
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 9/2021**

Precautionary Measure No. 256-06
Evel Fanfan *et al.* regarding Haiti
January 31, 2021
Original: Spanish

I. BACKGROUND

1. On November 8, 2006, the IACHR granted precautionary measures in favor of human rights defender Evel Fanfan, president of the "Association of University Students Committed to a Haiti with Rights" (AUMOHD, by its French acronym) and its members. AUMOHD provides legal support to poor people and works in favor of victims of human rights violations in Port-au-Prince. The information available indicated that Mr. Fanfan received numerous death threats and was subjected to acts of intimidation motivated by public complaints on the activity of armed groups and massive deaths of civilians in the communities of Grand Ravine and Martissant. In particular, members of AUMOHD had actively denounced the failure to find those responsible for the acts of violence carried out by gang members, who also turn out to be responsible for many of the deaths caused among civilians in the community. Given the situation of the beneficiaries, the IACHR requested that the Government of Haiti take the necessary measures to guarantee the life and personal integrity of Mr. Fanfan and the members of AUMOHD, as well as report on such measures to the IACHR.

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

2. Upon granting these precautionary measures, the Commission has monitored this matter through requests for information from the parties.

3. On November 2, 2012, the representatives reported that the threats against Evel Fanfan, and members of his nuclear family, had continued. According to the representatives, the press conferences and interviews that were held advocating for better wages and conditions for workers in Haiti, as well as the support for the victims of the Grand Ravine massacre and the filing of a petition before the IACHR, provoked a series of acts of intimidation and threats against the beneficiary and other members of the organization. However, no details were provided in that regard. It was alleged that on October 23, 2012, two large vehicles blocked his exit to the street, and one of the drivers shot the beneficiary, threatening him.

4. On November 4, 2019, the Commission requested updated information from the parties, within a period of 10 days, on the situation of the beneficiaries and the measures adopted by the State to guarantee the life and personal integrity of the beneficiaries. To date, the Commission has not received a communication from any of the parties, and the timelines have expired.

5. The latest information received from the representatives dates to November 2012. On August 23, 2012, the Commission requested updated information from the State and the representatives to "assess whether it would be appropriate to keep this precautionary measure in force." On December 28,

2020, the IACHR reiterated that request to the representatives. To date, the IACHR has not received any response from them.

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

6. 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 an irreparable harm to persons.

7. The Inter-American Commission and the Inter-American Court of Human Rights have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective. As regards the 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 being considered by the IACHR. Regarding the process of decision making, 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.

8. 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 maintain, modify or lift the precautionary measures in force." In this regard, the Commission must assess whether the urgent and serious situation and the possible generation of irreparable harm, which led to the adoption of 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.

9. As a preliminary matter, the Commission recalls that in 2006 these precautionary measures were granted so that the State of Haiti adopt the necessary measures to protect the life and personal integrity of Mr. Evel Fanfan and members of AUMOHD. During the monitoring of these measures, the Commission received information from the representatives in November 2012 on the situation of beneficiary Evel Fanfan. However, since then, the Commission has not received updated information from the representative party, despite the request for information sent on November 4, 2019, and approximately 8 years have gone by since the last information received on the situation of the beneficiaries.

10. In this regard, the Commission recalls that although 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.¹ In this sense, the burden of proof and argument increases as time goes by and there is no imminent risk.² The Inter-American Court has indicated that the passage of a reasonable period of time without threats or intimidation, added to the lack of imminent risk, may lead to the lifting of international protection measures.³ In this regard, in accordance with Article 25, subparagraph 11, the Commission may lift or review a precautionary measure when the beneficiaries or their representatives, without justification, fail to provide a satisfactory response to the Commission on the requirements presented by the State for their implementation.

11. Having requested information from the State on the measures adopted to implement these precautionary measures since 2006, the Commission notes that no response was received from the State. In this regard, the Commission recalls that according to the Inter-American Court, the breach of State duty to report on all the measures adopted in compliance with its decisions is especially serious, given the legal nature of these measures seeking to prevent irreparable harm to persons in a serious and urgent situation.⁴ The duty to report constitutes an obligation of a dual nature that requires for its effective fulfillment the formal filing of a document on time and the specific, true, current and detailed material reference concerning the issues on which that obligation falls.⁵

12. Similarly, regarding the representatives, the Commission deems, taking up what was indicated by the Inter-American Court, that their procedural activity in the framework of this proceeding is necessary in order to timely analyze the relevant observations and, in general, provide specific and detailed information to evaluate whether the precautionary measures should remain in force taking into account their considerations.⁶ Otherwise, the Commission does not have elements sufficient to analyze the maintenance of the precautionary measures. As the Inter-American Court has indicated, the representatives of the beneficiaries who wish the measures to continue in force must present proof of the reasons for this.⁷

13. In this regard, the Commission observes that the representatives provided information on the situation of the beneficiaries up to 2012. However, the Commission notes that, despite the request for information made in November 2019 and reiterated in December 2020, they have not provided further information regarding the situation of the beneficiaries or presented information regarding the actions, or lack of actions taken by the State in the framework of the implementation of the precautionary measure. Due to the foregoing and given the lack of updated information, the Commission does not have elements sufficient to indicate that the requirements established in Article 25 of its Rules of Procedure are currently met.

¹ 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

² Ibidem

³ Ibidem

⁴ I/A Court H.R. Matter of Communities of Jiguamiandó and Curvaradó regarding Colombia. Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006. Considerandum 16; and Case of Luisiana Ríos *et al.* (Radio Caracas Televisión - RCTV). Provisional Measures. Order of the Inter-American Court of Human Rights of September 12, 2005. Considerandum 17.

⁵ Ibidem

⁶ I/A Court H.R. Case of Coc Max *et al.* (Xamán Massacre) v. Guatemala. Provisional Measures. Order of the Inter-American Court of Human Rights of February 6, 2019. Considerandum 12. Available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/coc_se_02.pdf

⁷ I/A Court H.R. Matter of Luisiana Ríos *et al.* regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of August 22, 2018. Considerandum 3. Available (in Spanish) at http://www.corteidh.or.cr/docs/medidas/rios_se_10.pdf

14. Given that almost 8 years have passed without receiving information from the representatives, the Commission considers that it does not have specific and current information sufficient to determine that the beneficiaries are in a situation of serious and urgent risk of irreparable harm to their rights, as established in Article 25 of the Rules of Procedure. Upon not finding information to support the requirements of seriousness, urgency, and risk of irreparable harm, and taking into account the temporary and exceptional nature of precautionary measures,⁸ the Commission decides to proceed with the lifting of this matter.

15. Lastly, and in line with what was indicated by the Inter-American Court in various matters,⁹ a decision to lift does not imply to consider, in any way, that the State has effectively complied with the precautionary measures ordered, and it also cannot imply that the State is relieved of 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 might be established. In the same way, also based on the assessment of the Inter-American Court, the lifting or the declaration of non-compliance with the precautionary measures does not imply an eventual decision on the merits of the dispute if the case were brought to the attention of the Inter-American System through a petition, and it does not prejudge state responsibility for the events denounced either.¹⁰

IV. DECISION

16. The Commission hereby decides to lift these precautionary measures in the terms indicated.

17. The representatives may submit a new request for precautionary measures if they consider that the situation meets the requirements of Article 25 of the Rules of Procedure.

18. The Commission instructs the Executive Secretariat of the IACHR to notify this resolution to the State of Haiti and the representatives.

19. Approved on January 31, 2021 by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay; Esmeralda Arosemena de Troitiño; Edgar Stuardo Ralón Orellana, and Julissa Mantilla Falcón, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary

⁸ 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 Galdámez Álvarez *et al.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24

⁹ See: I/A Court H.R. Case 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.

¹⁰ 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.