
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 69/2020**

Precautionary Measure No. 799-20
Maikel Herrera Bones regarding Cuba
October 14, 2020

I. INTRODUCTION

1. On August 19, 2020, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures filed by the organization Foundation for Pan American Democracy (FDLDP) (“the applicants”), urging the Commission to require the State of Cuba (“the State” or “Cuba”) to adopt the measures necessary to protect the rights to life, personal integrity and health of Mr. Maikel Herrera Bones (“the proposed beneficiary”). According to the request, the proposed beneficiary find himself in a situation of risk in the context of his deprivation of liberty in Cuba, given that despite having HIV/AIDS and a severely weakened immune system, he is allegedly not receiving the medical treatment that he would require.

2. On August 24, 2020, in accordance with Article 25.5 of its Rules of Procedure, the IACHR requested information from the State and the applicants. To date, the State’s response has not been received. For their part, the applicants submitted additional information on August 27, 2020.

3. After analyzing the factual and legal allegations made by the applicants, the Commission considers that the information presented demonstrates, from the applicable *prima facie* standard, that Mr. Maikel Herrera Bones is in a situation of gravity and urgency, given that his rights to life, personal integrity and health are at risk of irreparable harm. Consequently, the IACHR requests that the State of Cuba: a) implement the necessary measures to protect the life, personal integrity and health of Mr. Maikel Herrera Bones, by adopting immediate measures that facilitate his access to adequate medical treatment, including the necessary medications in accordance with what has been prescribed by the corresponding health professionals, as well as the assessments and examinations that make it possible to regularly evaluate his state of health, in accordance with the applicable international standards; b) agree upon the measures to be implemented with the beneficiary and his representatives; and, c) report on the actions taken in order to investigate the alleged facts that led to the adoption of this resolution with the aim of avoiding their repetition.

II. SUMMARY OF FACTS AND ARGUMENTS

1. Information provided by the applicants

4. The proposed beneficiary identifies himself as an activist of the Patriotic Union of Cuba (UNPACU)¹ and a promoter of the campaign Cuba Decides.² On April 16, 2020, he was arrested along with his uncle Rodolfo Bones, who is also an activist, at his home in the Guardiola neighborhood in San Miguel del Padrón, Havana. According to the authorities, they were arrested for a crime that “they would have committed the previous day when they had a discussion in the street with a person who claimed to

¹ The applicants indicated that the Patriotic Union of Cuba (UNPACU) is the largest and most active organization of “non-violent political activism” in Cuba.

² The applicants indicated that Cuba Decides is a citizen initiative to change the political and economic system in Cuba, causing a peaceful transition process towards democracy.

be a police officer, after demonstrating publicly and peacefully against the Cuban regime, due to frequent power cuts that are carried out in their area of residence”.

5. After being detained, the proposed beneficiary and his uncle were transferred to the 11th Police Unit in the municipality of San Miguel del Padrón, where they remained for a few hours, and were then transferred to the El Vivac Classification Unit, where they were informed that they would be tried in the municipal court of Arroyo Naranjo in Havana. The proposed beneficiary would have initially been accused by the police of the crime of “contempt”, however, the trial was allegedly postponed.³ Subsequently, the charge would have been changed to “attack”,⁴ which, according to the Cuban Criminal Code carries a sentence of 3 to 8 years in prison. The request states that, as of the date of its submission, the trial had not yet been held. Following his arrest, the organization Cuban Prisoners Defenders decided to include the proposed beneficiary on its list of political prisoners.⁵

6. In addition, the application states that the proposed beneficiary has HIV/AIDS and severe immune deficiency. In this regard, at the end of April, the proposed beneficiary would have had to be admitted to the hospital of the detention center known as “100 and Aldabó” due to a deterioration in his health. He was later transferred to a prison in the municipality of Güines.⁶ At the beginning of May, the proposed beneficiary reportedly began a hunger strike to protest his state of health and detention conditions (which were not detailed in the application), however, the applicants reported that he had to suspend his hunger strike due to pressures and the advanced deterioration of his health, according to medical information available at the time. Later, on August 13, he began another hunger strike to demand his transfer to the IPK Hospital in Havana, where there are HIV/AIDS specialists⁷, however, he would have had to end his strike on August 21 given the physical deterioration resulting from it.

7. According to the information provided by the applicants, the health of the proposed beneficiary would be significantly deteriorated because, since the moment that he was detained, he has allegedly not been receiving his antiretroviral therapy and he would not be receiving treatment for opportunistic infections. He is allegedly only being reviewed periodically by a healthcare profession, however, the applicants argue that the treatment would not be effective (there is no information on what treatment would be being provided). Thus, according to the medical history of the proposed beneficiary, his CD4 count would be 44 cells per cubic millimeter –the normal range being between 500 to 1200 cells per cubic millimeter–, and he would have a viral load of 157,000 copies. In this regard, the applicants stated that interruptions in antiretroviral therapy for individuals with HIV/AIDS would result in a rapid increase in their viral load and a drop in their CD4 count, thus arguing that the current health of the proposed beneficiary would indicate that he is not receiving his antiretroviral therapy. They also noted that recently more than 30 boils and rashes would have appeared on the proposed beneficiary’s body, as well as black spots, which would normally be associated with opportunistic infections in persons with HIV/AIDS.

8. The applicants indicated that they would have difficulty in obtaining more up-to-date and detailed information regarding the current state of health of the proposed beneficiary because he would have not been allowed to receive visits from his family members. In addition, due to complaints that he

³ Radio Televisión Martí. [UNPACU activists accused of “contempt” will stand trial this Thursday](#). April 22, 2020 (Available in Spanish); CUBANET. [Summary trial against UNPACU activist on hunger strike suspended](#). April 24, 2020 (Available in Spanish).

⁴ Radio Televisión Martí. [UNPACU activist accused of “attack” for protesting against blackout](#). April 27, 2020 (Available in Spanish).

⁵ The applicants indicated that Cuban Prisoners Defenders is a pro-democracy defense and legal action institution established in September 2018. See in this regard: Cuban Prisoners Defenders. [List of Political Prisoners of Cuba](#). August 3, 2020.

⁶ CUBANET. [UNPACU activist Maykel Herrera Bones is transferred to prison](#). May 4, 2020 (Available in Spanish).

⁷ Diario de Cuba. [A Cuban political prisoner with HIV/AIDS demands specialized medical treatment](#). August 16, 2020 (Available in Spanish).

would have made over the telephone regarding his state of health, the penitentiary authorities would have prohibited him from making telephone calls to his family.

9. The application also states that the proposed beneficiary would be within the groups of persons deprived of their liberty who find themselves in particular situations of risk in the face of the COVID-19 pandemic, given that he has HIV/AIDS and a severely weakened immune system.

10. The request indicates that, on April 28, 2020, a modification of the provisional detention measure was requested for that of bail and house arrest. However, on May 5, this request was declared inadmissible by the prosecutor handling the criminal case of the proposed beneficiary, due to the fact that the prison where the proposed beneficiary is deprived of his liberty “has the necessary conditions to treat him”. Subsequently, on May 28, another request to change provisional detention measure was filed, but it was rejected again (this document is not included in the file, nor are the reasons why this second request was rejected).

2. Information provided by the State

11. On August 24, 2020, the Commission requested information from the State and has not received a response to date.

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

12. The precautionary measures mechanism is part of the Commission’s functions of overseeing Member State compliance with the human rights obligations established in Article 106 of the Charter of the Organization of American States (“OAS”). These general 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. Moreover, the precautionary measures mechanism is enshrined 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 irreparable harm.

13. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary. Regarding their protective nature, these measures seek to avoid irreparable harm and to protect the exercise of human rights. With regards to their precautionary nature, these 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.

14. 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.⁸ Likewise, it is relevant to clarify that, according to its mandate, the Commission is not called upon to make any determinations on the criminal liability of the proposed beneficiary, nor to determine in the present mechanism any violation of his rights, since this would incur an analysis on the merits, which is specific to a petition or case. The assessment will be focused on determining whether the proposed beneficiary finds himself in a situation of risk, in accordance with Article 25 of the Rules of Procedure.

15. In addition, in the present case, the Commission observes that the alleged situation of risk of the proposed beneficiary is framed within a specific context related to the situation of human rights defenders in Cuba, generally characterized by a climate of hostility, persecution and harassment, particularly with respect to those who have expressed their opposition to the government.⁹ Thus, those who defend human rights in the country are subjected to serious processes of criminalization and judicial persecution, and accusations of crimes such as contempt, dangerousness and pre-criminal social dangerousness, non-payment of fines, public disorder and resistance or rebellion, all with the aim of obstructing or paralyzing their work in the defense and promotion of human rights.¹⁰ Further, the Commission has observed that human rights defenders are victims of repeated arbitrary detentions as a method of harassment by police and state security actors.¹¹ Once deprived of their liberty, human rights defenders may be subjected to attacks, threats and mistreatment within penitentiary facilities, and the Commission has even granted various precautionary measures in this regard.¹²

16. Considering the fact that the proposed beneficiary belongs to certain groups in Cuba such as the Patriotic Union of Cuba (UNPACU), the Commission also takes into account, when analyzing the allegations made, the seriousness of the events that persons from that group have faced when have been deprived of their liberty. Along these lines, the Commission recently granted precautionary measures in favor of Keilylli de la Mora Valle in July 2020¹³ and in February of the same year, in favor of Fernando González Vaillant, José Pupo Chaveco and Roilan Zárraga Ferrer.¹⁴ Likewise, in December 2019, the Commission urged the State of Cuba to comply with the precautionary measures of José Daniel Ferrer García of the same organization, which have been in force since 2012.¹⁵

⁸ See in this regard: I/A Court H.R. [Matter of Residents of the Communities of the Miskitu Indigenous People of the North Caribbean Coast Region regarding Nicaragua](#). Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018. Considerandum 13; I/A Court H.R. [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. Order of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

⁹ IACHR. [Situation of Human Rights in Cuba](#). OEA/Ser.L/V/II. Doc. 2. February 3, 2020. Para. 172; IACHR. [Annual Report 2019. Chapter IV.B Cuba](#). OEA/Ser.L/V/II. Doc. 5. February 24, 2020. Para. 22.

¹⁰ IACHR. [Situation of Human Rights in Cuba](#). OEA/Ser.L/V/II. Doc. 2. February 3, 2020. paras. 173 & 188; IACHR. [Annual Report 2019. Chapter IV.B Cuba](#). OEA/Ser.L/V/II. Doc. 5. February 24, 2020. Para. 22.

¹¹ IACHR. [Situation of Human Rights in Cuba](#). OEA/Ser.L/V/II. Doc. 2. February 3, 2020. Para. 178; IACHR. [Annual Report 2019. Chapter IV.B Cuba](#). OEA/Ser.L/V/II. Doc. 5. February 24, 2020. Para. 22.

¹² See in this regard: IACHR. [Resolution 37/2020. Precautionary Measure No. 578-20. Keilylli de la Mora Valle regarding Cuba](#). July 17, 2020 (Available in Spanish); IACHR. [Resolution 29/2019. Precautionary Measure No. 306-19, 307-19 and 326-19. Josiel Guía Piloto, Iván Amaro Hidalgo and Jesús Alfredo Péres Rivas regarding Cuba](#). June 11, 2019 (Available in Spanish); IACHR. [Resolution 23/2019. Precautionary Measure No. 81-19. Edilberto Ronal Arzuaga Alcalá regarding Cuba](#). April 22, 2019 (Available in Spanish); IACHR. [Resolution 16/2018. Precautionary Measure No. 39-18. Eduardo Cardet Concepción regarding Cuba](#). February 24, 2018 (Available in Spanish).

¹³ See in this regard: IACHR. [Resolution 37/2020. Precautionary Measure No. 578-20. Keilylli de la Mora Valle regarding Cuba](#). July 17, 2020 (Available in Spanish).

¹⁴ See in this regard: IACHR. [Resolution 16/2020. Precautionary Measure No. 1077-19. Roilan Zárraga Ferrer et al. regarding Cuba](#). February 13, 2020 (Available in Spanish).

¹⁵ See in this regard: IACHR. Press Release No. 326/19. [IACHR urges the State of Cuba to comply with precautionary measures in favor of José Daniel Ferrer García](#). December 17, 2019.

17. The Commission also recalls that, with respect to persons deprived of liberty in general, the State is in a special position of guarantor, inasmuch as the prison authorities exercise strong control or command over the persons in their custody.¹⁶ This occurs as a result of the special relationship and interaction of subordination between the person deprived of liberty and the State, characterized by the particular intensity with which the latter can regulate their rights and obligations, and by the inherent circumstances of imprisonment, in which the prisoner is prevented from satisfying on his or her own account a series of basic needs that are essential for the development of a dignified life.¹⁷ More specifically, and in light of the facts provided by the applicants, the Commission recalls that, based on the principle of non-discrimination, the Inter-American Court has indicated that this duty implies the obligation of the State to guarantee the physical and mental health of persons deprived of their liberty, specifically through the provision of a regular medical examination, and when required, adequate, timely and where appropriate, specialized medical treatment in accordance with the special care needs of the detained persons in question.¹⁸ Likewise, the Commission emphasizes that pretrial detention should be the exception rather than the rule,¹⁹ and that the cumulative effects of pretrial detention have a much greater impact on persons belonging to vulnerable groups.²⁰

18. Likewise, in the context of the COVID-19 pandemic, the Commission has urged States to adopt urgent measures to guarantee the health and integrity of persons deprived of their liberty in the face of the effects of the pandemic, as well as to ensure dignified and adequate detention conditions in detention centers, noting that this context may pose a greater risk to those individuals who are part of vulnerable groups, such as immunosuppressed patients.²¹ In this regard, the Commission has recommended the States to ensure that applications for prison benefits and alternatives to imprisonment are evaluated in the cases of persons at risk in the context of the pandemic.²²

19. Taking this context into account, the Commission will proceed to analyze the regulatory requirements with respect to the proposed beneficiary.

20. As regards the requirement of seriousness, the Commission considers that it has been met. When assessing this requirement, the Commission identifies that the proposed beneficiary is in a situation of serious risk given his state of health status, considering the nature of the disease he suffers from, its possible consequences and the alleged lack of appropriate medical treatment, in the context of his preventive detention. Thus, according to the medical records of the proposed beneficiary, his CD4 count would be 44 cells per cubic millimeter and he would have a viral load of 157,000 copies. In this regard, the Commission notes that persons with HIV/AIDS with a CD4 count below 200 cells per cubic millimeter would have seriously compromised immunity, leaving them at high risk of developing serious diseases,²³ while a viral load of more than 100,000 copies would be considered high.²⁴ In addition, the

¹⁶ See in this regard: I/A Court H.R. [Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013](#). Series C No. 260. Para. 188; IACHR. [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#). OEA/Ser.L/V/II. Doc. 64. December 31, 2011. Para. 49.

¹⁷ IACHR. [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#). OEA/Ser.L/V/II. Doc. 64. December 31, 2011. Paras. 49-50.

¹⁸ I/A Court H.R. [Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary objection, merits, reparations and costs](#). Judgment of February 29, 2016. Series C No. 312. Para. 171.

¹⁹ IACHR. [Report on the Use of Pretrial Detention in the Americas](#). OEA/Ser.L/V/II. Doc. 46/13. December 30, 2013. Para. 21.

²⁰ IACHR. [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#). OEA/Ser.L/V/II.163 Doc. 105. July 3, 2017. Para. 215.

²¹ IACHR. Press Release No. 66/2020. [The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic](#). March 31, 2020.

²² IACHR. [Resolution 1/2020. Pandemic and Human Rights in the Americas](#). Adopted by the IACHR on April 10, 2020. Para. 46.

²³ Persons with a CD4 count below 200 are described as having AIDS. See in this regard: WHO. [HIV/AIDS](#).

²⁴ NAM. [Viral load](#); organization StopVIH. [Viral load](#) (Available in Spanish).

Commission notes that the proposed beneficiary would have undertaken two hunger strikes, which allegedly left him with long-term effects that would have an impact on his health,²⁵ in addition to the fact that more than 30 boils and rashes would have appeared on his body. In this regard, the allegations of the applicants concerning the difficulty of accessing certain information to ascertain more precisely the current status of the proposed beneficiary deserve particular attention, especially considering that the prison authorities would have prevented him from making telephone calls after he reported the state of his health via telephone to his family members. The Commission also emphasizes that the proposed beneficiary's situation of risk could be exacerbated due to his condition as a human rights defender.

21. In view of the situation analyzed above, the Commission regrets the lack of response from the State. Even though this does not justify, per se, the granting of a precautionary measure, it does prevent the Commission from knowing whether the authorities were implementing actions to protect the rights of the proposed beneficiary and therefore, from assessing whether the alleged situation of risk was disproved or not. The foregoing is particularly relevant in view of the fact that the events of risk were attributed to state agents, highlighting the position of special guarantor of the State of Cuba with respect to the rights of the proposed beneficiary, who is in their custody. More specifically, the analysis of the file does not permit for a precise determination as to the reasons why the authorities would not be providing him with adequate treatment, understanding that, according to the applicants, the treatment provided to date would not suit his medical needs.

22. In view of the foregoing, the Commission concludes that the information provided by the applicants, assessed in the context previously indicated, is sufficient to consider from a *prima facie* standard that the rights to life, personal integrity and health of Mr. Maikel Herrera Bones are at serious risk.

23. Regarding the requirement of urgency, the Commission considers that it has been met, insofar as the proposed beneficiary is not permitted access to adequate medical treatment and remains in custody of the State in the circumstances described, the evolution of his serious pathology is likely to cause even greater effects on his rights, thus requiring the adoption of immediate measures. In this regard, as stated above, the Commission does not have specific information provided by the State that would allow it to assess the actions that would have been taken to address the alleged situation of risk.

24. As for the requirement of irreparable harm, the Commission considers that it has been met, insofar as the potential impact on the rights to life, personal integrity and health constitutes the maximum situation of irreparable harm.

IV. BENEFICIARY

25. The Commission declares that the beneficiary of this precautionary measure is Maikel Herrera Bones, who is duly identified in this procedure.

V. DECISION

²⁵ The Commission has highlighted, in Cuba, cases of negligent medical attention, failure to provide medications and delay or total lack of medical attention. In addition, the IACHR has noted that persons held in prisons frequently resort to hunger strikes, self-flagellations, and even suicide, as a way of demanding improvements in detention conditions, respect for minimum judicial guarantees in processes pending against them, among others. See in this regard: IACHR. [Situation of Human Rights in Cuba](#). OEA/Ser.L/V/II. Doc. 2. February 3, 2020. Para. 376; IACHR. [Annual Report 2018. Chapter IV.B Cuba](#). 2019. Para. 96.

26. The Inter-American Commission on Human Rights considers that the present matter meets *prima facie* the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the State of Cuba is requested to:

- a) implement the necessary measures to protect the life, personal integrity and health of Mr. Maikel Herrera Bones, by adopting immediate measures that facilitate his access to adequate medical treatment, including the necessary medications in accordance with what has been prescribed by the corresponding health professionals, as well as the assessments and examinations that make it possible to regularly evaluate his state of health, in accordance with the applicable international standards;
- b) agree upon the measures to be implemented with the beneficiary and his representatives; and,
- c) report on the actions taken in order to investigate the alleged facts that led to the adoption of this resolution with the aim of avoiding their repetition;

27. The Commission requests the State of Cuba to report, within a period of 15 days from the date of this resolution, on the adoption of the required precautionary measures and to update this information periodically.

28. 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 of any violation of the rights protected in the applicable instruments.

29. The Commission instructs its Executive Secretariat to notify the State of Cuba and the applicants of this Resolution.

30. Approved on October 14, 2020 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