
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 58/2019**

Precautionary Measure No. 938-19

Paola Pabón and others regarding Ecuador

December 6, 2019

I. INTRODUCTION

1. On October 10, 2019, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a request for precautionary measures by Mr. Fausto Jarrín and Ms. Natasha Suñé (the applicants) on behalf of Ms. Paola Verenice Pabón Caranqui, Prefect of the Province of Pichincha; Mr. Virgilio Hernández, Executive Secretary of the Social Engagement Movement of the “Revolución Ciudadana” political party, and other persons identified as part of the opposition to the Government. On October 24, the request was extended to include Mr. Christian Fabián González Narváez (“the potential beneficiaries” or “proposed beneficiaries”). The request urged the IACHR to request that the State of Ecuador (“the State” or “Ecuador”) adopt the necessary measures to protect the rights of the proposed beneficiaries, who are currently deprived of their liberty and allegedly exposed to threats and acts of harassment.

2. The Commission requested information from the State, pursuant to Article 25 of the Rules of Procedure, on October 18 and November 21, 2019, which replied on October 25 and December 2. For their part, the applicants provided additional information on a recurring basis, the most recent having been on November 27, 2019.

3. After analyzing the factual and legal allegations submitted by both parties, the Commission considers that the information proves *prima facie* that the persons proposed as beneficiaries are in a situation of serious and urgent risk since their rights to life and personal integrity are at grave risk. Consequently, pursuant to Article 25 of its Rules of Procedure, the Commission requests that the State of Ecuador: a) adopt the measures necessary to protect the rights to life and personal integrity of Paola Verenice Pabón Caranqui, Virgilio Hernández and Christian Fabián González Narváez; specifically, by assessing and implementing the measures that are most adequate to each of the proposed beneficiaries’ personal circumstances, and allowing for the appropriate conditions to safeguard and respect their rights; b) agree upon the measures to be taken with the beneficiaries and their representatives; and c) report on the actions taken to investigate the alleged 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 applicants

4. The potential beneficiaries are Gabriela Alejandra Rivadeneira Burbano, Marcela Paola Aguiñaga Vallejo, Doris Solíz Carrión, Christian Pabel Muñoz López, Verónica Margarita Guevara Villacrés, Juan Cristóbal Lloret Valdivieso, members of the National Assembly of Ecuador and of the Citizen Revolution Movement (“Revolución Ciudadana”) political party; Paola Verenice Pabón Caranqui, Prefect of the Pichincha Province, and Virgilio Hernández Henríquez, Executive Secretary of the Citizen Revolution’s Movement for Social Commitment. The request was later extended to include Christian Fabián González Narváez.

5. To provide context, the applicant claimed that the potential beneficiaries are at risk due to “the intention to stigmatize and persecute leaders of the Citizen Revolution Movement” during the

social protests that recently took place in Ecuador. In addition, they stated that the measures that the Government has recently adopted, particularly the declaration of a “State of Emergency”, lacked legitimacy and that both the alleged refusal of the Government to engage in a dialogue as well as the suspension of parliamentary activities constitute a “coup to democratic order”. The applicant stressed that the protests were initiated by “different sectors”, without a specific link to the Citizen Revolution Movement political party.

6. Regarding specific events, the applicant stated that the protests were “atrociously repressed by the police” and that arbitrary detentions, aggressions and even deaths were reported. In addition to these allegations, the applicants mainly focused on the alleged arbitrary detentions that took place, such as that of Yofre Poma, member of the Assembly for the Citizen Revolution Movement political party, and Paola Pabón, who was allegedly arbitrarily detained on October 14. In this regard, they reported that she was detained “for no reason whatsoever”, except for “the persecution of Rafael Correa supporters (or *correístas*)” that has been allegedly promoted by the government. In addition, they mentioned the case of Gabriela Rivandeneira, who sought shelter at the Embassy of Mexico “to protect her life after the violent police persecution to which she was subject, constant threats against her life and that of her family, harassment, and other public complaints” (no details were provided). They also made reference to other members of the Assembly who were notified of their detention (Soledad Buendía, Luis Fernando Molina, Carlos Viteri, as well as citizens Edwin Jarrín and Tania Pauker Cueva).

7. On October 24, the applicant provided additional information and requested that the inclusion of Christian Fabián González Narváez as a potential beneficiary of the precautionary measure, since he had been “arbitrarily and illegally” detained. According to the information, the potential beneficiary is in poor conditions and has allegedly received threats against his life in repeated occasions. The applicant added that senior government officials made discrediting statements against several of the persons proposed as beneficiaries, blaming the “*correísta* opposition” for the protests. The applicants provided examples of such statements. According to the information provided, this context threatens the life and personal integrity of the potential beneficiaries.

8. On November 6, 2019, the applicant provided additional information in which he claimed that the potential beneficiary Virgilio Hernández had been detained with charges of “rebellion” as part of a process that the applicants believe is a political persecution against *correístas*.

9. On November 19, the applicants presented information alleging that the security conditions of the proposed beneficiaries Paola Pabón, Virgilio Hernández and Christian González are inadequate “in addition to the ongoing and continuous harassment due to their political status and the threats received against their lives on numerous occasions.” According to the request, regarding Ms. Pabón, “the danger against her life lies in the continuous searches of their cells and the discovery of weapons in the Prefect’s cell,” further stating that “they found 5 knives assembled by the detainees in the next cell.” Furthermore, the news spread that the weapons were to “end the *correísta* scum”.

10. The request also indicated that the proposed beneficiary Virgilio Hernández suffers from hypertension and that his health condition is worsening given that he is exposed to a “stressful situations with strong emotions.” “Virgilio Hernández has suffered constant threats against his life and integrity, which are aggravated by the fact that he is detained in a facility that does not guarantee his security,” it further stated. As an example, among the documents submitted, the applicants provided a copy of an email sent to various members of the opposition by which people are called to “eliminate the *correísta* scum.”

11. With respect to Mr. Christian González, the applicants alleged that he was threatened with death by other detainees and that “on different occasions he was threatened with knives and sharp objects inside the facilities.” Among the alleged events of harassment, the potential beneficiary said that on November 19, at least 20 police officers carrying heavy weaponry carried out searches of half of the cells, including his. During the search, he was kept outside, sitting on the floor for two hours. The next day, they reportedly carried out another search. Moreover, the potential beneficiary was diagnosed with a pituitary tumor, which causes him strong headaches and requires medical assistance. The applicants also alleged that “Mr. Christian González’s doctor told him that he had been contacted by the State Attorney General, specifically by the Human Rights authorities, who requested that he erase Mr. González’s health condition, that is, his brain tumor, from the medical records.”

12. With regard to Paola Pabón, the applicants further elaborated on the allegations above and added that from November 18 to 25, 3 searches were carried out in his cell. The police officers in charge of the search reportedly stated that they were given “orders from the top” to find something illicit in her cell.” In addition, the applicants stressed that, in accordance with domestic legislation, there is a possibility that the proposed beneficiary will lose her position as Prefect of Pichincha, which was granted by popular vote, as a result of her prolonged absence due to her deprivation of freedom.

2. Response by the State

13. As an introduction and general comment, the State claimed that the actions carried out during the protests to preserve law and order were in accordance with the law and human rights standards. Regarding the specific allegations of risk to the life and integrity of the persons proposed as beneficiaries, the State claimed that the documents provided by the applicant do not specify the “actions or failure to act” of the State that allegedly put their rights at risk.

14. Regarding the situation of Gabriela Rivadeneira, Paola Pabón and Virgilio Hernández, the State claimed that on October 7, 2019 an investigation was opened in response to the alleged offense of “rebellion”, which was later expanded to include the offense of “incitement”. The State also claimed that on October 14 the arrest of Paola Pablón and Virgilio Hernández was ordered for investigation purposes.

15. The State stressed that no other complaints against the other potential beneficiaries have been recorded. On the other hand, it informed that Gabriela Rivadeneira, Soledad Buendía, Luis Fernando Molina, Carlos Viteri, Edwin Jarrín and Tania Pauker requested diplomatic protection in the Embassy of Mexico in Ecuador, where they still remain.

16. Regarding the content of this request, the State argued that it only makes reference to alleged breaches of procedural guarantees, which, according to Resolution No. 3/2018 of the IACHR, cannot be assessed through the precautionary measures mechanism. In addition, the State added that carrying out investigations against some of the potential beneficiaries is “a duty that it has to fulfill on its own motion”.

17. In addition, the State provided a copy of the legal proceedings against the detainees, stressing that the phone taps and interventions that were carried out in the context of the investigation were duly authorized by the relevant judge. According to the information provided, one of the reasons why phone taps were carried out were the social media posts that potential beneficiary Virgilio Hernández published, such as: “either the economic measures (*paquetazo*) go, or the Government goes”. On the other hand, the information provided by the State suggests that accusations were based on the alleged fact that protesters were being financed by the detainees, who also provided material support. Finally, the State added that the forced entry into the residence of Paola Pabón was authorized by a judge.

18. On December 3, the State responded to the second request for information made by the Commission and indicated that “the processing of the present case [...] has proceeded in an irregular fashion”. The State highlighted that due to the time that has passed since the request was filed, “it is illogical to consider that these are serious, urgent and irreparable situations”.

19. Regarding the allegations of the applicants, the State noted that the pre-trial detention of Paola Pabón, Virgilio Hernández and Christian González was carried out within the framework of the law and with respect to due process, arguing that the intention of the request is to “[...] link the measure of deprivation of liberty [...] with an alleged imminent and true risk for the integrity and personal safety of the proposed beneficiaries”. That is, “a person’s deprivation of liberty ordered by a competent judicial authority *per se* cannot reasonably serve to establish the urgency criteria to protect persons potentially in danger”.

20. Regarding the health conditions of the three potential beneficiaries referred to above, the State indicated that they all went through medical examinations upon entering the respective prisons, and that it was possible to identify pre-existing diseases and treatment (copy provided). Moreover, persons deprived of liberty have access to health services.

III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND RISK OF IRREPARABLE HARM

21. The precautionary measures mechanism is part of the Commission’s function of monitoring Member State compliance with human rights obligations established in Article 106 of the Charter of the Organization of the American States (“OAS”), based upon Article 41 (b) of the American Convention on Human Rights (“American Convention”), and Article 18 (b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is described in Article 25 of the Rules of Procedure, by which the Commission grants precautionary measures in serious and urgent situations, where such measures are necessary to prevent an irreparable harm.

22. 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 bodies of the Inter-American System analyze a petition or case. 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” 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.

23. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.¹

24. As a preliminary aspect, the Commission wishes to clarify that it is not called upon to make a determination on whether the proposed beneficiaries are criminally responsible for the charges against them, nor to establish any possible violation to due process on this occasion. Furthermore, the lawfulness of the Executive Decrees issued in the context of the national protests shall not be examined. The Commission's analysis that follows is strictly based on the requirements of seriousness, urgency and risk of irreparable harm, which may be resolved without making determinations on the merits.

25. When assessing the present request, the Commission recalls that, with regard to persons deprived of liberty in general, the State holds a special position as guarantor, inasmuch as the prison authorities have strong control over the persons in their custody.² This is the result of the unique relationship and interaction of subordination between the inmate and the State, characterized by the degree to which the State may regulate their rights and obligations, and by the very circumstances of imprisonment, which prevent persons deprived of liberty from satisfying on their own several basic necessities that are essential to the development of a dignified life.³

26. As regards the requirement of seriousness, the Commission deems it pertinent to specify that it carried out an *in loco* visit to Ecuador from October 28 to 30 of this year, in order to observe on the ground the human rights situation in the country within the framework of the social protests that took place from October 3 to 13, after economic measures were announced by the National Government on October 1. The purpose of the visit was also to receive more detailed information about the acts of violence, the State response to these events and the development of a dialogue process between the parties concerned. During its visit, the IACHR had the opportunity to visit the Sierra Centro Norte Cotopaxi Regional Social Rehabilitation Center, where Ms. Pabón is currently deprived of her liberty, and the Male Provisional Detention Center called "El INCA", where Mr. González is located.

27. Particularly within the first facility, the Commission was able to verify a prevailing climate of hostility in the prison, which worsened at the time the official delegation met with Mrs. Pabón. In fact, the delegation was unable to conduct an interview with her in adequate conditions, due to the attitude of the prison authorities. During the visit, the delegation members were subjected to acts of harassment while taking flash photographs, despite the consent previously granted by the State to facilitate the interviews with the inmates and the known existence of protocols for visits in these situations. Through the *in loco* observations report, the Commission reiterated its formal complaint for these facts and recalled that, in accordance with Article 57 (e) and (g) of its Rules of Procedure, the Commission "[...] will have access to prisons and all other detention and interrogation sites and may privately interview detainees," further stating that it "[...] may use any appropriate means to film, take photographs, collect, document, record or reproduce information deemed appropriate."

¹ In that regard, for instance, in relation to the provisional measures, the Inter-American Court has considered that this standard requires a minimum of details and information that allow for the *prima facie* assessment of the situation of risk and urgency. IACHR, *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. Available in Spanish at: http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf.

² I / A Court HR. *Case of Mendoza et al. V. Argentina*. Preliminary Exceptions, Merits and Reparations. Sentence of May 14, 2013. Series C No. 260, para. 188. Also, see: IACHR, Report on the human rights of persons deprived of liberty in the Americas, December 31, 2011, para. 49.

³ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, para. 49 et seq.

28. Additionally, in the context of the visit to the Male Provisional Detention Center “INCA”, the IACHR had the opportunity to interview, among other people, Mr. Christian González, and meet with relatives of other detainees. On this occasion, it was reported that the potential beneficiary was already subject to persecution prior to the context of social protests, and that unidentified vehicles often followed him.

29. In analyzing the present matter, the Commission stresses that the facts alleged are framed in a context of polarization that has intensified in recent weeks, especially following recent social protests, with the subsequent declaration of the state of exception and numerous human rights violations that allegedly took place.⁴ As noted in the preceding paragraphs, the Commission has received information that certain persons identified as part of the opposition to the Government were subjected to threats, harassment and even acts of violence.

30. Among the *prima facie* evidence that can be taken into account when assessing the risk situation of the proposed beneficiaries, after alleged threats and acts of harassment purportedly related to their work as political opposition leaders, it is worth highlighting the conditions in which Ms. Pabón was arrested, the stigmatizing statements by high authorities in which the proposed beneficiaries are explicitly deemed responsible for the altercations and, as reported by the applicants, the existence of death threats against them. Although the proposed beneficiaries were not oblivious to this overt hostility before being deprived of liberty, the Commission considers it reasonable to infer that their risk situation has been aggravated on account of it, since they are now prone to face the direct materialization of irreparable harm to their rights to life and personal integrity. As proof of this, according to the information provided by the applicants and which has not been rebutted by the State, the applicants claim to have found bladed weapons not only in nearby cells, but even inside Ms. Pabón’s cell, with the presumed intention of being used to “end the *correísta* scum” (vid. *supra* para. 9). Although it cannot be ignored that persons deprived of liberty in the region are sometimes exposed to some type of risk to their rights, the particular circumstance of the proposed beneficiaries, together with the context described above, has an amplifying effect. Their social visibility and their affiliation with the opposing political force exacerbates the possibility that the alleged aggressors may attack their people, taking advantage of the closeness and the circumstances of a confined space.

31. The Commission has taken note of the information provided by the State and the arguments expressed with regard to the request for precautionary measures. However, the answer provided focused on affirming the lawfulness of domestic criminal proceedings carried out against the persons proposed as beneficiaries which, as indicated in this Resolution, require an analysis of the merits that is effectively incompatible in nature and purpose with the precautionary measures mechanism. The State indicated that the measure of deprivation of liberty *per se* cannot reasonably serve to establish the urgency criteria and argued that the request attempts to “[...] link the mere fact of complying with a precautionary measure of deprivation of liberty [...] with an alleged imminent and true risk for the integrity and personal safety of the proposed beneficiaries” (vid. *supra* para. 19). However, the State did not clarify that an analysis was carried out by the competent authorities on the risk situation of the proposed beneficiaries, considering their personal profile and circumstances, particularly given the gravity of the allegations about serious ongoing threats and the alleged involvement of state authorities in the various episodes of harassment (vid. *supra* para. 12). Therefore, the Commission did not identify sufficient elements to contest the applicants’ allegations regarding the situation of risk to life and integrity of Ms. Pabón and Messrs. González and Hernández in the context of their deprivations of liberty, despite the fact that specific requirements were made in this regard.

⁴ See: IACHR. IACHR completes observation mission to Ecuador, press release dated November 5, 2019. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2019/285.asp>

32. In view of the foregoing, and from the applicable *prima facie* standard, the Commission concludes that a situation of serious risk is sufficiently established in relation to the rights to life and personal integrity of Ms. Pabón and Messrs. González and Hernández.

33. As pertains to the requirement of urgency, the Commission understands that, in light of the threats made and the absence of more decisive measures to ensure the rights of the proposed beneficiaries who are deprived of liberty, they are likely to continue in a scenario of even greater risk, which may involve violations of their rights; thus, the State has the obligation to implement in the shortest time the measures it deems appropriate to protect them.

34. As regards the requirement of risk of irreparable harm, the Commission considers that it is equally fulfilled, since the potential impact on the rights to life and personal integrity constitutes the maximum situation of irreparability. On the other hand, as concerns the particular circumstances of Ms. Pabón, current Prefect of Pichincha, it should be noted that, according to the applicants, domestic legislation provides for the possibility that she will lose her position as a result of being deprived of liberty after the pretrial detention order. In this regard, the Commission calls on the State so that, in accordance with Article 23.2 of the American Convention and the standards in the matter, it fully respects the political rights of those persons elected through the popular vote.

35. Finally, with respect to the rest of the persons proposed as beneficiaries, the Commission considers that the information provided at the moment is not sufficient to verify compliance with the requirements.

IV. BENEFICIARIES

36. The Commission declares that the beneficiaries of this precautionary measure are Paola Verenice Pabón Caranqui, Virgilio Hernández and Christian Fabián González Narváez, who are duly identified in this Resolution.

V. DECISION

37. In view of the aforementioned, the IACHR considers that the present matter meets *prima facie* the requirements of seriousness, urgency and risk of irreparable harm contained in Article 25 of the Rules. Consequently, it requests that the State of Ecuador:

- a. adopt the measures necessary to protect the rights to life and personal integrity of Paola Verenice Pabón Caranqui, Virgilio Hernández and Christian Fabián González Narváez; specifically, by assessing and implementing the measures that are most adequate to each of the proposed beneficiaries' personal circumstances, and allowing for the appropriate conditions to safeguard and respect their rights;
- b. agree upon the measures to be taken with the beneficiaries and their representatives; and
- c. report on the actions taken to investigate the alleged events that led to the adoption of this resolution in order to prevent their repetition.

38. The Commission further asks the Government of Ecuador to report, within 15 days from the date of this resolution, on the precautionary measures taken and to update this information periodically

39. The Commission wishes to emphasize that, in accordance with Article 25 (8) of its Rules of Procedure, the granting of precautionary measures and its adoption by the State do not constitute a

prejudgment against any violation of the rights protected in the American Convention and other applicable instruments.

40. The Commission asks its Executive Secretariat to notify the present resolution to the State of Ecuador and to the applicants.

41. Approved on December 6, 2019 by: Esmeralda Arosemena de Troitiño, President; Joel Hernández García, First Vice-President; Antonia Urrejola Noguera, Second Vice-President; Margarette May Macaulay; Francisco José Eguiguren Praeli; Luis Ernesto Vargas; and Flavia Piovesan.