

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION N. 15/2014**

Matter of Nydia Erika Bautista and others regarding Colombia
PRECAUTIONARY MEASURE No. 42-14
May 28, 2014

I. INTRODUCTION

1. On February 6, 2014, the Commission on Human Rights (hereinafter "the Inter-American Commission," "Commission" or "IACHR ") received a request for precautionary measures presented by the Nydia Erika Bautista Foundation (hereinafter "FNEB" for its acronym in Spanish, or "the applicants") requesting the IACHR to ask the Republic of Colombia (hereinafter "Colombia" or "the State") to protect the life and personal integrity of the identified members of the Nydia Erika Bautista Foundation. Furthermore, the request seeks to protect an informant, whose identity in this proceeding is referred to as Mr. X in order to protect his identity, and that of his immediate family. According to the request, due to the organization's work and the information that "Mr. X" provided for the arrest of a high-ranking army officer allegedly involved in the acts related to the retaking of the Palace of Justice, the proposed beneficiaries are being subjected to instances of threats and surveillance.

2. After analyzing the factual and legal allegations presented by both parties, the Commission considers that it is demonstrated *prima facie* that the two identified members of the Nydia Erika Bautista Foundation, "Mr. X" and his immediate family are in a serious and urgent situation, because their rights to life and personal integrity are at imminent risk. In consequence, in accordance with Article 25 of the Commission's Rules of Procedures, the Commission requires the State of Colombia to: a) Adopt the necessary measures to guarantee the life and personal integrity of the two identified members of the Nydia Bautista Foundation, Mr. X and his immediate family; b) Agree on the measures to be adopted with the beneficiaries and their representatives; and c) Inform about the actions adopted to investigate the alleged facts that led to the adoption of this precautionary measure and thus avoid its repetition.

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

3. According to the petitioners, a police report revealed that members of the Nydia Erika Bautista Foundation had facilitated Mr. "X's" cooperation with the Office of the Attorney General [*Fiscalía General de la Nación*] for purposes of providing information to bring about the arrest of a high-ranking army officer. This officer had allegedly participated in multiple crimes, including forced disappearances, extrajudicial executions and events related to the 1985 Palace of Justice case. As per what was reported, the Nydia Erika Bautista Foundation works to protect the rights of women and family members' victims of forced disappearances, among other issues. The petitioners highlight that despite requesting that the competent authorities not reveal their collaboration or Mr. "X's" identity, the authorities had allowed the military officer arrested and his representatives to have access to this information. The request for precautionary measures is substantiated on the following alleged facts:

- A. On January 31, the Director of the Nydia Erika Bautista Foundation went to the Human Rights' Director of the Office of the Attorney General's Investigative Technical Corps (hereinafter referred to as "CTI") in order to request protection measures for the informant. She was informed however that "this did not fall under the purview of the Office of the Attorney General's Witness Protection Program and that there was no protection program for sources."

- B. On February 4, 2014, the petitioners went to the main institutions concerned with providing protection to request measures to protect the informant, “corrective [measures] based on the CTI-DH Judicial Police report or protection for the Foundation and its senior managers who had been exposed because of this error.” Nevertheless, the petitioners point out that “none of the authorities consulted—although verbally acknowledging at meetings with the Foundation that an extremely serious error was committed—, no agency will acknowledge its competence to make amends for the extremely serious error committed, or to adopt protection measures, leaving the persons affected totally defenseless.” Specifically, the petitioners fear that this situation may put “the victims and organizations of family members of the disappeared—human rights defenders—in the sights of the perpetrators of forced disappearances who would be affected by this arrest.”
4. On February 11, 2014, the IACHR requested more in-depth information from the petitioners to get more details about their alleged risk, the complaints filed, and whether they had been afforded any kind of protection regime and other pertinent information.
5. On February 14, 2014 and March 7, 2014, the petitioners submitted communications, noting that:
- A. On February 7, 2014, they reported the facts to the Presidential Program for Human Rights and the National Protection Unit, but have received no response from these agencies. On February 8, 2014, unidentified individuals entered the headquarters of the foundation where Mr. X is the Director and stolen his work computer.
- B. Regarding the protection measures afforded to the members of the Nydia Erika Bautista Foundation, the petitioners affirm that the protection regime is “very precarious,” consisting of “two bodyguards and a normal car for four individuals.” Regarding the shortcomings of the protection regime, the petitioners allege that (i) the “ordinary car [...] was assigned “temporarily” two years ago and has not been changed despite repeated requests;” (ii) “two years ago it was requested that closed-circuit security cameras be installed at headquarters,” without response to date; (iii) as for the two bodyguards and the ordinary vehicle for four individuals, they allege that “when an individual is being escorted, the others are left without protection or one of them with a bodyguard, going in taxis or buses for transportation.” As for Mr. X and his immediate family, they affirm that they have been afforded no protection measures to date.
- C. The petitioners highlighted that the confidential information revealed in the proceedings mentioned previously included the names and personal and work phone numbers of the members of the Nydia Erika Bautista Foundation, as well as Mr. “X’s” information.
6. On March 14, 2014, the IACHR requested information from the State; specifically, its observations on the request for precautionary measures submitted and whether it had adopted protection measures for the proposed beneficiaries.
7. On March 27, 2014, during the time period granted to the State [to respond], the petitioners presented a report, which stated that during that month “[Mr. X]” and his family members had been subjected to further threats, harassment and surveillance. For this reason, in addition to Mr. [...] [X], other members of his family had been forced to flee elsewhere in the country.” The petitioners did not provide details in that regard.
8. On April 7, 2014, the State presented its report, indicating that: (i) Andrea Torres Bautista and Rocío Bautista had a security regime, made up of a normal car, two bodyguards, two bullet-proof vests and three communication devices; (ii) as for Mrs. Yanette Bautista, Director of the Foundation, a technical reassessment of her risk level had been initiated on February 27, 2014 and once the study was available, the State would proceed in keeping with its

results; and (iii) the security study of the Nydia Erika Bautista Foundation was in progress. The State did not provide information about whether it was adopting any security measures for Mr. X and his immediate family.

9. In response to the report submitted by the State, on April 23, 2014 and May 2, 2014, the petitioners indicated that the National Protection Unit had stated “its inability to provide protection to the senior managers of the Nydia Erika Bautista Foundation”. Specifically, the petitioners asserted that:

A. With regard to the members of the Nydia Erika Bautista Foundation

i) On April 8, 2014, two individuals in a gray van allegedly followed a support staff member of the Foundation for twelve blocks. Later, this van and its occupants went to the Foundation’s national headquarters. The petitioners affirm that one of the occupants of the van was wearing a badge that said National Police and that they called the authorities to address the situation, but had received no response.

ii) Just as the State has indicated, some members of the Nydia Erika Bautista Foundation enjoy some protection measures. However, the petitioners have alleged that these protection measures are insufficient. In this regard, they stated that the measures need to be strengthened, above all “as a result of the new instances of harassment and threats.”

B. With regard to Mr. X and his family

i) In February and March 2014, Mr. X and members of his family had been subjected to “threats, harassment and forced displacement.” Specifically, it is stated that during the first two weeks of March 2014, Mr. “X’s” mother’s house in Cali, Colombia, had been “subject to ongoing surveillance from men in Chevrolet vans with tinted Windows and taxis.” Furthermore, two men had climbed a post at Mr. “X’s” mother’s house, allegedly “to tamper with the internet and television.” Due to the foregoing, Mr. X was forced to leave Cali for Bogotá, a trip during which he was escorted by agents from the Investigative Technical Corps (CTI). Upon arrival in Bogotá, Mr. X was followed by a man at the airport and the following day this same man followed him once again at a Transmilenio (Public Transportation Service) station in another part of the city.” The petitioners highlighted that since that day, Mr. X has been in hiding.

ii) On March 10, 2014, Mr. X was followed by a van carrying individuals that wore military uniforms while traveling in a taxi with another person. These individuals followed him for 45 minutes to the north of Bogotá. Upon arrival at the destination, the driver of the van rolled down the window of the car and mocked Mr. “X.” On March 11, 2014, a family member of the recently arrested military officer and two other individuals were in the environs of Mr. “X’s” mother’s house, looking like they were doing surveillance. Subsequently, Mr. “X’s” mother received “a threatening phone call in which she was insulted and she and Mr. X were called “snitches,” which is why she left her house and moved to another neighborhood in the city.”

iii) Mr. X received an e-mail, which told him “when are you going to sing like a canary again so we can stick the cat on you” (sic).

iv) A family member of the recently arrested military officer had approached Mr. “X’s” maternal first cousin, asking him about “the whereabouts of [his] underage daughter.” According to the petitioners, a family member of the recently arrested military officer “knows [his] daughter, [his] partner, and [his partner’s] son, who, together with [his] mother, is all in danger and have been forced to flee elsewhere in the country.”

v) On April 1, 2014, the former wife and mother of Mr. “X’s” daughter received a message on a social network, in the following terms: “That snitch son of a bitch father of your daughter leaves the country abandoning you and your daughter poor faggot hahahahaha he thinks that those old bitches can protect him we know about

the information he has and he had better keep his mouth shut or we'll be going on an excursion to Pitalito, we know where he is a photo for a souvenir ask him where it was taken... (*sic*).

vi) The petitioners reiterate that Mr. X and his immediate family do not enjoy any security measures provided by the State.

III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABILITY

10. The precautionary measures mechanism is part of the Commission's function to monitor compliance with the human rights obligations set forth in article 106 of the Charter of the Organization of American States. These general monitoring functions are provided in 41 (b) of the American Convention on Human Rights, enshrined in article 18 (b) of the IACHR's Statute and the precautionary measures mechanism is described in article 25 of the Commission's Rules of Procedure. Pursuant to this Article, the Commission grants precautionary measures in situations of gravity and urgency, in which said measures are necessary to prevent irreparable harm to the person.

11. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "IAHR Court") have repeatedly determined that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding the protective measure, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding the precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR. The precautionary nature aims to preserve those rights at risk until the petition in the inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, this, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures of provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the reparations ordered. For the purpose of making a decision, and in accordance with article 25.2 of its Rules and Procedures, 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 a 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.

12. The Commission considers that in this matter the requirement of seriousness has been met, in light of the alleged facts regarding threats, intimidation and surveillance of the members of the Nydia Erika Bautista Foundation identified and Mr. X and his immediate family. In particular, the information provided suggests that the organization's involvement, as well as Mr. "X's" identity, had presumably been revealed in the context of the proceedings related to the arrest of an army officer, who supposedly was involved in the retaking of the Palace of Justice, among other alleged acts. Given the circumstances, the petitioners contend that they currently face a kind of intimidation targeted at them in retaliation for having participated in that proceeding. Thus, the information suggests that the presumed perpetrators of the alleged acts know the address of the organization and the residences of Mr. "X's" family members.

13. Taking into consideration the specific characteristics of this matter and the particular circumstances surrounding it, the Commission deems that *prima facie* it has been established that the rights to life and personal

integrity of the members of the Nydia Erika Bautista Foundation identified and Mr. X and his immediate family are at risk.

14. The IACHR considers that the requirement of urgency has been met, to the extent that the threats and acts of intimidation and surveillance have presumably increased in the last few months, allegedly in the context of proceedings against a military officer recently arrested. In this regard, the Commission has not received substantive information on the investigations undertaken on the facts alleged by the petitioners in order to prevent their repetition. Specifically the Commission notes that:

i) With regard to the members of the Nydia Erika Bautista Foundation identified, the IACHR has taken note of the protection mechanisms the State indicated, as well as the security regime some members of the Foundation enjoy, consisting of an ordinary car, “two men for protection,” two bulletproof vests and three communication devices. However, the Commission believes that the State has not shown the potential effectiveness of such measures for purposes of affording the members of the Nydia Erika Bautista Foundation identified with an adequate protection regime, bearing in mind the supposed shortcomings alleged by the petitioners and increased risk they face, which led authorities to commit to strengthening their protection regime, but presumably has not been done to date.

ii) The Commission has not received information from the State regarding measures to protect Mr. X and his immediate family, in spite of the petitioner’s having reported the alleged facts to state authorities. This situation has presumably led Mr. X to hide and some members of his immediate family to flee elsewhere in the country. Under these circumstances, information suggests that Mr. X and his immediate family may be in a situation of defenselessness.

15. Regarding the requirement of irreparability, the Commission considers that it has been met, as the possible harm to the right to life and personal integrity constitutes the most extreme case of irreparability.

16. With regards to the work of human rights defenders in the region, the Commission has consistently highlighted the importance and the ethical dimension of the work carried out by the persons engaged in the promotion, monitoring, and defense of human rights and by the organizations to which many of them are affiliated. For its part, the Court has ruled “[t]hat the State has the specific duty to protect all people working in non-governmental organizations and other groups or individuals working for the defense of human rights, since their work constitutes a positive contribution supplementing the efforts made by the State in its capacity as guarantor of the rights of individuals under its jurisdiction.” In these circumstances, the Commission considers that acts of violence and other attacks against human rights defenders not only affect the guarantees of any human being, but also that such acts undermine the fundamental role human rights defenders play in society, and leave all those for whom they work defenseless.

IV. BENEFICIARIES

17. The request has been filed on behalf of the two identified members of the Nydia Erika Bautista Foundation, Mr. X and his immediate family. Regarding the immediate family of Mr. X, the applicants refer to the daughter, mother and half-brother of Mr. X. In addition, applicants refer to the current partner of Mr. X and her son.

V. DECISION

18. In view of the abovementioned precedents, the IACHR deems that the present case meets *prima facie* the requirements of gravity, urgency and irreparability set out in article 25 of its Rules of Procedure. Consequently, the Commission requests the Government of Colombia to:

- a) Adopt the necessary measures to guarantee the life and personal integrity of the two identified members of the Nydia Bautista Foundation, Mr. X and his immediate family;
- b) Agree on the measures to be adopted with the beneficiaries and their representatives; and
- c) Inform about the actions adopted to investigate the alleged facts that led to the adoption of this precautionary measure and thus avoid its repetition.

19. The Commission also requests the Government of Colombia to inform, within 15 days from the date of the issuance of this resolution, on the adoption of the required precautionary measures and to update said information on an ongoing basis.

20. The Commission emphasizes that, according to article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State shall not constitute a pre-judgment on any possible violation of the rights protected in the American Convention on Human Rights.

21. The Commission orders the Executive Secretariat of the IACHR to notify the State of Colombia and the applicants of this resolution.

22. Approved on the 28th day of May, 2014, by: Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice-President; Felipe González, Second Vice-President; Commissioners Jose de Jesús Orozco, Rosa María Ortiz, James L. Cavallaro.

Signed by Emilio Alvarez- Icaza L.

Executive Secretariat