
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 66/2021**

Precautionary Measure No. 970-04
Carmen Cuadrado Fincé *et al.* regarding Colombia
August 23, 2021
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift the precautionary measures in favor of Carmen Cuadrado Fincé, Mariana Epinayú, Débora Barros, Roland Fince Uriana, Ana Julia Fince Uriana, Telemina Barros Cuadrado, José Miguel Barros Fince, and Katty Fince Uriana in Colombia. When making this decision, the Commission assessed the actions taken by the State aimed at reaching an agreement regarding the measures, adopting protection measures, and supporting further investigations. Following the State's requests to lift these precautionary measures and the lack of information on potential risks in approximately 9 years, the Commission did not identify any elements suggesting that these precautionary measures should stay in place.

II. BACKGROUND INFORMATION

2. On September 23, 2004, the Commission requested to adopt precautionary measures in favor of Mariana Epinayú, Carmen Cuadrado Fincé, Débora Barros, and Karmen Ramírez. All have been identified as leaders of the Wayúu indigenous people in La Guajira, Colombia. According to the request, the Wayúu indigenous tribe was subjected to acts of violence by paramilitary groups led by "Jorge 40" with the assistance of State officers. It was alleged that the life and personal integrity of several women leaders were threatened as a result of exposing acts of violence against the Wayúu people. It was mentioned that, because they are blood related to a group of indigenous people that disappeared and were eventually murdered in a massacre on April 18, 2004, they have been subjected to threats and acts of harassment.¹

3. Upon analyzing the information presented, the Commission considered that the beneficiaries were *prima facie* in a serious and urgent situation, given that their rights to life and personal integrity were purportedly at risk. Subsequently, the Commission asked the State of Colombia to adopt the necessary measures in order to guarantee the beneficiaries' life and physical integrity and to report any actions taken aimed at resolving the situation that called for the adoption of these precautionary measures, including any relevant court proceedings.²

4. On November 16, 2004, the IACHR extended the precautionary measures to include Roland Fince Uriana, Ana Julia Fince Uriana, Telemina Barros Cuadrado, José Miguel Barros Fince, and Katty Fince Uriana, in Colombia.³ On February 14, 2012, the Commission decided to lift these precautionary measures regarding Karmen Ramírez Boscán.

¹ IACHR. Precautionary measures 2004. Available [in Spanish] at <http://www.cidh.org/medidas/2004.sp.htm>.

² Ibidem.

³ Ibidem.

III. SUMMARY OF THE INFORMATION PROVIDED DURING THE TIME THE PRECAUTIONARY MEASURES WERE IN FORCE

5. During the time the precautionary measures were in force, the Commission has followed-up on this situation by requesting information from both parties. On April 29, 2011, the Commission sent a notice to all parties. It informed them that the IACHR would hold a working meeting during the 141st Period of Sessions. The State provided information on May 30, 2011, where it requested to lift the precautionary measures in favor of beneficiary Karmen Ramírez Boscán. This information was forwarded to the beneficiary's representation on July 21, 2011, for its observations. Through communication dated September 28, 2011, the State reiterated its request to partially lift these precautionary measures, initially filed on May 30, 2011. On November 1, 2011, the IACHR forwarded the State's report to the representation. On December 22, 2011, the representation sent its observations. On February 14, 2012, the Commission disclosed its decision to lift the precautionary measures in favor of Karmen Ramírez Boscán, bearing in mind that she was not at risk and that the representatives themselves had stated that they did not understand why she was included as a beneficiary since she was not related to any of the victims that died in the alleged massacre leading to the granting of these precautionary measures.

6. On March 20, 2012, and April 2, 2012, the State sent further information that was forwarded to the representation on April 19, 2012. On September 6, 2012, the representation provided additional information that was later forwarded to the State on October 15, 2012. The State provided more information on November 2, 2012, which was forwarded to the representation on November 21, 2012. On July 5, 2013, the State sent the Commission additional information.

7. On September 22, 2016, the Commission requested both parties detailed and updated information regarding the situation placing the beneficiaries at risk. On October 10, 2016, the State responded and requested to lift these precautionary measures. In November 2016 and December 8, 2016, further information was provided by the representation and the beneficiaries. On January 18, 2017, the State provided additional information and withdrew its request to lift the precautionary measures. On February 10, 2017, the Commission forwarded each party the State's and the representation's reports. The State provided information on March 23, 2017 and reiterated its request to lift these precautionary measures. This information was forwarded to the representation on April 20, 2018. On September 11, 2020, the State requested, once again, the lifting of the precautionary measures. On December 4, 2020, the State reiterated the request made on September 11, 2020. On January 12, 2021, the Commission forwarded the State's requests to the representation. On January 28, 2021, the representation replied to the Commission's request. The State, once again, requested on March 3, 2021, and June 17, 2021, to lift these measures.

