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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 5/2021**

Precautionary Measure No. 1068-20  
Yandier García Labrada regarding Cuba  
January 7, 2021  
Original: Spanish

**I. INTRODUCTION**

1. On November 13, 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 Institute on Race, Equality and Human Rights (“the applicants”), urging the Commission to require that the State of Cuba (“the State” or “Cuba”) adopt the necessary measures to protect the rights to life and personal integrity of Mr. Yandier García Labrada (“the proposed beneficiary”). According to the request, the proposed beneficiary, who is an activist and member of the Christian Liberation Movement, is currently detained in the “El Tipico” prison for the crimes of “contempt and public disorder.” He finds himself at risk in the context of his deprivation of liberty as a result of an alleged lack of adequate medical care following beatings received during his detention.

2. Under the terms of Article 25.5 of its Rules of Procedure, the IACHR requested information from the State and the applicants on November 23, 2020. To date, no response has been received from the State. The applicants submitted additional information on November 25, 2020.

3. Having analyzed the submissions of fact and law presented by the applicants, the Commission considers that the information presented demonstrates prima facie that Mr. Yandier García Labrada finds himself in a serious and urgent situation, given that his rights to life and personal integrity are at risk of irreparable harm. Consequently, in accordance with Article 25 of the IACHR’s Rules of Procedure, the Commission requests that Cuba: a) adopt the necessary measures to protect the life and personal integrity of Mr. Yandier García Labrada; in particular, guarantee that his conditions of detention are in conformity 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 events that led to the adoption of this resolution with the aim of preventing their reoccurrence.

**II. SUMMARY OF FACTS AND ARGUMENTS**

**1. Information provided by the applicants**

4. The proposed beneficiary Yandier García Labrada is a human rights defender and activist, member of the Christian Liberation Movement (MCL for its Spanish acronym)<sup>1</sup> since 2015. As part of this organization, he leads a group of activists in the area of Manatí, Las Tunas.

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<sup>1</sup> According to the request, the Christian Liberation Movement (MCL) is an independent civil society organization in Cuba that advocates for a transition to democracy on the island, and carries out activities to promote and defend human rights. As a result of their activism, MCL members have reportedly been “aggressively persecuted by the Cuban government”. In July 2012, one of the founders and the first National Coordinator of the MCL, Oswaldo Payá, reportedly died under suspicious circumstances in a car accident after being pursued by State Security agents. The second National Coordinator, Dr. Eduardo Cardet Concepción, was allegedly attacked by five State Security agents in November 2016 and later sentenced to three years in prison for “assault”. His detention was declared arbitrary by the UN Working Group on Arbitrary Detention in 2019, noting that “Mr. Cardet’s detention was a result of his political and social activities, in the promotion of voting and democratic participation, both individually and

5. According to the request, following his affiliation with the MCL, the proposed beneficiary has been harassed, threatened, and detained for short periods of time on multiple occasions. The detentions have usually lasted between four to five hours, after which Mr. Garcia Labrada has been released with a warning to cease his activism, and defense of human rights and democracy. In this sense, in 2016, he was reportedly detained for twelve hours in the province of Las Tunas in a unit known as “Instrucción”.

6. In February 2017, Mr. García Labrada was again detained by State Security agents while on his way to work at around 7 a.m. He was deprived of his liberty for several hours and threatened with “being imprisoned in the prison of ‘El Típico’ if he continued with his activism with the MCL”.<sup>2</sup>

7. Later, in January 2020, the proposed beneficiary was intimidated by State Security agents who summoned him to a police station to “warn him that he would be imprisoned if he continued his activism for change in Cuba”.<sup>3</sup>

8. On October 6, 2020, at about 3:00 p.m., Mr. García Labrada was standing in line to obtain food and basic supplies for himself and his mother outside a food supply site in Manatí. While in line, a security guard from the supermarket pushed him, and the proposed beneficiary publicly complained about the disorganization and irregularities in the supply of goods. More people joined him in his complaint and local officials called the police. Mr. García Labrada was detained along with three other people. According to witnesses, the apprehension of the proposed beneficiary was “rough”, given that between four and five police officers “threw him headfirst into the patrol car to arrest him”. The three other people arrested with him were released hours later on October 6, while the proposed beneficiary remained in detention.

