
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 77/2018**

Precautionary measure N°. 82-18
Ramiro Ibarra Rubí regarding the United States of America
October 1st, 2018

I. INTRODUCTION

1. On February 2, 2018, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a request for precautionary measures on the part of Mrs. Amy Knight (hereinafter “the applicant”), urging that the Commission require the United States of America (hereinafter “the State” or “the United States”) to not execute the death penalty imposed on Mr. Ramiro Ibarra Rubí (hereinafter “the proposed beneficiary”), a Mexican citizen with an alleged intellectual disability who is on death row after having been sentenced for a sexual assault and murder that took place in 1987. This application is linked to the petition P-162-18, in which the applicant reported violations of Article I (right to life, liberty, and personal security), Article II (right to equality before law), Article XVIII (right to a fair trial), Article XIX (right to nationality), Article XXV (right to protection from arbitrary arrest) and Article XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration” or “the Declaration”).

2. The Commission requested additional information from the applicant, who presented her response on July 10, 2018.

3. After analyzing the allegations of fact and law presented by the applicant, the Commission considers that the information presented demonstrates *prima facie* that the present matter complies with the requisites of seriousness, urgency, and irreparability established in Article 25 of its Rules of Procedure. Moreover, in the event that Mr. Ibarra is executed before the Commission has the opportunity to examine the merits of the case, any eventual decision would be rendered moot, leading to irreparable harm. In consequence, in accordance with Article 25 of the Rules of Procedure of the IACHR, the Commission requests the United States of America to: a) adopt the measures necessary to protect the life and personal integrity of Mr. Ramiro Ibarra Rubí; b) refrain from carrying out the death penalty on Mr. Ramiro Ibarra Rubí; c) ensure that the detention conditions of Mr. Ramiro Ibarra Rubí are made consistent with the applicable international standards; and d) agree on the measures to be adopted with the beneficiary and his representatives.

II. SUMMARY OF THE FACTS AND ALLEGATIONS PROVIDED BY THE APPLICANT

4. Mr. Ibarra was detained on March 6, 1987 by the Texan police, for the alleged murder of a young 16-year-old Mexican girl in Texas, who was the victim of a sexual assault and afterwards was strangled to death. The applicant indicated that witnesses saw a car that resembled Mr. Ibarra’s and that, upon inspection of the vehicle, they found a yellow wire similar to what was used to strangle the victim. Mr. Ibarra was detained for 16 months until July 29, 1988, the date on which charges were dismissed given that the evidence was obtained without a court order. However, in 1996, he was accused again for the same murder, after new DNA tests linked Mr. Ibarra’s blood to the rape exam and the clothing of the victim.

5. The applicant alleged violations of due process during the proceedings against Mr. Ibarra. She highlighted that Mr. Ibarra was not informed of his right to be duly notified and assisted by consular authorities. Additionally, she affirmed that due to Mr. Ibarra's state of poverty, he had been assigned a public defender that did not properly present evidence. In relation to this point, the applicant indicated that both of Mr. Ibarra's brothers testified that he was at home during the time of the allegations. The public defender did not try to obtain a life sentence in place of the death penalty, despite the proposed beneficiary's mental disability.

6. The applicant informed that, in 1997, Mr. Ibarra was sentenced to the death penalty and later, with assistance from the Mexican Consulate, presented a motion to carry out a new trial, alleging violation of the Vienna Convention on Consular Relations, which was denied. This decision was appealed and the Texas Court of Criminal Appeals confirmed the decision of such recourse, considering that the allegation was not presented on time. Subsequently, the Supreme Court denied a writ of certiorari in relation to the allegation. The applicant noted that in 2003, the proposed beneficiary presented a writ of habeas corpus at the state level, pursuant to an opinion of the Supreme Court to prohibit the execution of persons with intellectual disabilities. In 2005, another habeas corpus was presented based on the decision of the International Court of Justice (ICJ) in the case *Avena and other Mexican citizens*.¹ The Court of Criminal Appeals determined that Mr. Ibarra did not have a mental disability and also rejected the allegation of the *Avena* case, considering that the decisions of the ICJ did not constitute a basis for a request of habeas corpus. The applicant indicated that the Supreme Court, for its part, had rejected a writ of certiorari.

7. Later, a habeas corpus was filed before the Federal District Court, which was also rejected. Furthermore, a request for a certificate of appealability filed before the US Fifth Circuit Court of Appeals was reportedly not granted. Afterwards, an application for a new hearing was placed, which was reportedly sent by the US Fifth Circuit Court in 2013. The application was made a new federal judge in September 2016, who dismissed the pleas nine days later. The applicant noted that the District Court rejected a request for a certificate of appealability and a motion to alter his previous sentence. Furthermore, on September 20, 2017, a new motion was presented to obtain a certificate of appealability before the US Fifth Circuit Court of Appeals.

8. The applicant indicated that the US Fifth Circuit Court of Appeals decided that, on June 19, 2018, it would hear just one claim by the proposed beneficiary regarding the ineffective assistance of counsel claim, indicating that the proposed beneficiary could present his information regarding this claim until July 30, 2018. The applicant indicated that there was no set date on which the Court of Appeals would make a decision on the claim. However, the applicant noted that the Court of Appeals indicated that it had received substantial briefing on the issue, so it was understood that it would be soon. Additionally, the applicant indicated that an appeal for review could be presented to the Supreme Court after the dismissal of the Fifth Circuit, but that this is of extraordinary nature and is rarely granted.

9. The applicant indicated that, after a denial from the Court, the State of Texas could set an execution date at any moment, for a date not earlier than the 91st day following the date of decision of

¹ The International Court of Justice considered that the lack of adequate notification to the Mexican Consulate of the detention of 49 Mexican citizens, and, in consequence, the deprivation of their right to consular assistance contained in the Vienna Convention, as in the deprivation of the Mexican authorities from visiting and connecting with their nationals, constitutes a violation of the United States' obligations contained in said Convention. International Court of Justice, Case *Avena and other Mexican citizens*, (*Mexico v. United States*), Sentenced on March 31, 2004, para. 153 (5) and (6).

the court to set the execution date according to Article 43.142 (c) of the Texas Code of Criminal Procedure.² The applicant considers that it is very probable that the Texan authorities will execute Mr. Ibarra at the first possible opportunity after the denial and revision of the Court, as has happened repeatedly in other similar cases. Additionally, she affirmed that Mr. Ibarra would be executed by lethal injection, which causes pain and excessive suffering.

10. The applicant highlights that Mr. Ibarra is confined to death row, where he has been for a prolonged period of 20 years and that, in account of his detention conditions, the prisoners sentenced to the death penalty are separate and have the most restrictions: the cells are 8x12 feet with a sink, a toilet, a 30-inch bunk, and a small window. They are only allowed to exercise in small “cages” and do not have access to educational programming. They are segregated from the other prisoners and can only communicate by yelling between the cells, and they are not permitted physical contact with their family members, friends, or attorneys. The applicant indicated that this worsens the preexisting condition of the mental disability and post-traumatic stress of the proposed beneficiary.

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

11. The mechanism of precautionary measures is part of the function of the Commission to oversee compliance with the human rights obligations established in Article 106 of the Charter of the Organization of American States. These general functions of observance are established in Article 41 (b) of the American Convention on Human Rights, recognized also in Article 18 (b) of the Statute of the IACHR. The mechanism of precautionary measures is described in Article 25 of the Rules and Procedure of the Commission. In conforming to this article, the Commission grants precautionary measures in situations that are serious and urgent, and in which such measures are necessary for preventing an irreparable harm to persons.

12. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”) have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective. In their protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. In their precautionary nature, precautionary measures aim to preserve a legal situation while under the consideration of the IACHR. The precautionary nature is intended to preserve the rights at possible risk until the request before the Inter-American System is resolved. Its objective is to assure the integrity and effectiveness of the merits decision, and in this way, to prevent alleged rights from being harmed, a situation that may distort the *effet utile* of the final decision. In this sense, the precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, implement the ordered reparations. For the purpose of making a decision, and in accordance with 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.

² Texas Code of Criminal Procedure. Art. 43. 141 (c) “An execution date may not be earlier than the 91st day after the date the convicting court enters the order setting the execution date.”

13. In the analysis of the mentioned requisites, the Commission reiterates that the alleged acts that motivate a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.³

14. As a preliminary observation, the Commission deems it necessary to highlight that, according to its mandate, it is not called upon to make a determination on the criminal responsibility of persons in relation to their alleged commission of crimes or infractions. Additionally, through the mechanism of precautionary measures, it is not in its mandate to determine whether the State has incurred violations to the American Declaration as a result of the alleged events. In this sense, the Commission reiterates that, with respect to the procedures of precautionary measures, it is only called to analyze whether the proposed beneficiary is in a situation of seriousness and urgency facing harm of an irreparable nature, conforming to what is established in Article 25 of the Rules of Procedure. With respect to the petition P-162-18, in which alleged violations to the American Declaration were reported, the Commission recalls that the analysis of these allegations will be carried out in conformity with the specific dispositions related to the Petitions and Cases System and with the pertinent dispositions of the Statutes and Rules of Procedure.

15. As a preliminary aspect, the Inter-American Commission finds it pertinent to recall that the death penalty has been the subject of strict regulation in the inter-American system of human rights protection. Despite the tendency observed between the Member States of the OAS to favor the gradual abolition of the death penalty, for those States that maintain the death penalty, there are a series of restrictions and established limitations in regional human rights instruments that the States are obligated to comply with in accordance with international law.⁴ These restrictions are based on the recognition of the right to life as the supreme right of human beings, and the *sine qua non* condition for the enjoyment of all other human rights, which requires greater scrutiny to ensure that any deprivation of the right to life resulting from the implementation of the death penalty is strictly in accordance with the requirements of the applicable instruments.⁵ In this sense, the Commission has resolved that the right to due process plays an essential role in guaranteeing the protection of the rights of persons sentenced to death. In effect, among the guarantees of due process, States have the obligation to guarantee the exercise of the right to a fair trial, the strictest compliance to the right to defense and the right to equality and non-discrimination.⁶

16. In the present matter, the Commission considers that the requirement of seriousness has been complied with, both in its precautionary and protective dimensions. With regards to the precautionary dimension, the Commission observes that in accordance with petition 162-18 presented by the applicant, during the process that Mr. Ibarra Rubí encountered, the State incurred various violations to

³ To that respect, for example, referring to the provisional measures, the Inter-American Court has indicated that it requires the minimum of detail and information that permits it to assess *prima facie* a situation of extreme seriousness and urgency. The Inter-American Court, Subject of the children and adolescents deprived of liberty in the “Complexo do Tatuapé” of Fundação CASA (CASA Foundation). Application to expand provisional measures. Provisional measures regarding Brazil. Resolution of the Inter-American Court of Human Rights from July 4, 2006. Recital 23.

⁴ IACHR, *The death penalty in the inter-American human rights system: from restrictions to abolition*, OAS/Ser.L/V/II Doc. 68, December 31, 2011, para. 138, 139, available at: <http://www.oas.org/es/cidh/docs/pdfs/penademuerte.pdf>

⁵ IACHR, Report N°90/09, Case 12.644, Admissibility and Merits (Publication), Medellín, Ramírez Cárdenas and Leal García, United States, August 7, 2009, para. 122.

⁶ CIDH, *La pena de muerte en el sistema interamericano de derechos humanos: de restricciones a abolición*, OAS/Ser.L/V/II Doc. 68, 31 de diciembre de 2011, párr. 141, disponible en: <http://www.oas.org/es/cidh/docs/pdfs/penademuerte.pdf>

the American Declaration, including to due process.⁷ In this respect, while the imposition of the death penalty is not prohibited *per se* in the American Declaration, the Commission has recognized systematically that the possibility of an execution in such circumstances is sufficiently serious to permit the granting of precautionary measures to the effect of safeguarding a decision on the merits of the petition filed.⁸

17. Considering the protective dimension, the Commission observes that, in the present situation, it is necessary to preserve the rights to life and personal integrity that are found at risk in the event of an execution.

18. Additionally, the Commission observes that, according to the applicant, Mr. Ibarra has been on death row for a prolonged period of 20 years. The applicant stated that Mr. Ibarra Rubí is subjected to severe restrictions as a result of the circumstances under which he is incarcerated, which are further aggravated given the anxiety caused by the uncertainty of the situation and his alleged condition as intellectually disabled. In relation to this point, the Commission has previously addressed the death penalty in the *Polunsky Unit, Texas*,⁹ and has observed that, in this facility, the prisoners are confined in small cells,¹⁰ and spend 23 hours a day in isolation, separated from other prisoners. According to the information presented to the Commission, in this unit, the prisoners are not permitted physical contact with relatives or lawyers from the moment they enter death row up until their execution.¹¹