A. Information provided by the State

8. On May 30, 2011, the State reported that a joint meeting with the beneficiaries was held on March 31, 2011. Participants in this meeting include the organization representing the beneficiaries; the Presidential Agency for Social Action and International Cooperation; the Ministry of National Defense; the National Police; the Ministry of the Interior and Justice via its Directorates of Human Rights and Affairs of Indigenous Communities, Minorities and Rom; the Office of the Attorney General; the Office of the Inspector General; and the Ministry of Foreign Affairs via the Directorate for Territorial Sovereignty and the Directorate for Human Rights and International Humanitarian Law. It was specified that the

meeting's main topic was the return request⁴ made by Ms. Telemina Barros in 2010. State agencies present at the meeting stated that the Departmental Government of La Guajira and the Municipal Government of Uribia are the entities legally responsible for processing the return request. The beneficiary was then informed that the Departmental Government of La Guajira would hold a meeting on May 5, 2011, to discuss the return of displaced people. The Presidential Agency for Social Action and the Directorate for Human Rights and International Humanitarian Law pledged to schedule another meeting with corresponding legal authorities in order to explain each agencies' duties to all the beneficiaries. It was also reported that on May 2, 2011, a meeting was held between State entities to debate on the actions needed to guarantee the return of the Wayúu population from Bahía Portete. On May 12, 2011, and May 27, 2011, meetings were held between the Government of La Guajira and beneficiaries Débora Barros and Telemina Barros to discuss the return request and the situation of community members living in Venezuela.

9. The State indicated that it has taken the necessary protection measures. In this regard, Ms. Débora Barros had been granted a security detail since 2010. This consists of a vehicle, two bodyguards, a bulletproof vest, and a communication device since 2004. Plane tickets have been granted since February 22, 2011. Ms. Telemina Barros had access to a cellphone, in force since 2010, and has national plane tickets. The State also affirms that the remaining beneficiaries have reportedly been offered temporary relocation aids, communication devices, as well as national plane tickets.

10. On March 20 and April 2, 2012, the State reported that several State entities have been working side by side in order to guarantee the adoption of protection measures in favor of the entire Wayúu community. The State stated that, in March 2011, inter-agency meetings were held in the department of La Guajira to learn what steps local agencies have taken regarding the return of the Bahía Portete community. It was mentioned that, during the meeting held on March 14, 2011, with the Regional Attorney's Office (*Procuraduría Regional*) of La Guajira, promises were made to review the actions taken regarding the Bahía Portete massacre and the meeting held with beneficiary Débora Barros. On May 5, 2011, the Expanded Departmental Committee for the Attention of Displaced People had a session, with the participation of representatives of the Bahía Portete community. In this meeting, the actions undertaken were reported and a series of commitments were made. On October 20, 2011, another meeting was held where a road map was created in order to establish a joint strategy between the national, departmental, and municipal governments, defining work lines and a work schedule. The State reported that, in March 2012, work meetings were held between the community and the State, with the aim of coordinating the community's return to its territory.

11. On November 2, 2012, it was reported that the National Police took protective actions regarding beneficiaries Telemina Barros and Carmen Fince after the September 1, 2012, events. However, the police officers who were at that time stated that the trip did not face any setbacks. It was also mentioned that no vehicle was in the way and that the police were always present. It was also stated that the women leaders were traveling in an armored vehicle granted by the National Protection Unit and that they were accompanied by 2 permanent bodyguards. It was also reported that beneficiaries Débora Barros Fince, Telemina Barros, and Carmen Fince have security details from both the National Police and the National Protection Unit. Moreover, the beneficiaries have received self-defense classes.

12. On October 10, 2016, the State provided information regarding the protection measures granted to the following beneficiaries:

⁴ Return request that seeks for the Wayúu Community of Bahía Portete to return to their territory, given that they were in Venezuelan territory.

- a) Mariana Epinayú: by resolution from March 18, 2013, her risk was classified as ordinary. A risk reassessment was done in 2015 and concluded that no new facts had changed this situation.
- b) Carmen Cuadrado Fince: her security detail includes a conventional vehicle, 3 bodyguards that she shares with Ms. Telemina Barros, a communication device, and a bulletproof vest.
- c) Telemina Barros Cuadrado: her security detail was suspended for 3 months due to misuse.
- d) Débora Barros Fince: her measures were suspended due to their misuse.

13. According to the State, misuse of these measures includes the use of armored vehicles without the presence of their respective bodyguards, the violation of security protocols, and the use of security vehicles by third parties who are not included in the security details. Regarding the other beneficiaries (Roland Fince Uriana, Ana Julia Fince Uriana, José Miguel Barros Fince, and Katty Fince Uriana) there is no recent information, and they are not beneficiaries of the National Protection Unit's protection program. They also reported that La Guajira Police Department sends police patrols and inspections to the beneficiaries' homes and that some operations aimed at identifying and individualizing the leaders and members of criminal groups that commit crimes in the areas where the Wayúu community lives are done.

14. The State indicated that different types of security measures have been implemented in order to prevent forced displacements within the community. In June 2015, the Departmental Transitional Justice Committee was held to address the return of 150 families to Bahía Portete. Regarding the investigations made, three criminal proceedings related to the murder against members of the Wayúu community of Bahía Portete was mentioned. In one of the processes, those accused have already been sentenced, another of the processes is in the investigation stage and the last process is in the trial stage. Lastly, the State requested to lift the precautionary measures.

15. On January 18, 2017, the State indicated that on November 22, 2016, an agreement had been reached with the beneficiaries in order to implement the preventive security measures. These include police patrols and police inspections at their homes and workplaces. Moreover, the police would allegedly assign an officer that would accompany the beneficiaries throughout low and middle Guajira. The State reiterated its request to lift the precautionary measures.

16. On March 23, 2017, the State provided additional information that reported that by resolutions dated November 15, 2016, it was determined that the risk faced by beneficiaries Carmen Cuadrado, Telemina Barros, and Débora Barros was ordinary and, as a result, protection measures were lifted. The State reiterated the information on the investigative actions carried out and emphasized that it did not have information on recent events regarding the situation present a risk or any threats against the beneficiaries. Lastly, the State reiterated the request to lift the measures.

17. Finally, on September 11, 2020, the State once again reiterated its request to lift the measures, considering that the circumstances that gave rise to the adoption of precautionary measures no longer exist. Subsequently, the State reiterated its request to lift the measures on December 4, 2020; March 3, 2021; and June 17, 2021.

B. Information provided by the representation

18. On December 22, 2011, the representation informed that on March 31, 2011, the consultation meeting was held with the different entities of the State. In this meeting, it was allegedly decided to arrange a meeting which includes different State entities. However, the Government reportedly did not schedule the meeting and, as a result, on May 12, 2011, the representation requested information about

the date planned for the meeting. On May 27, 2011, the representation received a response via email from the Government through the Directorate of Human Rights and International Humanitarian Law, informing about an institutional meeting held on May 2, 2011, and a new meeting scheduled for May 27.

19. The representation stated that on July 27, 2010, the vehicle in which the beneficiaries Débora Barros, Carmen Cuadrado Fince, and José Barros were traveling, accompanied by the bodyguard designated by the National Police, was shot with a firearm. On October 7, 2010, two men on a motorcycle allegedly robbed the headquarters of the Wayúumusurat (women weaving peace) organization. On October 13, 2011, two men on a black Boxer motorcycle were identified following the vehicle in which the beneficiary Telemina Barros Fince was traveling. The same individuals were seen later at the Akootchijirawa organization's headquarters. The facts were brought to the attention of the National Police. The bodyguards assigned to the proposed beneficiary Telemina Barros allegedly saw that one of the individuals went to the place where the beneficiary was, so they evacuated her from the place. The events were reported to the Human Rights Unit of the Office of the Attorney General, in response to the participation of the public defender for indigenous and ethnic minorities of the Ombudsperson's Office. On September 2, 2010, the representation reported in a meeting held with State authorities the presence of strange vehicles in intimidating circumstances for the members of the community. It was stated that the family members of Fince Uriana and Fince Epinayú were tormented. The representation also stated there was not threatening situations against other members of the community and that the Wayúu community of Bahía Portete is still in a situation of forced displacement.