9. On October 27, Mr. Irán Almaguer Labrada –brother of the proposed beneficiary and an activist with the MCL–, became aware of the proposed beneficiary’s detention and went to the Las Tunas Police Unit to inquire about his whereabouts. An officer who presented himself as the person responsible for the case, but who refused to identify himself or provide his name, suggested that Mr. Garcia Labrada was being held in the provisional prison of “El Típico” on charges of “contempt and public disorder.”<sup>4</sup>

10. In this regard, according to the applicants, following his arrest, the proposed beneficiary was held incommunicado for approximately one month in the “El Típico” prison. During this time, the proposed beneficiary was beaten by the authorities of the detention center and was not allowed to make telephone calls or receive visitors. It was not until November 3, 2020 that his brother was able to visit him at the prison for twenty minutes, during which time he was able to corroborate that the proposed beneficiary had several bruises on his ribs, shoulders and arms. During this visit, the proposed beneficiary informed his brother that “he cannot move his left arm and has not received medical attention”.

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through the association Christian Liberation Movement.” In this regard, see: Christian Liberation Movement. “[Quiénes somos?](#)” (Available in Spanish); Christian Liberation Movement. “[Acerca de Oswaldo](#)” (Available in Spanish); United Nations. Human Rights Council. Working Group on Arbitrary Detention. Opinions adopted by the Working Group on Arbitrary Detention at its 83rd session, from 19-23 November 2018. [Opinion No. 66/2018, regarding Eduardo Cardet Concepción \(Cuba\)](#). A/HRC/WGAD/2018/66. February 4, 2019 (Available in Spanish).

<sup>2</sup> MCL. “[Yandier García of the MCL arrested, Manatí, Las Tunas](#)”. February 4, 2017 (Available in Spanish).

<sup>3</sup> Radio Televisión Martí. “[MCL targeted by the regime; Doctor Cardet denied departure](#)”. January 27, 2020 (Available in Spanish).

<sup>4</sup> Radio Televisión Martí. “[Christian Liberation Movement member arrested](#)”. November 3, 2020 (Available in Spanish).

11. The following day, November 4, 2020, the brother of the proposed beneficiary, Mr. Almaguer Labrada, was detained in the town of Buenaventura for five hours by a State Security officer who demanded that he “abandon his opposition” in exchange for the release of Mr. Yandier García Labrada.

12. According to the request, despite his ailments and deteriorating health, Mr. García Labrada has allegedly not received any medical attention. Furthermore, the proposed beneficiary is asthmatic and consequently, frequently suffers respiratory crises. The prison authorities have reportedly prevented communication between the proposed beneficiary and his family, so they do not know if his injuries have worsened. They were only allowed to give him the salbutamol spray he requires for his bronchial asthma.

13. With regard to the allegations against the proposed beneficiary, the request indicates that his family has not been able to access any official records or case files. However, they are aware from information verbally provided by the case manager that the proposed beneficiary has been charged with the crimes of “contempt” and “public disorder”.

14. Furthermore, according to the applicants, the family members of the proposed beneficiary have not been able to file complaints or request protection measures with the national authorities because they lack sufficient economic resources to hire legal representation and the State has not provided them with free legal defense. In addition, restrictions due to the COVID-19 pandemic, including the closure of establishments and limitations on public transportation, have prevented Mr. Garcia Labrada’s family members from accessing domestic resources. In this regard, they applicants note that due to the pandemic and based on Instruction 248, the Supreme People’s Court ordered the “immediate temporary suspension and detention of the processing and promotion of the legal cases or proceedings in progress”. As a result, the Cuban judicial authorities have slowed down the processing of criminal cases without setting any time limit and leaving persons deprived of their liberty defenseless.

15. On the other hand, the applicants note that intimidation and aggressions against “political opponents in Cuba” have escalated in recent months, pointing out that the State has used the COVID-19 pandemic as a pretext to repress and violate the human rights of members of civil society, human rights defenders, activists and independent journalists.

## **2. Information provided by the State**

16. The Commission requested information from the State on November 23, 2020. No response has been received to date.

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

17. 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.

18. 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, one being protective and the other being 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.

19. In analyzing these 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.<sup>5</sup> It is also relevant to clarify that, in accordance with its mandate, the Commission is not required to determine whether the proposed beneficiary is criminally responsible for the crimes of which he has been charged, nor to determine under the precautionary measures mechanism whether his rights have been violated, since such an analysis must be made in a petition or case. The Commission will solely examine whether the proposed beneficiary is at risk pursuant to the terms of Article 25 of its Rules of Procedure.

