

**INTERAMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 53/2019**

Precautionary Measure No. 289-19

Héctor Armando Hernández Da Costa regarding Venezuela

October 15th, 2019

I. INTRODUCTION

1. On November 1, 2018, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission,” or “the IACHR”) received a request for precautionary measures submitted by Ms. Tamara Suju, Executive Director of the Human Rights Watch, CASLA Institute (“the applicant”), urging the Commission to request that the Bolivarian Republic of Venezuela (“the State” or “Venezuela”) adopt the necessary measures to protect the rights of Isbert José Marín Chaparro and Héctor Armando Hernández Da Costa, who, at the time, were detained in the headquarters of the Directorate General of Military Counterintelligence (DGCIM, by its Spanish acronym). On September 23, 2019, the Commission was informed that Mr. Héctor Armando Hernández Da Costa had been transferred to the prison at Fort Tiuna, in Caracas, where his rights to life and personal integrity are at risk.

2. The Commission requested information from the State, in accordance with Article 25(5) of its Rules of Procedure, on February 8, 2019. On February 22, the Commission received a request for a time extension from the State and was granted a 3-day extension. However, the State has not replied to this day. On March 4, 2019, based on the available information, the Commission granted precautionary measures in favor of Mr. Isbert José Marín Chaparro (Resolution 9/2019)¹. At that moment, the Commission did not have the consent from the family of Mr. Héctor Armando Hernández Da Costa to allow Ms. Tamara Suju to represent him². On March 11, 2019, the Commission received the consent of the family of Mr. Héctor Armando Hernández Da Costa (“potential beneficiary”) regarding his representation. The Commission decided to process the request on this matter under registration number PM-289-19.

3. On March 21, 2019, the Commission granted precautionary measures to all persons (military and civilians) detained at the DGCIM³, who were allegedly suffering acts of violence by the authorities in charge of such institution, including General Héctor Armando Hernández Da Costa. In light of the foregoing and to avoid the duplication of procedures, the Commission decided not to follow up with PM 289-19. However, procedures were resumed as a result of the information received on September 23 (see *supra*, par. 1).

4. After analyzing the factual and legal allegations submitted by both parties, the Commission considers that the information proves *prima facie* that the potential beneficiary is in a serious and urgent situation, since his rights face a risk of irreparable harm. Consequently, in accordance with Article 25 of its Rules of Procedure, the Commission requests that the State of Venezuela; a) adopt the necessary measures to protect the rights to health, life, and personal integrity of Mr. Héctor Armando Hernández Da Costa; b) adopt the necessary measures to ensure that the detention conditions of the potential

¹ IACHR, *Isbert José Martín Chaparro regarding Venezuela* (PM 1302-18), Resolution 9/2019, March 4, 2019. Available in Spanish at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/9-19MC1302-18-VE.pdf>.

² In accordance with Article 25(6)(c) of the Rules of Procedure of the IACHR.

³ IACHR, *Persons (military and civilians) detained in the Directorate General of Military Counterintelligence (DGCIM) regarding Venezuela* (PM 178-19), Resolution 14/2019, March 21, 2019. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/14-19MC178-19-VE.pdf>

beneficiary comply with the applicable international standards. In particular, the Commission urges the State to adopt measures to provide the necessary medical care to the potential beneficiary, taking into account his health and according to relevant medical recommendations. Likewise, with the purpose of verifying the conditions of the potential beneficiary, the Commission requests that the State facilitate family visits in accordance with applicable standards; and c) inform about the actions taken to investigate the events that led to the adoption of this resolution in order to prevent their repetition.

II. SUMMARY OF FACTS AND ARGUMENTS

1. Information provided by the applicant

5. The potential beneficiary, a Brigadier General, was deprived of his liberty at the headquarters of the DGCIM⁴. The applicant stated that, during the time in which he remained at the DGCIM, the potential beneficiary spent periods of time incommunicado and without enough food or water. In addition, the applicant claimed that the authorities punished him by locking him several times in what is known as “jaula de locos” (“mad cage”). According to the available information, it is an approximately 2x3 meter cell with unhealthy and inhumane conditions, where prisoners are subject to “continuous torture” and are unable to go to the bathroom, so they are forced to relieve themselves in a plastic bag. They are also exposed to a white light twenty-four hours a day, do not have access to natural ventilation, and must sleep on the floor.