20. In 2011, the representation indicated that it was not aware of the opening of any investigation. However, it indicated that a preliminary investigation allegedly began against the community leaders for their actions in defense of their territory. It considered that a stigmatization campaign was initiated against the beneficiaries through the media. Subsequently, the representation informed that the criminal investigations have allegedly progressed as the material perpetrators of the events were reportedly sentenced or they are in pretrial detention. However, the representation stated that members of the security forces who apparently participated in the massacre have not been linked to the case yet. It reiterated that the members of the community are still going through a situation of forced displacement. Besides, it stated that their ancestral territory has been illegally occupied since August 21, 2004.

21. On September 6, 2012, the representation informed that on September 1, 2012, the proposed beneficiaries Telemina Barros and Carmen Fince were intercepted by a Cherokee vehicle and a white bubble car, but they disappeared when the police arrived. On the same day, the proposed beneficiary Débora Barros Fince was hit by an unknown object in the armored vehicle in which she was traveling. The impact allegedly broke the first layer of armor on the car's glass. According to the information provided, the area where the events took place is normally monitored, but there was no surveillance that day. The representation mentioned the burning of entwined branches where the victims gathered to remember the massacre.

22. The proposed beneficiaries Débora Barros Fince and Carmen Cuadrado Fince provided a communication in November 2016, whereby they informed the withdrawal of the security detail in October 2016. However, they did not inform new events against them, providing information on the context of the Department of La Guajira. On December 8, 2016, the representation informed that for years they stopped receiving information about events that put the rights of the beneficiaries at risk. On January 28, 2021, the representation informed again that for several years the beneficiaries decided not to continue under their representation. Therefore, the representation does not have any contact with the beneficiaries.

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

23. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with the human rights obligations set forth in the Charter of the Organization of American States, and in the case of the Member States that have not yet ratified the American Convention, the Declaration of the Rights and Duties of Man. These general oversight functions are established in Article 18 of the Statute of the IACHR, and the precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. 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.

24. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that the precautionary and provisional measures have a double nature, both precautionary and protective. Regarding their protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are under consideration by the IACHR. In the process of reaching a decision, and according to Article 25(2) of the 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.

25. 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) establishes that "the Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to keep, modify or lift the precautionary measures in force." In this regard, the Commission should assess whether the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures persist. Moreover, the Commission should consider if new situations that might meet the requirements set forth in Article 25 of the Rules of Procedure have subsequently arisen.

26. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, the maintenance of such measures requires a more rigorous evaluation.⁵ In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.⁶ 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.⁷

27. In this matter, the Commission recalls that the precautionary measures were granted in 2004 in favor of the following persons which were duly identified: (1) Mariana Epinayú, (2) Carmen Cuadrado Fincé, (3) Débora Barros, (4) Karmen Ramírez, (5) Roland Fince Uriana, (6) Ana Julia Fince Uriana, (7)

⁵ I/A Court H.R., Provisional Measures regarding Mexico, Order of February 7, 2017, para. 16 and 17. Available [in Spanish] at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf

⁶ Ibid.

⁷ Ibid.

Telemina Barros Cuadrado, (8) José Miguel Barros Fince, and (9) Katty Fince Uriana (see *supra* paras. 2 and 4). Subsequently, in 2012, the IACHR decided to lift the precautionary measures regarding Karmen Ramírez Boscán (see *supra* para. 5), leaving the remaining 8 persons as the beneficiaries. Regarding such persons, the IACHR requested that the State of Colombia protect their rights to life and personal integrity (see *supra* para. 3). In its analysis, the Commission considered alleged threats against them, given their leadership roles in the Wayúu population of Bahía Portete in the department of La Guajira, as well as the acts of violence that reportedly occurred in 2004 (see *supra* para. 2). In this sense, although the information presented by the representation over time refers to other people and situations that the Wayúu population allegedly experienced in Bahía Portete, the analysis will focus on the information that refers to the situation of the identified persons, who are the beneficiaries of these precautionary measures.

- *Implementation of precautionary measures*

28. Upon the granting of the precautionary measures and throughout the follow-up by the Commission, the State answered the requests for information and sent reports detailing the actions taken to ensure the life and integrity of the beneficiaries, as well as the consultation actions undertaken in favor of the beneficiaries. Among them, the Commission highlights the following: (i) the consultation meeting on March 31, 2011, in which the organization representing the beneficiaries and several State entities participated; (ii) consultation meeting on May 12 and 27, 2011 with the beneficiaries Débora Barros and Telemina Barros; (iii) meetings on May 5 and October 20, 2011; (iv) meeting in March 2012; and (v) meeting in November 2016, in which preventive security measures were allegedly agreed upon.