20. In addition, with regard to the present matter, the Commission observes that the proposed beneficiary's alleged situation of risk is framed within a specific context related to the situation of human rights defenders in Cuba. This situation is generally characterized by a climate of hostility, persecution and harassment, particularly with respect to those who have expressed their opposition to the government.<sup>6</sup> 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 defense and promotion of human rights.<sup>7</sup> Other forms of harassment include being summoned to police stations, searches of their homes, assaults, prohibitions from leaving or entering the country, obstacles to leaving their homes through the use of official operations and surveillance of their communications.<sup>8</sup> Further,

<sup>5</sup> In this regard, see: I/A Court H.R., [Matter of Members of the Miskitu Indigenous Peoples of the North Caribbean Coast regarding Nicaragua](#). Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of February 6, 2020. Considerandum 13 (Available in Spanish); I/A Court H.R., [Matter of children deprived of liberty in the "Complexo do Tatuapé" of FEBEM regarding Brazil](#). Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> IACHR. [Special Report on the Situation of Freedom of Expression in Cuba](#). OEA/Ser.L/V/II. CIDH/RELE/INF.21/18. December 31, 2018. Para. 136.

the Commission has observed that human rights defenders are victims of repeated arbitrary detentions as a method of harassment by police and state security agents.<sup>9</sup> Once deprived of their liberty, human rights defenders may be subjected to attacks, threats and ill-treatment inside penitentiaries.<sup>10</sup>

21. Considering the situation of special risk faced by human rights defenders in Cuba, the IACHR has granted several precautionary measures,<sup>11</sup> including to members of the Christian Liberation Movement (MCL).<sup>12</sup>

22. The Commission also recalls that, with regard 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> Likewise, the Commission emphasizes that pretrial detention should be the exception rather than the rule,<sup>16</sup> and that the cumulative effects of pretrial detention have a much greater impact on persons belonging to vulnerable groups.<sup>17</sup>

23. Further, in the context of the COVID-19 pandemic, the Commission has urged States to adopt urgent measures to guarantee the health and integrity of the prison population in the face of the effects of the pandemic, as well as to ensure decent and adequate conditions of detention in places of

<sup>9</sup> 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.

<sup>10</sup> In this regard, see: 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 Measures 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).

<sup>11</sup> In this regard, see: IACHR. [Resolution 96/2020. Precautionary Measure No. 1043-20. Niober García Fournier and his family regarding Cuba](#). December 18, 2020; IACHR. [Resolution 90/20. Precautionary Measure No. 935-20. Maydolis Leyva Portelles, Ana Iris Miranda Leyva, Ada Iris Miranda Leyva, Fidel Manuel Batista Leyva, T.R.M., A.M.R.M. and María Casado Ureña regarding Cuba](#). November 23, 2020; IACHR. [Resolution 13/2020. Precautionary Measure 3-20. María Elena Mir Marrero regarding Cuba](#). February 5, 2020 (Available in Spanish); IACHR. [Resolution 22/2018. Precautionary Measure No. 954-16. José Ernesto Morales Estrada regarding Cuba](#). March 18, 2018 (Available in Spanish); IACHR. [Situation of Human Rights in Cuba](#). OEA/Ser.L/V/II. Doc. 2. February 3, 2020. Para. 172.

<sup>12</sup> IACHR. [Resolution 16/2018. Precautionary Measure No. 39-18. Eduardo Cardet Concepción regarding Cuba](#). February 24, 2018 (Available in Spanish).

<sup>13</sup> In this regard, see: I/A Court HR. [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.

<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> IACHR. [Report on the Use of Pretrial Detention in the Americas](#). OEA/Ser.L/V/II. Doc. 46/13. December 30, 2013. Para. 21.

<sup>17</sup> 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.

deprivation of liberty, noting that this context may mean a greater risk for those persons who are part of vulnerable groups.<sup>18</sup> In this regard, the Commission has recommended that States re-evaluate cases of pre-trial detention of human rights defenders to identify those that can be replaced by alternatives to incarceration, and to evaluate as a matter of priority the possibility of granting alternative measures such as probation, house arrest, or early release for human rights defenders deprived of their liberty who are at risk of contracting COVID-19.<sup>19</sup>

24. Bearing in mind the particular context of Cuba, the Commission will proceed to analyze the procedural requirements with respect to the proposed beneficiary, with the understanding that this context is particularly serious as it pertains to the facts alleged by the applicants.

25. The Commission considers that the requirement of seriousness has been met. When assessing this requirement, in accordance with the context described above, the Commission observes that the proposed beneficiary is deprived of his liberty and that the alleged facts are attributed to the State authorities responsible for his custody, which is particularly serious. In this same sense, the Commission notes that the alleged situation of risk is also related to the proposed beneficiary's profile as an activist and human rights defender. Thus, the Commission observes that the proposed beneficiary has allegedly been harassed, intimidated, threatened and detained for short periods of time as a deterrent for him to abandon his activism on multiple occasions since his affiliation with the MCL in 2015.

26. Further, after having been deprived of his liberty on October 6, 2020, the proposed beneficiary was allegedly beaten by prison authorities in the ribs, shoulders and arms, and he did not receive medical attention despite the fact that he has not mobility in his left arm as a result of these blows. The Commission also takes into account that Mr. García Labrada was held incommunicado for approximately one month without any initial information about his location, and that the prison authorities are currently prohibiting him from communicating with his family. This is particularly relevant, since it obstructs his representatives and family members from gaining access to him and thus from being able to ascertain the current situation that he finds himself in.

27. The Commission considers that the above-mentioned facts reflect a serious situation that the proposed beneficiary is facing as a person deprived of his liberty, since the concrete events of risk reported are attributable to the State agents responsible for his custody. Further, the lack of medical attention could generate irreversible impacts on the health and personal integrity of the proposed beneficiary.

28. In view of the situation analyzed above, the Commission regrets the lack of response from the State. While the foregoing is not sufficient per se to justify the granting of a precautionary measure, it does prevent the Commission from analyzing whether or not the allegations of the applicants are disproven, and from considering any actions that the authorities might be implementing to address the alleged situation. This is particularly relevant in view of the fact that the incidents of risk were attributed to State agents. In this sense, it is important to reiterate the position of special guarantor of the State of Cuba with respect to the rights of the proposed beneficiary, who is in custody of the State. The Commission therefore lacks information from the State on the actions taken in response to the

<sup>18</sup> 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.

<sup>19</sup> IACHR. Resolution 1/2020. [Pandemic and Human Rights in the Americas](#). Adopted by the IACHR on April 10, 2020. Para. 46; IACHR. Press Release No. 101/2020. [IACHR Calls on States to Protect and Preserve the Work of Human Rights Defenders During the COVID-19 Pandemic](#). May 5, 2020.

beatings that the proposed beneficiary allegedly received or the medical attention that might have been provided in this regard.

29. 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 Mr. Yandier García Labrada's rights to life and personal integrity are at serious risk.

30. The Commission considers that the urgency requirement has been met, in view of the fact that the proposed beneficiary, by remaining deprived of his liberty in the circumstances described, may become the subject of further infringements of his rights without his family or representatives being able to intervene in a timely manner and ensure that his conditions of detention are adequate, thus calling for the adoption of immediate measures. In this sense, as indicated above, the Commission does not have specific information provided by the State that would allow for an assessment of the actions being taken to address the alleged situation.

31. The Commission considers that the requirement of irreparability has been met, insofar as the potential impact on the rights to life and personal integrity of the proposed beneficiary constitutes the maximum situation of irreparability.

32. Lastly, the Commission wishes to reiterate the importance of the work of human rights defenders in the region, placing special emphasis on the fact that acts of violence, criminalization and other attacks against them not only affect the guarantees afforded to every human being, but also undermine the fundamental role that human rights defenders play in society and add to the defenselessness of all those from whom they work.<sup>20</sup>

#### **IV. BENEFICIARY**

33. The Commission declares that the beneficiary of this precautionary measure is Yandier García Labrada, who has been duly identified in this proceeding.

#### **V. DECISION**

34. 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 Commission requests that the State of Cuba:

- a) adopt the necessary measures to protect the life and personal integrity of Mr. Yandier García Labrada; in particular, guarantee that his conditions of detention are in conformity 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 events that led to the adoption of this resolution with the aim of preventing their reoccurrence.

<sup>20</sup> IACHR. [Towards Effective Integral Protection Policies for Human Rights Defenders](#). OEA/Ser.L/V/II. Doc. 207/17. December 29, 2017. Para. 8; IACHR. [Situation of Human Rights in Cuba](#). OEA/Ser.L/V/II. Doc. 2. February 3, 2020. Para. 172.

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

36. The Commission emphasizes 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 prejudgment of any violation of the rights protected in the applicable instruments.

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

38. Approved on January 7, 2021 by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay; Edgar Stuardo Ralón Orellana; and, Julissa Mantilla Falcón, members of the IACHR.

María Claudia Pulido  
Acting Executive Secretary