19. The so-called “death-row phenomenon” is well-known for the impact it has on the rights of persons deprived of liberty.¹² Additionally, it is worth mentioning that the Commission recently published the merits report N° 24/17,¹³ relating to the situation of an Argentinian citizen sentenced to death and secluded on death row for more than twenty years.¹⁴ The Commission took the opportunity to evaluate the circumstances, factually similar to the *Polunsky Unit*, in the context of merits report N° 76/16 relating to the Víctor Hugo Saldaño case regarding the United States, in which it concluded that the detention conditions he was found in were inhumane, cruel, unusual and vile, constituting a form of

⁷ In particular, the applicants alleged that: a. the proposed beneficiary had been deprived of the possibility for a revision of the claim regarding his intellectual disability; b. during the criminal proceedings, the authorities did not offer Mr. Ibarra the possibility to rely on an adequate defense. c. he had been deprived of his rights to notify and consult assistance; d. the existence of a racial, ethnic, and national bias, due to alleged public declarations by one of the federal judges; e. the alleged effects of the execution for lethal injection.

⁸ IACHR. Case of Víctor Hugo Saldaño regarding the United States (PM-241-17), Resolution 14/17 from May 26; Case of Williams Charles Morya, regarding the United States (PM-156-17), Resolution 9/2017 from March 16, 2017; Case of José Trinidad Loza Ventura regarding the United States (PM-304-15), Resolution 32/2015 from September 29, 2015; Case of Samuel Moreland regarding the United States (PM-37-14), Resolution 32/2014; Case of John Winfield regarding the United States (MC-204-14), Resolution 16/2014 from June 6, 2014; Case of Russell Bucklew and Charles Warmer regarding the United States (PM-177-14), Resolution 14/2014 from May 20, 2014. All of the decisions available at: <http://www.oas.org/es/cidh/decisiones/cautelares.asp>

⁹ IACHR, Report No. 24/17, Case 12.254. Merits. Víctor Saldaño. United States. March 18, 2017, para. 249.

¹⁰ IACHR, Report No. 44/14, Case 12.873. Merits (Publication). Edgar amayo Arias. United States. July 17, 2014, para. 117.

¹¹ IACHR. Case of Rubén Ramírez Cárdenas regarding the United States (PM-736-17), Resolution 41/2017 from October 18, 2017, available at: <http://www.oas.org/es/cidh/decisiones/cautelares.asp>

¹² In relation to this, in the *Soering v. United Kingdom* case, the European Court concluded that “the death row phenomenon” is characterized by a prolonged period of detention while waiting to be executed; during this time, the prisoners suffer great mental anguish in addition to other conditions. IACHR, *The death penalty in the inter-American human rights system: from restrictions to abolition*, OAS/Ser.L/V/II. Doc. 68, December 31, 2011, page 200. Available at: <https://www.oas.org/es/cidh/docs/pdfs/penademuerte.pdf>

¹³ IACHR, Report No. 24/17, Case 12.254. Merits. Víctor Saldaño. United States. March 18, 2017. Available at: <http://www.oas.org/es/cidh/decisiones/fondos.asp>

¹⁴ The Commission identified in its report that Mr. Víctor Hugo Saldaño had been condemned and sentenced to death in spite of presenting serious problems with his mental health, and use of erroneous proof, which included an expert report based on discriminatory considerations among other aspects. Additionally, as a result of the long seclusion on death row, his mental state had deteriorated, such that federal recourses of habeas corpus were presented with the objective of not imposing the death penalty.

torture.¹⁵ In this matter, taking into consideration the information received regarding the deterioration of his mental health due to the detention conditions, the Commission granted new precautionary measures in his favor on May 26, 2017, requesting that the United States abstain from executing Mr. Víctor Hugo Saldaño and protect his rights to life and personal integrity.¹⁶

20. In particular, as for the impact that solitary confinement may have on the rights to life and personal integrity, the United Nations Special Rapporteur on torture, Juan E. Mendez, stated that:

Individuals held in solitary confinement suffer extreme forms of sensory deprivation, anxiety and exclusion, clearly surpassing lawful conditions of deprivation of liberty. Solitary confinement, in combination with the foreknowledge of death and the uncertainty of whether or when an execution is to take place, contributes to the risk of serious and irreparable mental and physical harm and suffering to the inmate. Solitary confinement used on death row is by definition prolonged and indefinite and thus constitutes cruel, inhuman or degrading treatment or punishment or even torture.¹⁷

21. In view of these aspects, and without prejudice to the petition presented, the Commission concludes that the rights of Mr. Ibarra are *prima facie* in a situation of risk, due to the possibility of executing the death penalty and its subsequent effects included in the petition that is currently under analysis by the Commission. Additionally, the Commission takes into account the situation of serious risk posed on the rights of the proposed beneficiary, as a result of the detention conditions on death row in the circumstances highlighted by the applicant.

22. Regarding the requirement of urgency, the Commission observes that from a precautionary perspective, the applicant highlights that as soon as the last appeal is denied by the US Fifth Circuit Court of Appeals, the Texan authorities could execute Mr. Ibarra. According to the applicant, this situation could occur at any moment. Likewise, the applicant has highlighted that going to the Supreme Court after dismissal by the Fifth Circuit is an “extraordinary” remedy that is “rarely granted.” In view of the aforementioned, and before the imminent possibility that the death penalty is applied, the Commission considers that it is pertinent to adopt precautionary measures in order to examine the presented petition.

23. With regards to the protective dimension, the Commission considers that the requirement of urgency has also been complied with, given that the risk to the rights of Mr. Ibarra require immediate measures against the severe conditions caused on death row and before the possible execution of the death penalty in the near future.

24. Finally, regarding irreparable harm, the Commission considers that loss of life constitutes the most extreme and irreversible situation. Moreover, as indicated, the Commission had the opportunity to assess the impact on personal integrity of similar conditions to those of the proposed beneficiary. From a precautionary perspective, the Commission considers that if Mr. Ibarra is executed before the Commission has had the opportunity to evaluate petition P-162-18, the final decision would be rendered moot, since the situation of irreparable harm would already have materialized.

¹⁵ IACHR, Report No. 5/17, Case 12. 254, Víctor Saldaño (United States), January 27, 2017, para. 251.

¹⁶ IACHR. Case of Víctor Hugo Saldaño regarding the United States (PM-241-17), Resolution 14/17 from May 26.

¹⁷ United Nations, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 9 August 2012, A/67/279, para. 48.

25. In this context, the Commission highlights that, conforming to Article 25 (5) of its Rules of Procedure, “prior to the adoption of precautionary measures, the Commission shall request relevant information to the State concerned, except where the immediacy of the threatened harm admits of no delay.” In the present case, taking into account the nature of the potential harm, the processing of the presented request and its effect on the protected rights, the Commission acknowledges that it does not require additional information from the parties.

IV. BENEFICIARY

26. The Commission considers as a beneficiary of the present precautionary measure Mr. Ramiro Ibarra Rubí, who is duly identified in this procedure.

V. DECISION

27. In view of the aforementioned, the Commission considers that the present matter meets *prima facie* the requirements of seriousness, urgency, and irreparability contained in Article 25 of its Rules of Procedure. Moreover, in the event that Mr. Ibarra is executed before the Commission has the opportunity to examine the merits of the case, any eventual decision would be rendered moot, leading to irreparable harm. Consequently, in accordance with Article 25 of the Rules of Procedure of the IACHR, the Commission requests the United States of America to: a) adopt the measures necessary to protect the life and personal integrity of Mr. Ramiro Ibarra Rubí; b) refrain from carrying out the death penalty on Mr. Ramiro Ibarra Rubí; c) ensure that the detention conditions of Mr. Ramiro Ibarra Rubí are made consistent with the applicable international standards; and d) agree on the measures to be adopted with the beneficiary and his representatives.

28. The Commission requests that the Government inform, within a period of 15 days from the date of notification of the present resolution, regarding the adoption of the precautionary measures consulted with and agreed upon, and to update this information periodically.

29. The Commission resolves that, in accordance with Article 25 (8) of its Rules of Procedure, the granting and adoption of the present precautionary measure does not constitute a determination on the merits of the case, but rather seeks to comply with its objectives of protecting rights at risk.

30. The Commission requests that the Executive Secretary of the IACHR notify the United States and the applicant of the present resolution.

31. Approved on October 1st, 2018: Margarette May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Francisco José Eguiguren Praeli; Joel Hernández García; Antonia Urrejola; and Flavia Piovesan, members of the IACHR.

Paulo Abrão
Executive Secretary