29. In the same way, the Commission underscores that the State provided material protection measures to the proposed beneficiaries, based on the risk analysis that were carried out internally to define the protection measures to be implemented for each of them. Although the representation informed that certain risk events allegedly occurred against some beneficiaries until 2012 (see *supra* paras. 19-21), the Commission observes that the State disproved certain alleged facts (see *supra* para. 11). In any event, if such allegations are true, the Commission notes that, given the protection detail implemented by the State, the alleged risk reportedly did not materialize.

30. At the same time, the Commission notes that the available information indicates that protection measures were effectively implemented in favor of (1) Mariana Epinayú, (2) Carmen Cuadrado Fincé, (3) Débora Barros, and (4) Telemina Barros Cuadrado, while in the case of the last three beneficiaries, the protection measures were in force until 2016. In the case of (5) Roland Fince Uriana, (6) Ana Julia Fince Uriana, (7) José Miguel Barros Fince, and (8) Katty Fince Uriana, the Commission notes that the representation has not provided any type of information on their situation at least since 2012, while the State has indicated that the Protection Program of the National Protection Unit was not activated and there is no information on such beneficiaries or on the events against them.

31. Lastly, regarding investigative activities, the most recent information points out that the State referred to three criminal proceedings on homicides of members of the Wayúu community of Bahía Portete. In one of the processes, those accused have already been sentenced, another of the processes is in the investigation stage, and the last process is in the trial stage. In this sense, the Commission appreciates the progress in the criminal proceedings and calls for the continuation of the corresponding actions and proceedings under the terms of Article 8 and 25 of the American Convention.

- *Compliance with the requirements set forth in Article 25 of the Rules of Procedure*

32. The Commission observes that the State has requested the lifting of the precautionary measures since October 10, 2016 and has reiterated the said request 6 times: on January 18 and March 23, 2017, on September 11 and December 4 2020, and March 3 and June 17, 2021. In that sense, the request to lift the measures was forwarded to the representation, pursuant to Article 25 (9), and no specific observations were received by the representation. Additionally, 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.⁸ By the same token, the representatives of the beneficiaries that want the measures to continue must present evidence of any reasons why.⁹ Similarly, Article 25, subparagraph 11 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.

33. In this regard, the Commission observes that the representation has only reported on the occurrence of incidents until 2012. Subsequently, the Commission has received information indicating that certain material protection measures in favor of some beneficiaries were lifted after the corresponding risk analysis. However, no information has been provided on the situation of each of the beneficiaries, even though the IACHR has made requests for information to the representation since 2012 and considering that the State has requested the lifting of the precautionary measures over time at least since 2016. In this regard, the Commission observes that approximately 9 years have elapsed without the occurrence of events against the beneficiaries, and approximately 5 years since the representation reported that it no longer keeps contact with the beneficiaries.

34. Considering the analysis carried out, and in response to the request to lift the measures, the Commission understands that the factual circumstances that called for the granting of these precautionary measures in favor of the beneficiaries have changed significantly. Thus, the Commission estimates that, according to the information available, there is not any situation that currently complies with the requirements of Article 25 of the Rules of Procedure, having passed approximately 9 years without information on incidents and 5 years since the representation indicated that it does not keep any contact with the beneficiaries. In view of the above and taking into account the exceptional and temporary nature of precautionary measures,¹⁰ the Commission deems it appropriate to lift these precautionary measures.

V. DECISION

35. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of Carmen Cuadrado Fincé, Mariana Epinayú, Débora Barros, Roland Fince Uriana, Ana Julia Fince Uriana, Telemina Barros Cuadrado, José Miguel Barros Fince, and Katty Fince Uriana in Colombia.

36. The Commission emphasizes that, regardless of the lifting of these measures, in accordance with Article 1.1 of the American Convention, the State of Colombia must respect and guarantee the rights recognized therein, including the life and personal integrity of Carmen Cuadrado Fincé, Mariana Epinayú, Débora Barros, Roland Fince Uriana, Ana Julia Fince Uriana, Telemina Barros Cuadrado, José Miguel Barros Fince, and Katty Fince Uriana.

⁸ Ibid.

⁹ Ibid.

¹⁰ 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

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

38. The Commission instructs its Executive Secretariat to notify this resolution to the State of Colombia and the representation.

39. Approved on August 23, 2021, by: Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay, Esmeralda Arosemena de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary