mitigated or has disappeared.

22. Regarding the requirement of *irreparable harm*, the Commission concludes that it has been met, insofar as the potential impact on the rights to life, personal integrity and health constitutes the maximum situation of irreparability.

IV. BENEFICIARY

¹³ See, among others: Inter-American Court of Human Rights, Advisory Opinion OC-29/22 of May 30, 2022, requested by the Inter-American Commission on Human Rights, "Differentiated Approaches regarding Certain Groups of Persons Deprived of Liberty (Interpretation and scope of Articles 1.1, 4.1, 5, 11.2, 12, 13, 17.1, 19, 24 and 26 of the American Convention on Human Rights and other instruments that concern the protection of human rights)".

23. The Commission declares Joel Jardines Jardines beneficiary of the precautionary measures, who is duly identified in this proceeding.

V. DECISION

24. The Commission considers that this matter meets *prima facie* the requirements of seriousness, urgency, and irreparable harm set forth in Article 25 of its Rules of Procedure. Consequently, the Commission requests that Cuba:

- a) adopt the necessary measures to protect the rights to life and personal integrity of Joel Jardines Jardines;
- b) take the necessary measures to ensure his detention conditions comply with applicable international standards. In particular, ensuring that the corresponding medical diagnoses are made, that sufficient and timely medical information is provided; and that his medical treatment is defined, with the prior consent of the proposed beneficiary;
- c) consult and agree upon the measures to be adopted with the beneficiary and his representatives; and
- d) report on the actions taken to investigate the alleged events that gave rise to this resolution, so as to prevent such events from reoccurring.

25. The Commission requests that Cuba report, within 15 days from the date of notification of this resolution, on the adoption of the requested precautionary measures and update that information periodically.

26. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment of any violation of the rights protected in the American Convention and other applicable instruments.

27. The Commission instructs its Executive Secretariat to notify this resolution to the State of Cuba and the applicants.

28. Approved on August 13, 2024, by Roberta Clarke, President; Carlos Bernal Pulido, First Vice-President; José Luis Caballero Ochoa, Second Vice-President; Edgar Stuardo Ralón Orellana; Arif Bulkan; Andrea Pochak; and Gloria Monique de Mees, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary