

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 9/2020**

Precautionary Measure No. 1212-19
M.I.F.M. and family regarding Colombia
February 5, 2020
Original: Spanish

I. INTRODUCTION

1. On December 21, 2019, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures urging that the IACHR request the State of Colombia (“the State”) to adopt the precautionary measures necessary to guarantee the life and personal integrity of Ms. M.I.F.M. and her family (“the proposed beneficiary”). According to the request, Ms. M.I.F.M. is being subjected to threats, harassments and acts of violence by her ex-partner, having she and her daughter been recently attacked with a firearm.

2. The Commission requested information from the State and the applicants on December 23, 2019. The applicants provided additional information on December 30. For its part, after granting a time extension, the State provided observations on January 16, 23 and 24, 2020.

3. Having analyzed the submissions of fact and law provided by the parties, the Commission considers that the persons proposed as beneficiaries are *prima facie* in a serious and urgent situation, since their rights to life and personal integrity are at risk. Consequently, in accordance with Article 25 of the IACHR’s Rules of Procedure , the Commission requests that Colombia: a) adopt the necessary measures to protect the life and personal integrity of M.I.F.M. and her nuclear family, with a gender perspective or differentiated approaches, as appropriate, in accordance with applicable international standards and obligations; b) consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and c) report on the measures adopted in order to investigate the facts that led to the adoption of this precautionary measure, so as to prevent their reoccurrence.

II. SUMMARY OF FACTS AND ARGUMENTS

1. Information provided by the applicants

4. The proposed beneficiary has reportedly maintained a relationship for about 4 years with Mr. Jairo (or J. C. N.), who allegedly had aggressive attitudes towards her, including physical and verbal abuse and sexual violence. It was indicated, for instance, that the alleged aggressor returned drunk and told her that “he was going to kill himself or her if she left him, because she could only be with him, and that if she was not with him, she would not be with anyone else.”

5. In 2015, Ms. Martha reportedly filed several complaints against Mr. Jairo and, on May 24, 2015, she was subjected to bodily injuries and filed the corresponding complaint. The request states that Mr. Jairo forced her to withdraw from one of those proceedings. Between May and June 2018, the proposed beneficiary reportedly ended her relationship with Mr. Jairo; however, it was indicated that the threats and aggressions did not cease. In September 2018, Ms. Martha was allegedly subjected to new threats and, after Jairo learned that she had a new partner, he reportedly disclosed intimate photos of her. On March 14, 2019 Ms. Martha went to Jairo’s business to scold him about the persistence of the threats and, that same night, she was allegedly subjected to new death threats, which were extended to her new partner.

6. The request states that on March 16, the proposed beneficiary was heading toward a neighborhood store to meet her relatives in order to attend a party when “arriving at the corner, a man shouted at her ‘here they send you, bitch’, and after this she was shot by a firearm on her back, after which [Ms. Martha] turned and shouted to her daughter to run, taking her in her arms. After this, the subject unloaded the weapon against her and she received six (6) more hits. Her daughter was also shot, and one of her cousins, Leonardo, was also victim of a projectile.”

7. Both Ms. Martha and her daughter reportedly remained hospitalized in the intensive care unit nearly for one month, and the applicants reported that the Colombian Family Welfare Institute (*ICBF* by its Spanish acronym) took away the custody of the girl M.A.O.F., who was shot, from the proposed beneficiary, and awarded it temporarily to the girl’s biological father, José (J.N.O.).

8. It is claimed that the proposed beneficiary has recently moved to a different municipality, in Valle del Cauca, where it was indicated that the alleged aggressor has also moved to. Similarly, the request notes that Jairo has continued harassing Ms. Martha through the social network *Messenger*, allegedly mocking the facts, as well as constantly calling her to a new phone number that she had not given him and, when she answered only once, he told her that “she was paying for what she had done to him.”

9. The request states that, in the proceeding at the investigation stage before the Office of the Attorney General (*FGN* by its Spanish acronym) for the reported attack, although the proposed beneficiary had identified the aggressor as a Jairo’s employee and declared that the most likely culprit was her ex-partner, none of them had been arrested. Moreover, the applicants added that, after searching Jairo’s house, they found a gun-type firearm on the bed. The applicants provided the screenshot of the case inquiry that allegedly corresponds to proceedings for domestic violence of 2015, bodily injuries in 2015, threats in 2018, insult of 2019 and a last one for femicide of November 2019. All of them were reportedly inactive, except for the last one.

10. On December 30, 2019 additional information was provided, where it was initially indicated that the persons proposed as beneficiaries do not have protection measures of any kind. In 2015, protection was requested and only police visits were allegedly granted, which concluded with the change of residence.

11. The applicants emphasized that the girl M.A.O.F. is under the custody of her biological father, José, given the facts, which the applicants consider unjustified and revictimizing. The applicants added that the *ICBF* allowed that, by mutual agreement, mother and father exercise shared custody of the girl in her city of residence, while they wait for the permanent custody to be awarded back to her mother. The girl M.S.A.F. remains under her mother’s custody.

12. Lastly, it was stressed that after Mr. Jairo moved to the municipality of the proposed beneficiary, she and her daughters live with fear, indicating that the alleged aggressor continues making threatening calls to them from unknown numbers, the last one reportedly registered on December 23, 2019.

2. Response from the State

13. The State reported the actions carried out by the *ICBF*, regarding the girls M.A.O.F. and M.S.A.F. This report notes that a file regarding the girl M.A.O.F. was created on March 22, 2019, day in which it was reported that the girl had a diagnosis of “firearm wound in precordium” and after the facts she dreamed in connection with the shot, presented with acute stress disorder, fear, sadness, impossibility to differentiate reality from lies in the images of the facts, as well as dreadfulness and anxiety. The girl’s father, José, reportedly came forward to indicate that her nuclear family was at risk, due to the existence of threats, adding that, when the facts of March 16 happened, the girl was in her mother’s care.

14. On April 1, 2019 a judicial order was issued and, in company of the father, an assessment of the girl M.A.O.F. was carried out by the ICBF. According to the report, the assessment reflected, *inter alia*, as results in the emotional-affective area, an “emotionally unstable, insecure girl with extreme locus of control, her higher psychic functions are altered in thought, in content there is a vivid post-traumatic event, in affection, she presents signs and symptoms of anxiety and depression [...]” Similarly, in the cognitive-adaptive area it was noted that “[t]he mother was victim of an attack against her life with a firearm where the girl results injured,” who refers, “I want to live with my dad because I am afraid to go back to my mom’s house for the same thing to happen to me.”

15. For its part, the ICBF also found that “[...]the progenitor at the moment of the assessment is emotionally stable and presents factors of generativity in the development and care of the adolescent. The report of the ICBF highlighted, regarding the assessment of the girl M.A.O.F., that

[t]he psychologist concluded that there was a threat to her rights to personal integrity, life quality, education and healthy environment, since the girl was emotionally unstable, presenting with “altered higher psychic functions,” “psychic disturbance as a consequence of having been victim of a shot,” therefore he recommended to start psychotherapeutic treatment by the Health Promoting Entity (*EPS* by its Spanish acronym), suggesting to consider the placement of the minor with the father “because he presents characteristics of generativity and development of the girl.

16. Therefore, on April 1, 2019, the family defender received the sworn statement from the girl’s father, mainly about “the homicide attempt suffered by Ms. M.I.F.M.” and ordered a rights restoration measure in favor of the girl, placing her in the family environment with the father and ordering psychological care for her. On April 3, the proceeding was reportedly forwarded to Mr. José’s municipality of residence. In June, the family authority reportedly followed-up, verifying development and cohabitation conditions of the girl, as well as psychological and medical checks. In September, a new hearing was reportedly carried out, where the rights restoration measure for the placement with the father was confirmed.

17. Subsequently, during a follow-up made in October, it was verified that the girl was cohabiting with her father, but that she expressed her wish to “return to her mother’s side”, therefore it was authorized to cohabit with the mother with a mutual agreement by both, with care for the protection of the girl in case of any risk situation . The report described that the proposed beneficiary changed her residence to the same municipality and that the social worker ruled favorably in the girl’s process of care and socialization by the father.

18. As regards the girl M.S.A.F., the State noted that on April 9, 2019, the father of the girl, Alexander (A.A.), requested the custody and personal care of her daughter. A proceeding was ordered for April 23, 2019, to which the father did not appear, therefore the request was closed on April 29, 2019. The authorities emphasized that a family defender recently ordered the verification of the rights’ guarantee status for December 27, 2019.

19. On January 23, 2020, the State of Colombia provided several reports dated January 8, 2020, whereby it was indicated that the Santander de Quilichao Police Station provided a talk on self-protection measures to the proposed beneficiary on March 30, 2019, in accordance with a request by the Office of the Attorney General due to an alleged threat. The police also reported that they have called on several occasions to the number of Ms. Martha, which sends to voicemail (switched off), and that her address has been visited three times (in the previous municipality), being informed by the neighbors that she does not live there anymore since October 2019. It was also reported that the proposed beneficiary has been provided all the medical care required and that she receives health services regularly.

20. The State of Colombia provided new information on January 24, in connection with the actions of the FGN and the ICBF. On the part of the FGN, information of reference was provided about four investigations for aggravated domestic violence in 2015, injuries in 2015, threats in 2018 and insults

in 2019, all against Mr. Jairo and in “filed” status. Additionally, it was reported that there is an active investigation for attempted homicide, with “investigative” indications.

21. The ICBF indicated that the proceeding scheduled for December 27, 2019 in relation to the girl M.S.A.F. was transferred to the authorities of the municipality they moved to, where a psychological assessment was carried out on January 14, 2020. The assessment showed that the girl’s physical and behavioral development was related to her chronological age, 7. The mother reportedly indicated that she, her daughter and her current partner, as well as the fathers of her two daughters, have a good relationship and that she hopes “that soon [her] two daughters will be together. The process with the Office of the Attorney General is very advanced and gives me the guarantee of being with my daughters without fear that something could happen again.”

22. The proposed beneficiary has also allegedly stated that she moved for her safety, that her other daughter lives with her father because she was injured in the attack, and that the girl “would not like to live with her father anymore without her little sister M.” The proposed beneficiary has reportedly indicated that she wants her daughter M.S.A.F. returned to her, noting that “[she is] currently out of danger and my daughter M wants to live with her sister again, M. A.’s father agrees that the girl should return with us. Therefore, the Family Defender opened a rights restoration administrative process, defining for this purpose “[...] the placement in a family environment of maternal origin with her mother.”

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

23. The precautionary measures mechanism is part of the Commission’s function to overseeing compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general oversight functions are established in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR while the precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with this article, the Commission grants precautionary measures in serious and urgent situations, and when these measures are necessary to avoid an irreparable harm to persons.

24. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that precautionary and provisional measures have a dual nature, one being precautionary and the other being protective. As regards the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding the precautionary nature, precautionary measures have the purpose of preserving legal situations being considered by the IACHR. Their precautionary nature aims to safeguard the rights at risk until the request under consideration in the Inter-American System is resolved. The object 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 useful effect (*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. Regarding the process of decision making and, according to Article 25(2) of the Rules of Procedure, the Commission considers that:

- a. “serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American System;
- b. “urgent situation” is determined by means of the information provided 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.

25. 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 exists¹.

26. As a preliminary issue, the Commission notes that the actions of the State of Colombia in relation to the daughters of Ms. Martha have been aimed at seeking their protection and their best interests through the competent authorities for such issue, such as the ICBF. The above, especially in relation to the girl M.A.O.F., where it is noted that the determinations made are reportedly of a temporary nature and are allegedly under constant review and oversight. Similarly, the information provided by both parties indicates that the girl is in touch with her mother and father, so there is currently no evidence of any risk of loss of family ties that might affect her overall development, especially since a process is under way to place the girl with her mother and sister. Consequently, this resolution will not address the situation of custody or cohabitation of Ms. Martha and her daughters, but will focus on the alleged situation of risk to her life and integrity.

27. When assessing the seriousness and taking into account the context, in accordance with Article 25(6) of the Rules of Procedure, the Commission has learned about the obstacles that women face when trying to report the violence acts they have suffered, as well as the lack of judicial protection and guarantees to protect their dignity, safety and privacy during the process². In its recent report, it has indicated that “women in the region continue to face serious challenges in achieving full respect and protection of their fundamental rights, in a context of structural and endemic violence and discrimination against them.” In addition, it is noted that “the high rates of gender-based homicides, harassment and sexual violence, among other forms of violence, and the persistence of serious obstacles, prevent women from having timely and non-discriminatory access to justice and to comprehensive protection and reparation in the face of these acts”³. The IACHR has also noted that “violent murders of women on the basis of their gender are the most extreme and irreversible expression of violence and discrimination against women,” stressing that the murders of women are also characterized by impunity, in a context of limited access to justice for women victims of violence, stereotyped patterns, and social permissiveness”⁴.

28. In turn, it cannot be ignored that, in many cases, the murdered women had previously reported their aggressors, faced serious acts of domestic violence or suffered previous attacks or homicide attempts, which reflects the existing deficiencies in the mechanisms for prevention and protection of women against the risks of gender violence and, in particular, murder⁵. In this regard, the IACHR has indicated that States must adopt comprehensive measures to comply with due diligence in cases of violence against women, with a strategy of prevention that must prevent risk factors and strengthen institutions so that they can provide an effective response to cases of violence against women⁶. In this regard, it is important to recall what the Court indicated, in the sense that:

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. I/A Court H.R., *Matter of the children and adolescents deprived of their liberty in the “Complejo 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: http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf (available in Spanish)

² IACHR, Access to justice for women victims of sexual violence in the Americas, OAS/Ser.L/V/II., Doc. 68, January 20, 2007, para. 172.

³ IACHR, Violence and discrimination against women, girls and adolescents Good practices and challenges in Latin America and the Caribbean. OEA/Ser.L/V/II., Doc. 233, November 14, 2019, para. 7, available for consultation at: <http://www.oas.org/es/cidh/informes/pdfs/ViolenciaMujeresNNA.pdf>

⁴ IACHR, Violence and discrimination against women, girls and adolescents..., para. 154, available for consultation at: <http://www.oas.org/es/cidh/informes/pdfs/ViolenciaMujeresNNA.pdf>

⁵ IACHR, Violence and discrimination against women, girls and adolescents..., para. 160, available for consultation at: <http://www.oas.org/es/cidh/informes/pdfs/ViolenciaMujeresNNA.pdf>

⁶ I/A Court H.R., Case of López Soto *et al.* v. Venezuela. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of May 14, 2019. Series C No. 379, para. 131. (Only in Spanish)

it is for the State authorities who become aware of a situation of special risk to identify or assess whether the person subjected to threats and harassment requires protective measures or to refer the matter to the competent authority to do so, and to provide the person at risk with timely information on the measures available. The assessment of whether a person requires protective measures and what the appropriate measures are is an obligation incumbent on the State and cannot be restricted to the victim themselves requesting it from "the competent authorities," nor can it be restricted to knowing exactly which authority is best placed to deal with their situation, since it is up to the State to establish coordination measures between its entities and officers for this purpose."⁷

29. In the specific matter, the Commission notes that, according to the request, Ms. Martha has been subjected to acts of violence by her former partner, Mr. Jairo, since they were in a relationship lasting about four years, during which she reportedly filed several complaints, including of bodily injuries, all of which are currently inactive. Violence reportedly intensified when the proposed beneficiary decided to end the relationship and even more so when she began a relationship with a different person, with the presence of alleged threats against her, which led to a firearm attack against her on March 16, resulting in injuries to her, her daughter M.A.O.F. and her cousin. The Commission notes with concern that, despite the alleged identification of the attacker as being related to the alleged aggressor, the investigations are not having any results and no security measures are being provided to the proposed beneficiary.

30. The Commission takes note of the response from the State, particularly with regard to the attempts to locate the proposed beneficiary, the offer of self-protection talks and the fact that, as indicated by the applicants, security rounds had previously been arranged in her favor. However, it warns that the above-mentioned measures have not been effective, considering the materialization of an attack against her and the persistence of threats and harassment against the proposed beneficiary, despite the various complaints filed. It is even worrying to note the allegation that Mr. Jairo, when communicating with the beneficiary proposal, reportedly made a threatening reference to the events, referring to it as "she was paying for what she had done to him."

31. In relation to the above, it should be noted that, to date, there is no evidence that the authorities have strengthened or assessed the adequacy of security measures following the attack with a firearm that occurred on March 16, 2019, since as it was indicated, on March 30 the police once again referred to self-protection measures, thus evidencing their lack of effectiveness in connection with the facts alleged. On the other hand, as regards what was stated by the Police, who reportedly had not located the proposed beneficiary to follow up on their situation, the Commission notes from the ICBF reports that it has mentioned the existence of the risk involved, thus, reiterating the aforementioned regarding the obligation of the State to protect a person from the moment that any of its agents or entity becomes aware of it.

32. In the same context, in relation to the statements that the proposed beneficiary reportedly made before the ICBF that they are allegedly already out of danger, supposedly to facilitate the return of her daughter to live with her and her sister, the IACHR understands that this does not exempt the authorities from updating the analysis of the level of risk of Ms. Martha, who was recently threatened in December 2019. Not only because the threat is independent of the custody decision, but also because if the child is to return to her mother, the home must have the necessary conditions to be sufficiently safe, taking into account that the daughter has already been subjected to an attack while in the company of Ms. Martha, and the reinforced protection that she requires from the State for being a girl.

⁷ I/A Court H.R., *Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269*, para. 127. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_269_esp.pdf. See *inter alia*: IACHR, Maria Patricia Arce Guzmán and Children, regarding Bolivia (PM-1123-19), resolution 68/2019 of December 25, 2019, para. 32. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/68-19MC1123-19-BO.pdf>; Yaku Pérez Guartambel (PM 807/18), Ecuador, Resolution 67/18 of August 27, 2019, para. 30. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/67-18MC807-18-EC.pdf>

33. In view of the risk aspects raised, which are consistent with the context described, the Commission considers that Ms. M.I.F.M.'s situation allows her rights to be considered *prima facie* as being in a serious situation. Moreover, in view of the alleged facts of risk, with threats to her current partner, and since her daughter and her cousin have been previously injured, the IACHR considers that the situation of risk also extends to her nuclear family.

34. Regarding the requirement of urgency, the IACHR notes that, according to both parties, the proposed beneficiary moved to other municipality in Valle del Cauca; however, the applicants claimed that the alleged aggressor had also moved to that city and that threats and harassment against the beneficiary proposal have continued. Despite the above situations and even the materialization of a serious act of violence in the past, the Commission stresses that both parties have reported that the proposed beneficiary does not currently have safety measures. In view of the above, the Commission considers that the requirement of urgency is met, insofar as the reported risk could materialize imminently in view of the situation of vulnerability in which they would find themselves.

35. As for the requirement of irreparable harm, the Commission considers that it has been met, insofar as the possible affectation of the right to life and personal integrity constitutes the maximum situation of irreparable harm.

IV. BENEFICIARIES

36. The IACHR considers Ms. M.I.F.M. and her nuclear family, who are fully identified in the request for precautionary measures, to be the beneficiaries of this precautionary measure.

V. DECISION

37. In view of the aforementioned background information, the IACHR considers that the present matter meets, *prima facie*, the requirements of seriousness, urgency, and irreparable harm established in Article 25 of the Rules of Procedure. Consequently, the Commission requests that Colombia:

- a) adopt the necessary measures to protect the life and personal integrity of M.I.F.M. and her nuclear family, with a gender perspective or differentiated approaches, as appropriate, in accordance with applicable international standards and obligations;
- b) consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and
- c) report on the measures adopted in order to investigate the facts that led to the adoption of this precautionary measure, so as to prevent their reoccurrence.

38. The Commission also requests that the Government of Colombia kindly inform the Commission, within a period of 15 days, as from the date of notification of the present resolution, regarding the adoption of the precautionary measures that have been consulted upon and to periodically update this information.

39. The Commission highlights that, pursuant to Article 25(8) of the Commission's Rules of Procedure, the granting of precautionary measures and their adoption by the State do not constitute prejudgment regarding the possible violation of the rights protected in the American Convention and other applicable instruments.

40. The Commission requests its Executive Secretariat notify the State of Colombia and the applicants of the present resolution.

41. Approved on February 5, 2020 by: Esmeralda Arosemena de Troitiño, President; Joel Hernández García, First Vice-president; Antonia Urrejola Noguera, Second Vice-president; Margarette May Macaulay, Flávia Piovesan and Julissa Mantilla Falcón, members of the IACHR.

Paulo Abrão
Executive Secretary