6. The applicant alleged that, during his last days at the DGCIM, the potential beneficiary was kept under “extreme surveillance”, including when using the bathroom. Likewise, General Héctor Armando Hernández Da Costa remained locked without access to sunlight or fresh air, and he was unable to participate in physical or recreational activities.

7. The request added that, when the family visited the potential beneficiary, they were subjected to degrading inspections and they were rarely allowed to bring him food.

8. On September 23, 2019, the potential beneficiary was unexpectedly transferred from the DGCIM to a maximum-security prison in Fort Tiuna, Caracas. However, his family had not received, until four days later, specific information about his transfer or his current whereabouts⁵. On September 29, the proposed beneficiary's family was able to see him for 10 minutes through a glass window.

9. Regarding the potential beneficiary's health, the applicant informed that he has a history of gastrointestinal surgeries (two perianal abscesses and an anal fistula), which require a specific diet. He also suffers from type 2 diabetes and has “perianal mucosal prolapse”. However, he did not receive proper medical care or diet while he was detained at the DGCIM, which made him lose a significant amount of weight. The request added that, as a result, the health of the potential beneficiary has worsened and is now suffering from progressive loss of vision, skin spots, and memory losses, not being able to differentiate the day from the night. The proposed beneficiary told the custodians about his health condition, but he was not taken to a medical center. He is currently in solitary confinement, is not allowed to talk or make phone calls.

⁴ The applicant explained that the potential beneficiary was detained in a context of repression and prosecution perpetrated by the State against civilians and the military.

⁵ NTN24, Relatives demand to obtain information on the health of the political prisoner Hernández Da Costa, September 23, 2019. Available in Spanish at: <http://www.ntn24america.com/america-latina/venezuela/familiares-exigen-conocer-situacion-de-salud-del-pres-o-politico-herandez>.

2. Response by the State

10. On February 22, 2019, the State submitted a request of extension to the Commission in order to collect the required information with the relevant institutions. To this day, no response has been received from the State. Taking into account the lack of response from the State, no additional information has been requested in the context of the new allegations.

III. CONTEXTUAL ASPECTS IN RELATION TO THIS REQUEST

11. The Inter-American Commission, within the framework of its various mechanisms, has continuously been monitoring the human rights situation in Venezuela. The Commission recently issued its Report *Democratic Institutions, the Rule of Law and Human Rights in Venezuela* in which it referred to the “marked deterioration in the country with respect to the exercise of human rights, and the grave political, economic, and social crisis in Venezuela [...]”⁶.

12. As discussed by the Commission, “there is a complex set of issues rooted in interference by the Executive in the other branches of government.” The Commission noted that “[t]his breach of the principle of separation of powers is most seriously manifested in the alarming behavior of the Judiciary.” In effect, the worsening of the recent crisis in Venezuela was particularly monitored by the Commission in 2017 after “a series of decisions taken by the Supreme Court of Justice (TSJ), which represented interference in the National Assembly (AN) and they affected the principle of separation of powers.”⁷

13. In light of the previous events, the Commission has expressed its deep concern “about the worsening situation of violence in Venezuela” and has taken notice of the fact that, in the context of repression against the wave of social protests that took place between April and July 2017, more than a hundred deaths were recorded⁸, as well as arbitrary detentions and complaints about acts of torture and other cruel, inhuman or degrading treatment⁹.

14. On March 2, 2018, the Commission issued Resolution 2/2018 on “Forced Migration of Venezuelans”, in which it detailed a series of recommendations to the Member States of the OAS in view of the “serious food and health crisis of Venezuela as a consequence of the shortage of food and medicine”, which caused an exponential increase in the number of Venezuelans, now amounting to hundreds of thousands, forced to migrate to other countries as a “survival strategy”¹⁰.

⁶ IACHR, Country Report. Democratic Institutionalality, Rule of Law and Human Rights in Venezuela, December 31, 2017, para. 470. Available at: <https://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁷ This situation was aggravated to the point of an alteration of the constitutional order with Judgments Nº 155 and 156 issued by the TSJ on March 28 and 29, respectively, in which it raised parliamentary immunities to the deputies of the AN, established that their acts constitute “treason”, granted the Executive Power broad discretionary powers, and powers of the Legislative Power were repealed. As the IACHR pointed out at the time, “such measures constituted a usurpation of the functions of the Legislative Power by the Judicial and Executive Powers, as well as a de facto annulment of the popular vote through which the deputies were elected” IACHR, Press Release No. 041/17, IACHR condemns decisions of the Supreme Court of Justice and the alteration of the constitutional and democratic order in Venezuela, March 31, 2017.

⁸ IACHR, Country Report. Democratic Institutionalality, Rule of Law and Human Rights in Venezuela, December 31, 2017, para. 165.

⁹ IACHR, Country Report. Democratic Institutionalality, Rule of Law and Human Rights in Venezuela, December 31, 2017, para. 165. Available at: <https://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

¹⁰ IACHR, Resolution 2/2018 “Forced Migration of Venezuelans”, passed in Bogota, Colombia, during its 167th session, March 2, 2018. Available in Spanish at: <http://www.oas.org/es/cidh/decisiones/pdf/Resolucion-2-18-es.pdf>

15. On May 18, 2018, the Commission expressed “its deep concern about the lack of minimum conditions necessary to hold free, fair and reliable elections in Venezuela,” calling for “elections on a reasonable and adequate time, on the basis of the full and effective exercise of human rights and democratic principles.”¹¹ On October 1, 2018, in light of the crisis in the Venezuelan health system, the Commission, together with United Nations experts, urged the government to act more urgently to mobilize the necessary resources to restore the healthcare system¹².

16. On January 9, 2019, the Commission issued another press release in which, after having conducted an electoral process that did not comply with the minimum standards for free and fair elections in the country, “the Commission warn[ed] of the further weakening of Venezuelan institutions” and also warned about “persistent structural issues affecting human rights”, noting the “serious consequences that a Venezuelan withdrawal from the OAS would have for the Venezuelan people”¹³.

17. On January 10, 2019, the Permanent Council of the Organization of American States agreed by majority “to not recognize the legitimacy of Nicolas Maduro’s new term.”¹⁴ Furthermore, in light of the call for new demonstrations and the serious acts of violence that took place in previous mobilizations, on January 23, 2019, the Commission called on the State to guarantee that social mobilizations may be carried out in exercise of the right to peaceful assembly and demonstration, and to protect the rights to life, personal integrity and personal freedom of all who manifest.¹⁵

18. On January 25, 2019, the Commission learned about new acts of violence and repression of social protests, illegal raids, arbitrary detentions, stigmatization and persecution of opposition activists that took place in various towns and cities, which have generated human rights violations that are still being relieved and account for the worsening of the situation.¹⁶

19. On February 1, 2019, the Commission expressed its alarm at the mass repression against protesters in Venezuela and at the worrying arbitrary detentions figures registered in the context of the social protests that took place during the last week of January¹⁷. On February 22, 2019, the Commission expressed its concern over ongoing harassment against human rights defenders in Venezuela¹⁸. The IACHR urged the State of Venezuela to take urgent measures to guarantee that human rights defenders can exercise their duties in the country, free from intimidation.

20. On March 1, 2019, the IACHR collected information regarding the serious acts of violence that took place in Venezuela on February 23, 2019 in the context of the actions aimed at facilitating the entrance of

¹¹ IACHR, IACHR Warns about Lack of Adequate Conditions to Hold Free and Fair Elections in Venezuela, May 18, 2018. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2018/112.asp

¹² IACHR, Venezuela: Human rights experts say health system in crisis, October 1, 2018. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2018/215.asp

¹³ IACHR, IACHR Alerts About Further Weakening of Rule of Law in Venezuela Ahead of New Presidential Mandate, January 9, 2019. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/005.asp

¹⁴ OAS, OAS Permanent Council Agrees “to not recognize the legitimacy of Nicolas Maduro’s new term,” January 10, 2019. Available at: http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-001/19

¹⁵ IACHR, IACHR calls on the Republic of Venezuela to guarantee the right to protest and to public demonstration, January 23, 2019. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/012.asp

¹⁶ IACHR, IACHR Condemns Deaths in Protests and Calls on State Institutions to Protect the Human Rights of the Venezuelan People, January 25, 2019. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/015.asp

¹⁷ IACHR Alarmed by Arrests in the Context of Protests in Venezuela, February 1, 2019. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/022.asp

¹⁸ IACHR, IACHR Concerned about Harassment against Human Rights Defenders in Venezuela, February 22, 2019. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/040.asp

humanitarian assistance from several border crossings in Colombia and Brazil. The IACHR expressed its growing concern over the situation of extreme vulnerability of the Venezuelan people, both inside and outside the border, due to generalized poverty and extraordinary restrictions to have access to rights such as the right to food, health, education, work, and housing. Furthermore, the Commission expressed its concern over the acts of repression and the use of lethal force during demonstrations, as well as over the illegal raids and arbitrary detentions carried out before and after the protests¹⁹. For their part, on March 8, 2019, freedom of expression experts of the UN and the IACHR expressed their alarm over censorship measures and blocking of platforms, social networks and online media outlets, as well as at freedom of press restrictions²⁰.

21. On April 5 the Commission expressed its concern over the persistent undermining of human rights in Venezuela, particularly with respect to the ongoing harassment against human rights defenders, civil society organizations, and journalists, who are reporting human rights violations. The IACHR has noted once again a deepening in the pattern of harassment as a result of stigmatizing comments by State authorities through different media outlets and social networks²¹.

22. On May 14, the IACHR condemned the escalation of the attacks against members of the Venezuelan National Assembly, and called upon the State institutions to refrain from adopting any decision that could affect the separation of powers and representative democracy. On that same occasion, the IACHR noted that the grave human rights crisis in Venezuela has been unfolding against the backdrop of a state of exception that is characterized by the abusive use of public forces to repress dissidents, the imprisonment of opposition forces and demonstrators; and restrictions on freedom of expression²².

23. Recently, on July 3, the Commission expressed its alarm and concern over the death of Captain Rafael Acosta Arévalo in custody in Venezuela, who died for alleged acts of torture²³ at the DGCIM.

24. Likewise, on September 18, the IACHR expressed its concern over the prolonged detention in prisons of communicators Pedro Jaimes and Jesús Medina in Venezuela, based on norms that arbitrarily criminalize the exercise of freedom of expression²⁴.

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

25. The precautionary measures mechanism is part of the Commission's function of overseeing Member State compliance with human rights obligations established in Article 106 of the Charter of the

¹⁹ IACHR, IACHR and REDESCA condemn the acts of violent repression carried out in Venezuela and urge the Venezuelan State to guarantee the exercise of human rights during the political, economic, and social crisis, March 1, 2019. Available at: http://oas.org/en/iachr/media_center/PReleases/2019/022.asp

²⁰ IACHR, Freedom of Speech experts from the UN and the IACHR express their alarm at the expansion of censorship mechanisms in Venezuela, March 8, 2019. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1133&IID=1>

²¹ IACHR, IACHR observes persistent human rights issues in Venezuela, April 5, 2019. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/091.asp

²² IACHR, IACHR condemns the escalation of the attacks against members of the National Assembly of Venezuela, May 14, 2019. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/115.asp

²³ IACHR, IACHR Expresses Alarm and Concern over the Death of Captain Rafael Acosta Arévalo in Custody in Venezuela, July 3, 2019. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/167.asp

²⁴ IACHR, Office of the Special Rapporteur condemns that communicators Pedro Jaimes and Jesús Medina have served one year in prison in Venezuela without being convicted, September 18, 2019. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1155&IID=1>

Organization of the American States. These general oversight functions are set forth in Article 41 (b) of the American Convention on Human Rights, as well as in Article 18 (b) of the Statute of the IACHR. 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 serious and urgent situations, and when these measures are necessary to prevent an irreparable harm.

26. The Inter-American Commission and the Inter-American Court on Human Rights (hereinafter "the Inter-American Court" or "IAHR Court") have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective. Regarding the protective nature, these measures seek to avoid irreparable harm and to protect the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations while the IACHR analyzes a petition or case. The precautionary nature of the mechanism seeks to protect those rights that are potentially at risk until the resolution of the petition brought to the Inter-American system. Their objective 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 *effet utile* of the final decision. In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, implement the ordered reparations. For such purposes, 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" is determined through the provided information and 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.

27. In the analysis of the requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. However, there needs to be a minimum of detail and information to allow for a *prima facie* assessment of the situation of extreme seriousness and urgency²⁵.

28. In the analysis of the requirements established in Article 25 of the Rules of Procedure, in relation to the requirement of seriousness, given the particular circumstances that the State of Venezuela is currently facing, the Commission considers it pertinent to evaluate the alleged facts in light of the context in which they are taking place.

29. The Commission has followed up on the harassment and aggressions to which certain members and leaders of the political opposition have been subjected to in Venezuela and, in several cases, has

²⁵ In that regard, for instance, in reference to provisional measures, the Inter-American Court has indicated that a minimum level of detail and information is required to be able to assess *prima facie* a situation of extreme seriousness and urgency. IHR Court. Matter of the children and adolescents deprived of their liberty in the "Complexo do Tatuapé" of the Fundação CASA. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

considered it pertinent to grant precautionary measures to safeguard their rights²⁶. In the resolutions adopted, the Commission has assessed allegations regarding, for instance, ill-treatment or torture while in detention, delegitimizing and discrediting declarations by high authorities that create an atmosphere of animosity against them and can put their rights at risk, or aggressions and direct harassment against them or their family groups.

30. In this regard, the Commission has identified situations of risk that justified the granting of precautionary measures in favor of members of the military in Venezuela who were deprived of their liberty for alleged actions against the government of Nicolás Maduro and whose rights were at risk due to the conditions in which they found themselves²⁷.

31. Concerning this matter, the Commission wishes to recall that, by virtue of Resolution 14/2019, it granted precautionary measures for all persons (civilians and military) detained in the Directorate General of Military Counterintelligence (DGCIM)²⁸, which included Mr. Héctor Armando Hernández Da Costa as one of the beneficiaries²⁹. In said resolution, the Commission analyzed the allegations regarding mistreatment and structural deficiencies (e.g. lack of ventilation and light), as well as the alleged lack of food, water, and medical care for the potential beneficiaries.

32. Consistent with the information provided as a result of the precautionary measure granted in favor of all persons detained at the DGCIM (Resolution 14/2019), the Commission notes that the applicant claimed that the potential beneficiary Mr. Héctor Armando Hernández Da Costa was mistreated and did not receive proper medical care, which allegedly accounted for the worsening of his health. Indeed, he does not have access to proper diabetes or gastrointestinal treatment, has suffered a significant weight loss, is progressively losing his eyesight, and has skin spots and memory losses (see *supra* par. 9).

²⁶ IACHR, *Leopoldo López and Daniel Ceballos regarding Venezuela (MC 335-14)*, Resolution 12/2015, April 20, 2015; IACHR, *Members of the Voluntad Popular Party regarding Venezuela (MC-475-15)*, Resolution 1/17 of January 14. Available in Spanish at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/1-17MC475-15-VE.pdf>; IACHR, *Luis Florido regarding Venezuela*, Resolution No. 12/17, April 7, 2017; IACHR, *Julio Borges and others regarding Venezuela (MC 403-17)*, Resolution 24/2017; IACHR, *Henrique Capriles Radonski (MC 248-17)*, Resolution 15/17, June 2, 2017. Available in Spanish at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/15-17 MC248- 17-VE.pdf>; IACHR, *Williams Dávila regarding Venezuela*, September 6, 2017 (MC 533-17), Resolution 35/2017, September 6, 2017, available in Spanish at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/35-17MC533-17-VE.pdf>; IACHR, *Juan Carlos Requesens Martínez regarding Venezuela (MC 1039-18)*, Resolution 79/2018, October 11, 2018, available in Spanish at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/79-18 MC1039-18-VE.pdf>; IACHR, *Juan Gerardo Guaidó Márquez regarding Venezuela (MC 70-19)*, Resolution 1/2019, January 25, 2019. Available in Spanish at: <http://www.oas.org/es/cidh/prensa/comunicados/2019/017A.pdf>; IACHR, *Roberto Marrero and Sergio Vergara regarding Venezuela (Enlargement, MC 70-19)*, Resolution 16/2019, March 27, 2019. Available in Spanish at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/16-19MC70-19-VE-Ampliacion.pdf>

²⁷ IACHR, Resolution 3/2019. MC-115-19. Oswaldo García Palomo and others regarding Venezuela, February 19 2019. Available in Spanish at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/3-19MC115-19-VE.pdf>; IACHR, Resolution 8/2019. MC-83-19. Luis Alexander Bandres Figueroa regarding Venezuela, February 28 2019. Available in Spanish at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/8-18MC83-19-VE.pdf>; IACHR, Resolution 9/2019. MC-1302-18. Isbert José Marín Chaparro regarding Venezuela, March 4 2019. Available in Spanish at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/9-19MC1302-18-VE.pdf>.

²⁸ IACHR, *Persons (military and civilians) detained at the Directorate General of Military Counterintelligence DGCIM – regarding Venezuela (PM 178-19)*, Resolution 14/2019, March 21, 2019, par. 26. Resolution 14/2019 was coherent with previous cases of the Commission regarding the special situation of risk of members of the Armed Forces at present, particularly taking into account the allegations according to which the deprivation of liberty is a form of retaliation. See: IACHR, Luis Alexander Bandres Figueroa regarding Venezuela (PM-83-19), Resolution 8/2019 of February 28, 2019. Available in Spanish at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/8-18MC83-19-VE.pdf>; and IACHR, Oswaldo García Palomo et al. regarding Venezuela (PM-115-19), Resolution 3/2019 of February 19. Available in Spanish at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/3-19MC115-19-VE.pdf>

²⁹ El propuesto beneficiario habría sido detenido en agosto de 2018. Ver: "La detención del general de brigada genera conmoción en la GNB", El Nacional, 14 de agosto de 2018. Disponible en: http://www.el-nacional.com/noticias/presos-politicos/detencion-del-general-brigada-genera-conmocion-gnb_247986.

33. In light of the above, the Commission takes note that the potential beneficiary was transferred to a maximum security prison in Fort Tiuna, Caracas on September 23, 2019. His family was not aware of such transfer, has no access to him or knows for certain his actual whereabouts or his health and detention conditions. The Commission also observes that, after visiting him for 10 minutes on September 29, 2019, his family reported that he is being kept in isolation, without communication or access to phone calls, and has not received the required medical attention.

34. The Commission is aware that the State of Venezuela is bound to the Inter-American Convention to Prevent and Punish Torture since its ratification on August 26th, 1991, which defines torture as “any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose” and as “the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.” In this sense, it is important to recall that, according to Articles 1 and 6 of said instrument, the States have the duty to prevent and punish torture, as well as cruel, inhumane, or degrading treatment or sentences within its jurisdiction. By its turn, Article 17 established a commitment to “inform the Inter-American Commission on Human Rights of any legislative, judicial, administrative, or other measures they adopt in application of this Convention”.

35. Following this logic, the Commission reiterates as part of its attributions regarding States, the ones foreseen on Article 18 (b) of its Statute, consistent in making “recommendations to the governments of the states on the adoption of progressive measures in favor of human rights in the framework of their legislation, constitutional provisions and international commitments, as well as appropriate measures to further observance of those rights”. In this manner, the precautionary measures mechanism has had a progressive development to constitute itself as a mechanism of protection proper of the Inter-American system, in compliance with its conventional and statutory obligations and originating from the referred attribution of the IACHR to oversee the compliance of the international obligations assumed by States parties.

36. In this way, it is of particular worrisome the applicant’s allegations about the situation in which the potential beneficiary is being held in Fort Tiuna, as well as her allegations that the worsening of the potential beneficiary’s health is due in part to alleged mistreatment during his detention at the DGCIM. In this sense, the Commission notes that the allegations included in this request are coherent with the information provided to the IACHR during its monitoring work (see *supra* par. 23)³⁰.

37. In this regard, the Commission regrets the lack of response from the State, despite having granted an extension. Even though the above is not enough to justify the granting of a precautionary measure, it does prevent the Commission from having observations from the State and thus assessing whether the applicant’s allegations can be rebutted or not. This is particularly relevant in this case, where the seriousness of the situation is amplified by its context. It should also be noted that the alleged acts of violence were perpetrated by the same state officials who had control and custody over the potential beneficiary, which makes this matter particularly serious.

³⁰IACHR, IACHR Expresses Alarm and Concern over the Death of Captain Rafael Acosta Arévalo in Custody in Venezuela, July 3, 2019. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/167.asp

38. In addition, the Commission wishes to recall that, in the case of persons deprived of liberty in general, the State's role as a guarantor is particularly important, given that prison authorities exercise control or power over persons under custody³¹. This results from the unique relationship and interaction of subordination between the State and inmate, which is characterized by the intensity with which the State may regulate their rights and duties and by the conditions of the detention itself, where the detainee is prevented from satisfying on their own several basic necessities essential to the development of a dignified life³².

39. In this context, taking into account the allegations of mistreatment against the potential beneficiary and his health, as well as the lack of knowledge regarding his precise location and detention conditions, the Commission concludes that the existence of a situation of serious risk against the potential beneficiary's rights to health, life and personal integrity is sufficiently proven from the applicable *prima facie* parameter.³³

40. With respect to the requirement of urgency, in light of the analysis previously carried out, the Commission considers that it is complied with, given that the potential beneficiary remains deprived of liberty without timely and proper medical care, despite the fact that his health has worsened. Likewise, given the alleged mistreatment by those who exercise the power of custody over him, the Commission believes that it is necessary to adopt immediate precautionary measures to protect him and safeguard his rights.

41. Regarding the requirement of risk of irreparable harm, the Commission considers that it is complied with insofar as the possible impact on the right to life and personal integrity constitutes the maximum situation of irreparability.

V. BENEFICIARY

42. The Commission declares that the beneficiary of this precautionary measure is Mr. Héctor Armando Hernández Da Costa, who has been duly identified within this procedure.

VI. DECISION

43. The Inter-American Commission on Human Rights considers that the present case meets *prima facie* the requirements of seriousness, urgency and irreparability contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests that the State of Venezuela:

- a) adopt the necessary measures to protect the rights to health, life, and personal integrity of Mr. Héctor Armando Hernández Da Costa;
- b) adopt the necessary measures to ensure that the detention conditions of the proposed beneficiary comply with the applicable international standards. In particular, the Commission urges the State to adopt measures to provide the necessary medical care to the proposed beneficiary, taking into

³¹Court H.R.. Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C No. 260., par. 188. See also: IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, par. 49.

³² IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, par. 49 and ss.

³³ The Commission notes that the nuclear family of the potential beneficiary has requested his inclusion as beneficiaries of this precautionary measure. However, the Commission does not have specific information regarding the situations of risks that they are facing.

account his health and according to relevant medical recommendations. Likewise, with the purpose of verifying the conditions of the proposed beneficiary, the Commission requests that the State facilitate family visits in accordance with applicable standards; and

- c) inform about the actions taken to investigate the events that led to the adoption of this resolution in order to prevent their repetition.

44. The Commission requests that the State of Venezuela report, within 15 days from the date of this resolution, on the adoption of the precautionary measures requested and to update this information periodically. The Commission will assess in a timely manner the information provided by the State in order to decide on the appropriateness of keeping this precautionary measure in force.

45. The Commission emphasizes that, in accordance with Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment on any violation of the rights protected in the applicable human rights instruments.

46. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the State of Venezuela and to the representative.

47. Approved on October 15th, 2019 by: Esmeralda Arosemena de Troitiño, President; Joel Hernández García, First Vice-President; Antonia Urrejola Noguera, Second Vice-President; Margarette May Macaulay; y Flávia Piovesan.

Paulo Abrão
Executive Secretary