
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 114/2021**

Precautionary Measure No. 137-13
Girls deprived of liberty in adult detention centers
regarding Jamaica¹
December 31, 2021
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of girls deprived of liberty in adult detention centers. At the time of making the decision, the Commission assessed the actions taken by the State during implementation as well as the observations of the beneficiaries' representation. Both the State and the representation provided information that allegedly indicates that there are no longer girls in adult detention centers, having been transferred to a juvenile detention center. Following the request made by the State to have the measures lifted, the IACHR repeatedly requested observations from the representation, who responded for the last time in 2014, without answering to the requests for information made in 2017, 2019, and 2021. However, no additional and updated details on their current situation were provided, despite the repeated requests for information made by the IACHR. Upon not identifying compliance with the procedural requirements, the IACHR decided to lift these measures.

II. BACKGROUND INFORMATION

2. On July 31, 2013, the IACHR granted precautionary measures in favor of girls deprived of liberty in adult detention centers in Jamaica, represented by John Clark. The request for precautionary measures alleged that the girls were being held with adults and in hazardous conditions. Additionally, it was alleged that the pertinent authorities did not adopt measures to prevent the girls from hurting themselves; and it was indicated that cases of abuse by adults or other inmates were reported. Upon identifying compliance with the requirements of Article 25 of its Rules of Procedure, the IACHR granted measures to protect the life and physical integrity of girls deprived of liberty in adult detention centers. Specifically, the Commission requested that the State: a) adopt the necessary measures to protect the life and personal integrity of the beneficiaries, providing the physical and mental medical care required by the beneficiaries; b) investigate allegations of sexual and physical abuse; c) provide the IACHR with a list of all girls detained in adult centers, including their names, ages, current judicial status, and health status; and d) take the necessary measures to transfer all girls from the Horizon Adult Remand Centre, the Fort Augusta Adult Correctional Centre, and all other adult detention centers, to appropriate facilities, taking into account their legal situation and their medical or psychological needs, and preventing any children from being deprived of liberty in adult detention centers.²

III. INFORMATION PROVIDED DURING THE TIME THE MEASURES WERE IN FORCE

¹ In accordance with Article 17(2)(a) of the IACHR Rules of Procedure, Commissioner Margarette May Macaulay, a Jamaican national, did not participate in the debate and deliberation of this matter.

² IACHR. Precautionary Measures 2013. Available [in Spanish] at <https://www.oas.org/es/CIDH/decisiones/MC/cautelares.asp?Year=2013&Country=JAM>

3. Throughout the time the precautionary measures have been in force, the Commission has followed-up on the situation that is the subject matter of this resolution through the request for information from the parties. On August 26, 2013, the State presented a report. On September 25, 2013, the Commission forwarded the State's response to the representation. On October 14, 2013, the representation requested a timeline extension, which was granted on October 17, 2013. On November 25, 2013, the representation presented a report. On December 4, 2013, the Commission forwarded the representation's response to the State. On January 18, 2014, the State requested a time extension, which was granted on January 22, 2014. On January 30, 2014, the State submitted a report. On February 3, 2014, the Commission forwarded the report to the representation. On February 19, 2014, the representation requested a timeline extension. On February 26, 2014, the Commission called a working meeting with the parties on March 26, 2014. On March 26, 2014, the representation provided a report.

4. On May 13, 2015, the Commission requested that the State submit updated information. On June 26, 2015, the State requested a time extension, which was granted by the Commission on July 7, 2015. On August 17, 2015, the State submitted a report and requested that the precautionary measures be lifted. On May 9, 2017, the Commission asked the representation to present updated information and requested its observations. On June 8, 2017, the representation requested a timeline extension.

5. On July 10, 2017, the representation indicated that the new representation will be exercised by Jamaicans for Justice. In this regard, on September 26, 2017, the Commission requested additional information from the new representation to rule on these precautionary measures. On May 29, 2019, and December 21, 2021, the Commission reiterated the request for information and requested information again to provide its observations, to assess whether these precautionary measures should remain in force.

A. Information provided by the State

6. On August 26, 2013, the State declared that the requirements of Article 25 of the Rules of Procedure were not met. Thus, it indicated that, before the precautionary measures were granted, measures were taken to ensure the safety and development of girls deprived of liberty in adult detention centers, such as the establishment of medical personnel, psychologists, and psychiatrists, as well as teachers to ensure education. Additionally, the State reported that:

- The Department of Correctional Services employs 3 psychologists (2 part-time and one full-time), 3 part-time psychiatrists, 5 part-time and 3 full-time physicians, a nurse psychiatrist, and a full-time dentist. Additionally, the Department of Correctional Services is in the process of hiring an additional 2 part-time physicians and a full-time nurse.
- There are several clinics and public hospitals that are used in case of requiring additional treatment and hospitalization. Cases of physical and sexual abuse are investigated by the police, by a unit completely independent from the detention center.
- On August 8, 2013, it was reported that 37 girls are deprived of liberty in the detention center Fort Augusta Adult Correctional Centre; 15 girls are being treated for a medical condition, the remaining ones have been considered healthy.
- The State made the decision not to continue with the detention of girls in the detention center Horizon Adult Remand Centre. In this sense, all the girls who were in that detention center were transferred to Fort Augusta Adult Correctional Centre on July 4, 2013.
- The detention center South Camp Adult Facility it is being transformed into a youth institution for girls. In this sense, girls in adult detention centers will be transferred to the juvenile institution when it is operational.
- The State reported the case of two girls deprived of liberty, specifically, S.F. and T.F.:

- S.F. was reportedly released into her mother's custody on July 1, 2013. The Child Development Agency established that girl S.F. should have a psychological follow-up. In that sense, an appointment with the psychologist was scheduled on August 15, 2013. In addition, the girl purportedly has classes for anger management and conflict management.
- A psychologist appointment was scheduled for T.F. on August 15, 2013. In addition, a place was obtained in the Jonathan Grant High School so that girl T.F. can resume her education in September 2013.

7. The State reserved the possibility of refusing to give the names of the girls deprived of liberty in order to safeguard their right to privacy.

8. On January 30, 2014, the State reported that: (i) all girls deprived of liberty in adult detention centers have been transferred, and as of January 3, 2014, the number of girls deprived of liberty was 41 ; (ii) each girl is examined within 72 hours of detention and the psychological or psychiatric evaluation is carried out within two weeks of detention; (iii) there is frequent medical and psychological care for the girls in the South Camp detention center, a psychiatrist sees the inmates once a week, a psychologist sees the inmates twice a week, as well as a physician; (iv) detained girls are separated according to their legal status, and where possible, those inmates with psychological and/or behavioral problems are assigned to special dormitories to receive adequate care; (v) all girls receive school education, as well as other life skills, such as computer skills and instruction on clothing and textiles; and (vi) every underage person who must appear before the courts has the option of requesting legal representation before the Legal Assistance Council, and there is no record of any case in which legal representation has been requested before the Legal Assistance Council and is has been denied.

9. On August 17, 2015, the State stated that: (i) the three girls specifically mentioned are no longer in the custody of the State and are being monitored by the Child Development Agency to implement actions in their favor; (ii) all the girls have been transferred to South Camp juvenile detention center, in which they receive physical and psychological evaluations upon admission to the center; (iii) inmates receive education from trained teachers, as well as training on social skills; (iv) the Department of Correctional Services (DCS) reported that in 2014 it had 7 reports of sexual abuse, 4 of them had occurred before entering the detention center and 3 of them had occurred in the detention center, and all the cases were reported for investigation; (v) the DCS informed that 17 incidents of physical abuse were reported in the indicated period; (vi) a box was set up to report abuse incidents anonymously; (vii) DCS employees receive training on the procedure to follow in the event of self-harm and suicide attempts; (viii) regarding the girls detained in police cells, it is reported that at that time only one girl was detained in a police cell; and (ix) in the period from January 3, 2014 to June 30, 2015, 112 underage persons requested legal aid. Lastly, the State requested the lifting of the precautionary measures.

B. Information provided by the representation

10. On November 25, 2013, the representation presented a report stating that the State had not properly implemented the precautionary measures. In this regard, it reported that: (i) the State has failed to grant the necessary medical treatment to the T.F., S.F., and S.G. girls, who continue to show symptoms of trauma due to the harsh conditions of detention and the abuse suffered; (ii) girls continue to be subject to prison conditions even when they are in the custody of the State for civil proceedings; (iii) the medical personnel hired by the Directorate of Correctional Services is purportedly insufficient to provide an adequate health service to the prison population and especially to girls deprived of liberty, because

according to the International Center for Prison Studies, 4,201 persons are deprived of their liberty in Jamaica; (iv) regarding investigations into physical and sexual abuse, no specific measures have been adopted to investigate allegations of physical and sexual abuse; (v) all the girls detained in the Fort Augusta Correctional Centre and the Diamond Crest Juvenile Centre were transferred to South Camp Road Correctional Centre on November 22, 2013. According to the information, 67 girls are being detained, of which 28 are being held for civil proceedings. The South Camp Road Detention Centre is said to continue under construction and, in that sense, is not an adequate place for the girls deprived of liberty to live; (vi) regarding S.F.'s situation, it was reported that she attended a psychologist session, and the following meeting has been reportedly scheduled for November 6, 2013, but it was purportedly canceled because the meeting interfered with her school activities; the family reportedly does not receive help from the State and they do not have contact with the social worker assigned to them by the court on August 22, 2013; (vii) regarding T.F., it was reported that she was released in May 2013 and she effectively resumed her studies in September 2013. However, due to the school delay, the girl reportedly had to repeat certain courses. In addition, it was reported that T.F.'s grandmother has received state aid and since October 2013 she has received \$ 2,200 in aid; and (viii) regarding S.G., it was reported that since her release in October 2013 the beneficiary has been followed up by a social worker. The representation expresses concern that a large percentage of detained children do not have full legal representation.

11. On March 26, 2014, the representation stated that: (i) the information on the medical personnel who take care of the inmates does not imply that the precautionary measures are being implemented; (ii) in February 2014, the representation made a visit to the juvenile detention center, during the visit it was established that there were 32 girls. However, on March 21, 2014, the Department of Correctional Services reported that there were 41 girls deprived of liberty in the center. Additionally, the Department of Correctional Services estimates that in November 2013 there were 13 suicide attempts in the detention center South Camp; (iii) the representation indicated that the detention center South Camp Road Facility functioned as a male prison until 2012; (iv) the detained girls are reportedly not receiving a full education which would allow them to easily reintegrate the educational system after their release; and (v) there are reportedly girls held in police cells.

12. Having requested updated information from the representation, and upon informing them that the IACHR would analyze whether these precautionary measures should remain in force, the representation did not send a response, and the deadlines granted have expired. Similarly, while a change in representation was reported, the Commission asked them again in 2017 and 2019 to submit additional information. To date, no response has been provided to the Commission, and the timelines granted have also expired.

IV. ANALYSIS OF THE REQUIREMENTS OF URGENCY, SERIOUSNESS, AND IRREPARABLE HARM

13. The precautionary measures mechanism 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 established in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the IACHR Statute. 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 irreparable harm to persons or to the subject matter of a petition or case before the organs of the inter-American system.

14. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have repeatedly established that precautionary and provisional measures have a dual nature, both protective and precautionary.³ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.⁴ To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and the vulnerability to which the persons proposed as beneficiaries would be exposed if the measures are not adopted.⁵ Regarding their precautionary nature, these measures have the purpose of preserving a legal situation while under consideration by the organs of the inter-American system. The precautionary nature aims at safeguarding 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 of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations. 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.

15. With respect to the foregoing, Article 25(7) of the Commission’s Rules of Procedure establishes that “the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25(9) sets forth that “the Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force.” In this regard, the Commission should evaluate if the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures persist. Moreover, the Commission shall consider whether new situations have subsequently arisen that might meet the requirements set forth in Article 25 of the Rules of Procedure.

16. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, keeping such measures in force requires a more rigorous evaluation.⁶ In this sense, when no imminent risk is identified, the burden of proof and argument

³ See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela, Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#) Precautionary Measures, Order of July 6, 2009, considerandum 16.

⁴ See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela, Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Case of Bámaca Velásquez](#). Provisional measures regarding Guatemala, Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional Measures regarding Mexico, Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5.

⁵ See in this regard: I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5; I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela, Order of the Court of February 8, 2008, considerandum 9; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#). Provisional Measures regarding Brazil, Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6 [only in Spanish].

⁶ I/A Court H.R., Provisional Measures regarding Mexico, Order of February 7, 2017, paras. 16 and 17. Available [in Spanish] at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf

increases over time.⁷ The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, added to the lack of imminent risk, may lead to the lifting of international protection measures.⁸

17. In the instant matter, the Commission recalls that the precautionary measures were granted in 2013 in light of the available information, which indicated that girls were deprived of their liberty in adult detention centers in Jamaica. After assessing the information about their conditions of detention in such centers, the Commission considered the requirements of Article 25 of its Rules of Procedure to have been met. During the follow-up on the matter, the State sent a response to what was indicated by the Commission. In this regard, the Commission observes that the State adopted the following measures:

- (i) It transferred all girls deprived of liberty in adult detention centers to the juvenile detention center South Camp Road Facility. In this way, there are no girls deprived of their liberty in adult detention centers;
- (ii) It reported on the conditions in which they were in the juvenile detention center. In particular, it was indicated that detained girls are separated into different dormitories according to their legal status and, where possible, those inmates with psychological and/or behavioral problems are assigned to special dormitories;
- (iii) It detailed the health care. In particular, it referred to the existence of various health professionals to take care of the girls. In addition, at the time of admission of the inmates, the girls are reportedly evaluated both physically and psychologically. The physical assessment is said to take place within 72 hours of detention and the psychological examination is reportedly carried out within 2 weeks of detention. The State referred to frequent medical and psychiatric care: a psychiatrist purportedly sees them once a week, as well as a psychologist and a physician see the inmates twice a week;
- (iv) Regarding the complaints made, it was reported that these are addressed by the national police and not within the detention center, being that certain complaints about sexual abuse had occurred before the girls were admitted to the juvenile center, and those complaints that occurred in the center are reportedly being investigated. In addition, the State installed a box to report incidents anonymously, mainly regarding physical abuse;
- (v) Regarding the lack of legal assistance to the girls, it was indicated that legal representation could be requested before the Legal Assistance Council. However, it was specified that there is no record of any case in which legal representation has been requested and assistance has been denied;
- (vi) Finally, the State referred to the situation of certain girls, being that some had already left the center and were not in the custody of the State.

18. Thus, the State indicated that the procedural requirements are no longer met. In particular, the Commission notes that this has been the stance of the State since 2013 and reaffirmed in 2015 when it formally requested the lifting of these precautionary measures. In the terms of Article 25(9) of the Rules of Procedure, the request to have the measures lifted was forwarded to the representation, as well as the

⁷ Ibid.

⁸ Ibid.

State's reports on the implementation of these precautionary measures. However, the representation did not provide a response, its last information being provided in 2014, while approximately 7 years have passed since the last information received by the representation. In the communications sent by the representation in 2014, the Commission notes that they confirmed that the girls were in a juvenile detention center, and no longer in adult detention centers. However, no additional details on their current situation were provided, despite the repeated requests for information made by the IACHR.

19. The Commission recalls that when a State requests the lifting of a precautionary measure, it must present sufficient evidence and arguments to support its request.⁹ By the same token, the representatives of the beneficiaries that want the measures to continue must present evidence of any reasons why.¹⁰ Similarly, Article 25(11) of the Rules of Procedure sets forth that the Commission may lift or review a precautionary measure when the beneficiaries or their representatives unjustifiably fail to provide the Commission with a satisfactory response to the requests made by the State for its implementation.

20. In this matter, the Commission notes that in the last 7 years there has been no information from the representation. Although the Commission requested their observations in 2017, which was later reiterated in 2019 and 2021, no response has been received from them. The Commission notes that, after learning of a new representation in this matter, they were asked again in May 2019 to provide their response. In particular, they were told that the IACHR would analyze whether these precautionary measures should remain in force in the terms of Article 25 of its Rules of Procedure. Despite such requests, the Commission has not received a response from the representation.

21. In this sense, considering the analysis previously carried out, and in response to the State's request to have the measures lifted, the Commission understands that the factual circumstances that gave rise to the granting of these precautionary measures have changed significantly due to the measures taken in favor of the beneficiaries. Thus, the Commission observes, based on the information available, that the girls are not in an adult detention center in Jamaica, this being the factual framework from which the precautionary measures granted in 2013 began. Similarly, the Commission observes that the detention conditions are reportedly different from those that were informed before granting the precautionary measures. In this sense, the latest information from the representation dates to 2014 and presents general questions about the measures adopted by the State. However, it does not detail or specify elements sufficient to consider that the situation can be still classified as one presenting a "imminent" risk under the terms of Article 25 of its Rules of Procedure, even more so when they have not provided information within a period of approximately 7 years. Given that the girls are in the juvenile detention center South Camp Road Facility in the reported detention conditions, and in view of the lack of updated information from the representation, the Commission considers that the factual circumstances have changed significantly and that the matter has been rendered moot, insofar as they are no longer deprived of liberty in adult penitentiary centers or facing the factual circumstances assessed in 2013.

22. Consequently, the Commission considers the current situation does not support compliance with the requirements of Article 25 of the Rules of Procedure. In view of the above and taking into account the exceptional and temporary nature of precautionary measures,¹¹ the Commission deems it appropriate to lift these measures.

⁹ Ibid.

¹⁰ Ibid.

¹¹ I/A Court H.R., *Matter of Adrián Meléndez Quijano et al.* Provisional Measures regarding El Salvador. Order of the Court of August 21, 2013, para. 22, and *Matter of Galdámez Álvarez et al.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24

23. In line with what was indicated by the Inter-American Court in various matters,¹² a lifting decision does not imply considering, in any way, that the State has effectively complied with the precautionary measures ordered, nor can it imply that the State is relieved from its general protection obligations, contained in Article 1(1) of the Convention, within the framework of which the State is especially obliged to guarantee the rights of persons at risk and must promote the necessary investigations to clarify the facts, followed by the consequences that may be established. In the same way, also based on the assessment of the Inter-American Court, the lifting of the precautionary measures, or the declaration of non-compliance with them, does not imply an eventual decision on the merits of the controversy if the case were to be brought before the inter-American system through a petition, nor does it prejudice state responsibility for the events denounced.¹³

24. Lastly, the Commission emphasizes that regardless of the lifting of these measures, in accordance with Article 1(1) of the American Convention, it is the obligation of the State of Jamaica to respect and guarantee the rights recognized therein, including the life and personal integrity of the persons identified in the matter at hand.

V. DECISION

25. The Commission decides to lift the precautionary measures granted in favor of girls deprived of liberty in adult detention centers in Jamaica.

26. The Commission recalls that the lifting of these measures does not prevent the representation from filing a new request for precautionary measures in case they consider that there exists a situation that meets the requirements established in Article 25 of the Rules of Procedure.

27. The IACHR instructs its Executive Secretariat to notify this resolution to the State of Jamaica and the representation.

28. Approved on December 31, 2021, by Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice-President; Flávia Piovesan, Second Vice-President; Esmeralda Arosemena de Troitiño; and Joel Hernández García, members of the IACHR.

Maria Claudia Pulido
Assistant Executive Secretary

¹² See: I/A Court H.R. Case of Velásquez Rodríguez. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considerandum 3, and Matter of Giraldo Cardona *et al.* Provisional measures regarding Colombia. Order of the Inter-American Court of Human Rights of January 28, 2015, Considerandum 40.

¹³ See: I/A Court H.R. Matter of Guerrero Larez. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of August 19, 2013, Considerandum 16, and Matter of Natera Balboa. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of August 19, 2013, considerandum 16.