

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 15/2024**

Precautionary Measure No. 542-19
Clave Enero and his family unit regarding El Salvador
March 28, 2024
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift the precautionary measures in favor of Clave Enero and his family unit in El Salvador. At the time of making the decision, the Commission assessed the measures adopted by the State and identified the lack of response by the representation since January 2021, despite repeated requests for information. Upon not identifying compliance with the requirements set forth in Article 25 of the Rules of Procedure, the IACHR decided to lift these precautionary measures.

II. BACKGROUND INFORMATION

2. On June 11, 2019, the IACHR decided to grant precautionary measures in favor of Clave Enero and his family in El Salvador.¹ The request for precautionary measures alleged that, on March 8, 2019, Mr. Clave Enero was the subject of an attempted homicide and was tortured by agents of the National Civil Police of El Salvador. Subsequently, he and his family were reportedly monitored and followed by police officers. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, the Commission requested the State of El Salvador to: a) adopt the necessary measures to protect the rights to life and personal integrity of Clave Enero and his family unit, taking into consideration that he has reported status of victim due to the events of March 8, 2019; and b) report on the actions taken to investigate the alleged facts that gave rise to the adoption of this resolution and thus prevent its repetition.

III. INFORMATION PROVIDED DURING THE TIME THESE PRECAUTIONARY MEASURES WERE IN FORCE

3. During the time the precautionary measures were in force, the Commission followed up on the subject matter of these precautionary measures by requesting information from both parties.

	Reports from the State	Reports from the representation	The Commission forwarding and requesting information
2019	July 18 and September 17	June 20 and October 24	September 10
2020	February 4 and September 1	February 14 and March 24	February 26 and December 10
2021	July 12	January 26	May 10
2022	No information	No information	September 19
2023	No information	No information	April 11 and December 19

¹ IACHR. [Clave Enero and his family regarding El Salvador \(PM 542-19\)](#). Resolution 28/19 of June 11, 2019.

4. On April 11 and December 19, 2023, the Commission reiterated the request for information to the representation, in order to evaluate keeping these precautionary measures in force. However, the representation has not responded to the latest requests for information, and the deadlines granted have since expired.

5. Representation is exercised by the Institute of Human Rights of the José Simeón Cañas Central American University (IDHUCA).

A. Information provided by the State

6. In 2019, the State indicated that on April 11, 2019, protection measures were granted in favor of Clave Enero after a risk assessment carried out by the Directorate for the Protection of Victims and Witnesses of the Executive Technical Unit (*Unidad Técnica Ejecutiva*, UTE) of the Section of Justice. It was noted that the beneficiary has decided to not stay in a safe house. However, other witness protection measures have been implemented, such as the following: during the time that the protected persons remain in the locations where the proceedings are carried out, they are provided with a reserved and guarded location to stay; the protected persons appear for the proceedings using the necessary forms or means to make their visual identification impossible; the protected persons give their testimony in a non-formal and non-hostile environment, and their testimony is recorded by audiovisual means to facilitate its reproduction in the public hearing when necessary or when the person cannot appear; the protected persons are prevented from being photographed or having their image is captured by any other means; and any person is prohibited from disclosing data that may allow the identification of the protected persons.

7. The State also reported that meetings were held in June and July 2019 with the representation and an inter-institutional team with officials from the Ministry of Foreign Affairs, Ministry of Justice and Public Security, National Civil Police, and the UTE for the coordination of precautionary measures. At these meetings, agreements were reached on the implementation of the protection measures in favor of Clave Enero and his family unit. The beneficiaries were in a property with safety measures provided by the Victim and Witness Protection Program of the UTE, under a modality of personal and residential protection by two protection agents, with rotation of personnel every four days, since August 16, 2019. In addition, they received a monthly delivery of a food basket and cleaning supplies, as well as the weekly transportation of their relatives to receive psychological care.

8. On March 14, 2019, through the Internal Affairs Unit, the National Civil Police opened an administrative file to investigate the police officers linked to the facts that gave rise to the precautionary measures at hand. The Office of the Attorney General announced that it is conducting a fiscal investigation for the crime of imperfect or attempted aggravated homicide that occurred on March 8, 2019. On April 14, 2019, an arrest warrant was issued against four police officers linked to this case. The Magistrate's Court of Apopa decreed the provisional detention of the accused in the initial hearing. This measure was confirmed by the Third Criminal Chamber of the First Section of the Center (*Cámara Tercera de lo Penal de la Primera Sección del Centro*). The Instruction Court of Apopa ordered the investigation phase of the case. The Prosecutor's Office reported that a series of procedures had been carried out, including an interview with the victim, an interview with the doctor who provided first aid, and an interview with the accused's boss. It indicated that other proceedings were pending.

9. In 2020, the State reported that the personal and residential protection measures for beneficiaries were still in force. The Office of the Attorney General reported that on August 28, 2019, it filed a complaint for the crimes of torture and deprivation of liberty against Clave Enero with the Magistrate's court of Apopa, and an initial hearing was held on September 19, 2019. At that hearing, a formal investigation order was issued against the defendants. Regarding the alleged harassment in February 2020, the Office of the Attorney General indicated that administrative files have been opened, through the Life Crimes Unit of the San

Marcos Prosecutor's Office, in order to investigate the crimes of trespassing and coercion to the detriment of the beneficiary.

10. In 2021, the State reiterated that, following the granting of the precautionary measures, the authorities have coordinated to implement them. The State added that on July 23, 2020, the personal and residential security service was terminated due to the express and voluntary resignation of the beneficiaries, who currently only have ordinary protection measures established in the Special Law for the Protection of Victims and Witnesses, and wellbeing measures, such as the delivery of food products and personal hygiene kits on a regular basis.

11. Regarding the investigation of the facts, the Office of the Attorney General of the El Salvador informed that the investigative processes for the crime of torture and aggravated attempted homicide to the detriment of the beneficiary were accumulated. On February 22, 2021, the Instruction Court of Apopa held a preliminary hearing regarding the case. The qualification of the crimes was modified, subsuming the crime of torture to that of attempted aggravated homicide, ordering the opening of the trial, and decreeing the continuation of the provisional detention of the accused.

B. Information provided by the representation

12. In 2019, the representation noted that on June 13, 2019, two National Civil Police patrol cars were parked in front of the beneficiary's residence. The agents allegedly pointed their guns at his bedroom window, and entered the house after breaking down the entrance gate. The police officers indicated that they were alerted about a girl who was being deprived of her liberty. On this occasion, the police officers allegedly searched the beneficiary's belongings and asked several questions, including whether he was "the *quemado* [meaning marked] from La Nueva"². As he left the house, the police officers reportedly warned him that they went to the house to "see if he was there". These facts were reported to the Office of the Attorney General. The Internal Affairs Unit of the National Civil Police went to the beneficiary's home to conduct an inspection. In order to protect the lives of the beneficiary and his 16-year-old brother, they were taken to a safe location provided by the Institute of Human Rights of the Central American University, IDHUCA.

13. The representation indicated that the only measures implemented by the State in favor of the beneficiaries were to provide protection to the beneficiary through the Victim and Witness Protection Unit of the Police. In addition, the authorities allegedly provided the beneficiary and his family with food in a timely manner. It was alleged that Mr. Clave Enero did not agree to be in a safe house because the conditions were not dignified and caused him to be re-victimized. In that sense, the representation informed that the beneficiary does not have contact with his family, and that it would seem that the people in these houses have committed a crime, rather than being victims of serious crimes, because of the state of the facilities and treatment they reportedly receive. The representation indicated that one of the policemen prosecuted for the actions against the beneficiary escaped from the Penal Center where he was detained. He was allegedly subsequently recaptured hours after his escape. The person who tried to escape reportedly indicated that his objective was to look for the beneficiary of these precautionary measures.

14. In 2020, the representation noted that on January 31, 2020, Clave Enero's anticipated statement was made before the Instruction Court of Apopa. In it, he exposed the participation of the police officers involved in the facts that gave rise to the precautionary measures. In addition, the representation added that on February 11, 2020, a group of police officers were present at the beneficiary's grandfather's house for about 40 minutes. They allegedly took pictures of the house and left.

15. Regarding the protection measures, the representation indicated that the beneficiary's situation, and that of his family was, at that time, "practically a deprivation of liberty". The foregoing is due to

² It was indicated that "La Nueva" refers to Nueva Apopa, the neighborhood where the beneficiary lived before the police attack.

the fact that the Victim and Witness Protection Program of the UTE of the Section of Justice did not allow the beneficiary to leave his home unless he gave a written note in advance requesting and justifying his departure. In several meetings with state authorities, the State has been notified of the situation that the beneficiaries underwent, and it has been indicated that they cannot be held in conditions similar to house arrest.

16. In 2021, the representation argued that to date the State has not informed the beneficiaries about the status of the investigations into the illegal search against the beneficiary. In addition, the representation reported that the beneficiary and his family had personal and residential service in their favor, because this became a *de facto* deprivation of liberty. Moreover, in recent months, the police officers designated for their protection were systematically changed. It was stated that the beneficiary and his family continued with the protection of the UTE of the Section of Justice, but not in the safe house.

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

17. The precautionary measures mechanism is part of the Commission's function of 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 IACHR Statute. The mechanism of precautionary measures is set forth in Article 25 of the Commission's Rules of Procedure. In accordance with this Article, the IACHR grants precautionary measures in urgent and serious situations in which these measures are necessary to avoid irreparable harm to persons or to the subject matter of a petition or case before the organs of the inter-American system.

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, both protective and precautionary.³ Regarding the protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights.⁴ To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and the vulnerability to which the persons proposed as beneficiaries would be exposed if the measures are not adopted.⁵ Regarding their precautionary nature, these measures have the purpose of preserving a legal situation while under consideration by the organs of the inter-American system. They aim to safeguard the rights at risk until the petition pending before the inter-American system is resolved. Their 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 enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations. In the process of reaching a decision, according to Article 25(2) of its Rules of Procedure, the Commission considers that:

³ See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#). Provisional Measures. Interim measures, Order of the Inter-American Court of Human Rights of July 6, 2009, considerandum 16.

⁴ See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008, recital 8; I/A Court H.R. [Matter of Bámaca Velásquez](#). Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of January 27, 2009, considerandum 45; I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional Measures regarding Mexico, Order of the Inter-American Court of Human Rights of April 30, 2009, considerandum 5; I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Resolution of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5.

⁵ See in this regard: I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5; I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008, considerandum 8; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#). Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6 [only in Spanish].

- 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 this sense, Article 25(7) of the Commission’s Rules of Procedure establishes that decisions “granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25(9) sets forth that the Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force. In this regard, the Commission should assess whether the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures persist. Furthermore, it shall consider whether there are new situations that may comply with the requirements set forth in Article 25 of the Rules of Procedure.

20. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, keeping such measures in force requires a more rigorous evaluation.⁶ In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.⁷ The Inter-American Court has indicated that the passage of a reasonable time without any threats or intimidation, in addition to the lack of imminent risk, may lead to lifting international protection measures.⁸

21. In the matter at hand, the Commission observes that the precautionary measures were granted in 2019 due a situation that placed Mr. Clave Enero at risk after he was subjected to aggressions and threats by police officers on March 8, 2019. In the framework of the follow-up of these precautionary measures, the Commission observes that the parties agreed to report on the measure of “personal and residential protection service” in favor of the beneficiary and his relatives, by the Victim and Witness Protection Division of the UTE of the Section of Justice as of August 16, 2019. As also indicated by the parties, this measure was terminated in July 2020 at the beneficiary’s request. Although the representation questioned the measures regarding the residential protection service, the Commission does not have concrete and current elements to assess how and in what way this measure could have jeopardized the beneficiary’s rights. There is also no evidence to indicate whether this measure was not suitable or not effective for the situation being faced by the beneficiary and his family. This Commission does not have sufficient information to assess the conditions under which it was implemented, with the exception of the general questions raised by the representation.

22. According to the file of these precautionary measures, by 2021 the beneficiary and his family members were receiving ordinary protection measures, according to the Special Law for the Protection of Victims and Witnesses, and care measures, which included delivery of food and personal hygiene products. The information provided also revealed that criminal proceedings were initiated in relation to the facts that originated the precautionary measures, which was still in process in 2021, and four police officers were provisionally detained in this case.

23. The Commission observes that, following the withdrawal of the residential protection measure at the beneficiary’s request, no elements have been reported that could indicate the existence of a situation that places the proposed beneficiaries at imminent risk. The Commission verifies that three years have elapsed without information from the representation on the beneficiaries’ situation. Despite requests for

⁶ I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 7, 2017. 16 and 17.

⁷ I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 7, 2017, paras. 16 and 17.

⁸ I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 7, 2017, paras. 16 and 17.

information in 2021, 2022, and 2023, the representation has not submitted updated information. The last information provided is dated January 26, 2021.

24. The Commission observes that, despite having been informed that it would proceed with the analysis of keeping these precautionary measures in force, no response or updated information on the situation of the beneficiaries has been received for the last three years. In this regard, the Commission does not have any assessment elements to identify a current situation that places the proposed beneficiaries at risk under the terms of Article 25 of its Rules of Procedure.

25. Lastly, the Commission emphasizes that regardless of the lifting of these measures, in accordance with Article 1(1) of the American Convention, it is the obligation of the State of El Salvador to respect and guarantee the rights recognized therein, including the life and personal integrity of the proposed beneficiaries in the matter at hand. The Commission acknowledges the actions taken by the State to investigate the facts that gave rise to these precautionary measures, and calls for their continuation.

V. DECISION

26. The Commission decides to lift the precautionary measures granted in favor of Clave Enero and his family unit in El Salvador.

27. The Commission recalls that lifting these measures does not prevent the representatives from filing a new request for precautionary measures should they consider that there is a situation that meets the requirements established in Article 25 of the Rules of Procedure.

28. The Commission instructs the Executive Secretariat to notify this Resolution to the State of El Salvador and to the representation.

29. Approved on March 28, 2024, by Carlos Bernal Pulido, First Vice-President; José Luis Caballero Ochoa, Second Vice-President; Edgar Stuardo Ralón Orellana; Andrea Pochak; and Gloria Monique de Mees, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary