
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 1/2020**

Precautionary Measure No. 1132-19

Mary Elizabeth Carrasco Condarco and Juan Alipaz regarding Bolivia

January 8, 2020

Original: Spanish

I. INTRODUCTION

1. On November 29, 2019, the Inter-American Commission on Human Rights ("the Inter-American Commission", "the Commission" or "the IACHR") received a request for precautionary measures submitted by the Center for Legal and Social Studies (*CELS* by its Spanish acronym) and the Center for Justice and International Law (*CEJIL* by its Spanish acronym) ("the applicants") urging the Commission to require that the Plurinational State of Bolivia ("Bolivia" or "the State") adopt the necessary protective measures to guarantee the rights of Mary Elizabeth Carrasco Condarco, Juan Alipaz Aparicio and other persons ("the proposed beneficiaries"). According to the request, Ms. Mary Carrasco and Mr. Juan Alipaz are representatives of victims in a criminal proceeding of the so-called "Massacre of El Porvenir", in the framework of which she are being subjected to harassment and threats against their lives. Such acts are reportedly increasing given the current development of the criminal proceeding and the context of the country.

2. In accordance with Article 25(5) of the Rules of Procedure, the IACHR requested information from the State on December 12, 2019. The State requested a time extension, which was granted on December 17, 2019. On December 20, 2019, the State sent its response. The applicants sent additional information on December 9, 10, and 25, 2019.

3. Having analyzed the submissions of fact and law submitted by the parties, the Commission considers that, from a *prima facie* standard, Ms. Mary Elizabeth Carrasco Condarco and Mr. Juan Alipaz Aparicio, as well as the nuclear family of Ms. Carrasco Condarco are in a serious and urgent situation, since their rights to life and personal integrity face a risk of irreparable harm. Consequently, in accordance with Article 25 of the IACHR's Rules of Procedure, the Commission requests that the Plurinational State of Bolivia: a) adopt the necessary measures to protect the rights to life and personal integrity of Mary Elizabeth Carrasco Condarco and Juan Alipaz Aparicio, as well as the nuclear family of Ms. Carrasco Condarco, in accordance with the standards established by international human rights law, including the protection of their rights in relation to acts of risk attributable to third parties; b) consult upon the measures to be adopted with the beneficiaries and their representatives; and c) report on the measures adopted in order to investigate the alleged facts that led to the adoption of this precautionary measure and thus prevent their reoccurrence.

II. SUMMARY OF FACTS AND ARGUMENTS SUBMITTED BY THE PARTIES

1. Information alleged by the applicants

4. The applicants referred to the political situation in Bolivia in 2008, in a context of tension due to the emergence of movements seeking the separation of territories from Bolivia. It was stated that on

September 11, 2011, the so-called "Massacre of El Porvenir" took place in the department of Pando¹. They indicated that the Massacre occurred during a march as a consequence of the intervention of local authorities, resulting in the death of several people and several wounded. The applicants declared that peasants and indigenous people who were marching to defend their rights died. Relatives of the victims, represented by lawyer Mary Carrasco, allegedly filed a complaint against the Pando's former prefect, Leopoldo Fernández, and other persons, in which Juan Alipaz was later included as lawyer representing other victims.

5. The request indicates that, after eight years of criminal proceedings, the Sixth Criminal Court of La Paz issued Judgment No. 10/2017 on March 10, 2017, which convicted the defendants Leopoldo Fernández, Evin Ventura, German Justiniano and Juan Marcelo Mejido. The former prefect Leopoldo Fernández was reportedly sentenced to 15 years' imprisonment for the crimes of terrorism, homicide, and others in the context of the Massacre. The judgment was upheld on appeal, and he is now serving his sentence under house arrest. An appeal in cassation is currently pending before the Supreme Court of Justice.

6. In view of these circumstances, the requesting organizations noted that Mary Carrasco, as lawyer of the alleged victims in the above-mentioned criminal proceeding, has been subjected of threats against her life and that of her children, following the inauguration of the new State President, Jeanine Añez. They argued that the situation of risk is embedded in the current crisis of the country, in addition to the close relationship between the new members of the Executive Branch and the people convicted or indicted in the Porvenir case. In that regard, the applicants indicated that, throughout the case for the massacre, authorities who hold office in the Executive Branch today made statements regarding the alleged unfairness of the process and directly supported the defendants by appearing at the hearings.

7. The requesting organizations added that President Añez intends to pardon those whom she describes as "political prisoners", some of whom are currently abroad and where the persons convicted or indicted² in the Porvenir case allegedly are. In this regard, they believe that there is a risk that the acts committed will remain in impunity, since in at least one case one of the fugitives, upon his return to Bolivia, has not yet been arrested. The applicants also stressed the possibility that the Supreme Court of Justice might eventually overturn the conviction of former prefect Fernández.

8. Specifically regarding personal risk, the requesting organizations stated that, since the beginning of her work accompanying the victims of the Porvenir case, Ms. Carrasco received threats from the indicted, and even had to ask for protection measures in 2011 "for the victims and family members of the case". In relation to this issue, they claimed that the tax authority initiated a sanctioning procedure against her for an amount of more than six million dollars, allegedly to intimidate her and undermine her credibility. Additionally, in relation to the alleged situations of risk, they reported that: (i) on the occasion of the commemoration of the massacre, a representative of the Nationalist Revolutionary Movement (*Movimiento Nacionalista Revolucionario*) expressed on the radio that Ms. Carrasco "[...] was going to pay for everything she had done in the proceeding against Leopoldo Fernández"; and (ii) on November 19 and 20, 2019, the proposed beneficiary received, respectively, the following messages to her telephone:

¹ The name refers to the place where the Massacre took place, the town of Porvenir, near the city of Cobija, capital of the department of Pando.

² The applicants indicated that there are currently 8 convicted persons, though without a final judgment, including Pando's former Prefect, Leopoldo Fernández, and 21 indicted persons, many of whom are fugitives from justice and recently left the country.

Ms. Lawyer, don't even think about showing up because we will burn down your house. We will make your daughters disappear because of so much damage caused. Masista de Maleante (Maleante Shit), show up and watch out for the consequences [we hope] you are packing to disappear from our country as your President. We don't want to see you in La Paz again if you don't want us to do it MALEANTE (*sic*)

Dear Maricita we know.your office in.the Building XXXXXX in the street XXXXXX if you don't go away and disappear therefore Damage to the Pandinos already went away your Friend Juan Ramon de la Quintana we will burn your Office don't dare leave we want you to go away because if we find you you will go straight to the Side of the Shoe have what it feels to be Unjustly Imprisoned we are giving you the opportunity to go away Maleante (*sic*.)

9. With respect to the lawyer Juan Alipaz, the applicants mentioned that he too was "warned" and indicated that both he and his partner are being threatened by the Ministry of Government with the opening of criminal proceedings "[...] for fabrication of evidence in the case of the "Massacre of El Porvenir". The applicants also claim they have received information indicating that proceedings will again be opened against him for tax evasion". Additionally, the request makes reference to several individualized persons, about whom no specific information nor further elements were provided as to the risk situation they allegedly currently face.

10. On December 9 and 10, the requesting organizations calimed that the threats that Ms. Mary Carrasco had received on November 19 and 20 referred to her role as a defender of the victims of the Porvenir massacre. In addition, they reported that, as a result of these threats, Ms. Mary Carrasco left her home to find shelter, given that she is the spokesperson in the proceeding and in all the respective stages, including media, for the denounce of the "Massacre of El Porvenir" They also stated that between October 20 and 25, Juan Alipaz Aparicio was personally warned by the lawyer and former judge in the case, Alvaro Melgarejo, that "they were going to pay for it". The applicants insisted on the existence of "threats" from the Ministry of Government about the opening of criminal proceedings against the proposed beneficiaries.

11. The applicants reported that on December 9, 2019, the Sixth Sentencing Court of La Paz ordered the release of Mr. Leopoldo Fernández, who was serving a 15-year sentence since 2008, having recently been placed under house arrest, while the appeal before the Supreme Court of Justice is being resolved. At the same time, it was further claimed that a cousin of Mr. Leopoldo Fernández approached a survivor of the Porvenir massacre in the streets of Cobija, shouting at him that "they are going to come back and you have to disappear!". The request indicates that no requests for protection were filed with the Prosecutor's Office due to a lack of trust in the authorities and alleged breaches to the due criminal process.

2. Response from the State

12. The Plurinational State of Bolivia referred to the assumption of the current President, and reported on the measures allegedly in place aimed at "peace-building in the country", as well as on the invitation made to the IACHR so that it may carry out an investigation of the events that took place between September and November 2019.

13. In relation to the present matter, the State considered that the regulatory requirements had not been met and requested that the Commission dismiss the request for precautionary measures. It alleged

that in addition to lacking legal support and grounds, the allegations made by the applicants are insufficient to demonstrate seriousness, urgency, or potential irreparable harm.

14. With respect to the allegations made by the applicants on the filing of several criminal proceedings against them as a form of harassment, the State stresses that there are no elements to support the accuracy of this information. Furthermore, according to the State, no alleged risk factors can be determined which may affect the proposed beneficiary as a result of the proceedings mentioned.

15. The State confronted the alleged threats, such as that received by Ms. Mary Carrasco from Representative Miguel Santa Lucia Ojopi, and the text messages sent to her phone, or the alleged threat made against Mr. Juan Alipaz Aparicio by the judge in the "Massacre of El Porvenir" case. The State further indicated that there is no evidence of the reported facts, and that the alleged victims have not resorted to national authorities, such as the police and the prosecutor's office, to file their complaints.

16. Regarding the previous paragraph, the State provided information from the police and the prosecutor's office, indicating that the proposed beneficiaries have not filed any complaints with their institutions. It further claimed that they did not inform of the alleged threats against them at the recent hearing held to potentially modify the precautionary measures in favor of Leopoldo Fernández. This hearing was reportedly held on December 9, 2019, where the proposed beneficiaries were present and had the possibility of taking the floor.

17. Regarding the allegations of threats of arrest by government officials against the proposed beneficiaries, in the context of the criminal proceedings initiated against them due to the hypothetical fabrication of evidence, the State has deemed that no risk elements can be identified to verify the impacts of such risk on the proposed beneficiaries.

18. The State emphasized that the applicants did not indicate in what way the supreme decree created by the "Justice and Peace Committee" allegedly affects the personal situation of the proposed beneficiaries and informed that, in any case, the aforementioned regulation has already been repealed.

19. Finally, the State considered that releasing Mr. Leopoldo Fernández does not in itself entail a situation of risk to the proposed beneficiaries, and that no objective elements are identified that may point to the possible materialization of the risk. Moreover, the State listed the reasons why the measures against the accused should be reviewed, especially since the arrests already lasted more than 12 years, a final appeal still pending. Finally, the State informed that the proposed beneficiaries were present at the hearing for the review of the measures, held within the framework of due process of law, and did not challenge the request for modification.

III. ANALYSIS ON THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABILITY

20. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with human rights obligations established in Article 106 of the Charter of the Organization of American States. These general supervisory functions are established in Article 41 (b) of the American Convention on Human Rights, also included in Article 18 (b) of the Statute of the IACHR. The mechanism of precautionary measures is described in Article 25 of the Commission's Rules of Procedure. In accordance with that article, the Commission grants precautionary measures in situations that are serious and urgent, and in which such measures are necessary to prevent irreparable harm to persons.

21. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have repeatedly established that precautionary and provisional measures have a dual nature, one being protective and the other precautionary. With respect to the protective nature, the measures seek to avoid irreparable harm and to preserve the exercise of human rights. With respect to the precautionary nature, the measures are intended to preserve a legal situation while it is being considered by the IACHR. The purpose of the precautionary nature is to preserve rights at possible risk until the petition under consideration in the Inter-American System is decided upon. Its object and purpose is to ensure the integrity and effectiveness of the decision on the merits and, in this way, to prevent the alleged rights from being violated, a situation that could adversely affect the useful effect (*effet utile*) of the final decision. In this sense, precautionary or provisional measures allow the State in question to comply with the final decision and, if necessary, the ordered reparations. For the purposes of taking a decision, and in accordance with Article 25(2) of its 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.

22. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary need not be proven beyond doubt; rather, the information provided should be assessed from a *prima facie* standard to determine a serious and urgent situation³.

23. As a preliminary observation, the Commission considers it appropriate to clarify that it is not for the Commission to determine, through the mechanism of precautionary measures, any criminal or fiscal liabilities of the proposed beneficiaries or to reach any conclusions on the serving of sentences or on the potential regime modification of those accused or convicted for the events relating to the “Massacre of El Porvenir.” The analysis made by the Commission relates exclusively to the requirements of seriousness, urgency and risk of irreparable harm established in Article 25 of its Rules of Procedure, which can be determined without an assessment on the merits.

24. On the other hand, although the request for precautionary measures seeks to protect several persons, the Commission considers that at present it lacks sufficient information to identify a risk in light of Article 25 of its Rules of Procedure that would endanger all the proposed beneficiaries. For this reason, the present resolution will only analyze the situation of Ms. Mary Carrasco and Mr. Juan Alipaz.

25. Upon analyzing the requirement of seriousness, the Commission notes that the events date back to 2008, when the “Massacre of El Porvenir” occurred, and have recently become relevant again, both in

³ In this regard, see IA Court H.R. Matter of the inhabitants of the Miskitu Indigenous Peoples of the Northern 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 Children and Adolescents Deprived of their Liberty in the “Complexo do Tatuapé” of the Fundação CASA. Request for extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23. Available at: http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf

relation to the current context in Bolivia and to the return of allegedly convicted persons and the determination to release the then prefect of Pando, who had been deprived of his liberty because of those events. In this sense, it is noted that the risk situation of the proposed beneficiaries reportedly derives from their role as representatives of the victims of the "Massacre of El Porvenir" in 2008, a criminal proceedings which is currently pending, and an appeal to the Supreme Court of Justice allegedly remains to be decided upon.

26. In this regard, the Secretariat notes with great concern the threats through text messages received by Ms. Mary Carrasco about "burning down her house", "burning down her office" and "making her daughters disappear". In this sense, it is noted that the above mentioned threats were allegedly received through text messages to her personal phone and express knowledge about the location of her office. In view of the foregoing, the requesting organizations indicated that both proposed beneficiaries have been subjected to threats and marking seeking to intimidate them, both by persons related to the current government and y private individuals and relatives of Mr. Fernández. In this sense, the Commission considers that the seriousness of the alleged threats in light of the climate of stigmatization against the proposed beneficiaries by groups close to those who have been convicted of the "Massacre of El Porvenir," together with the climate of polarization that currently exists in Bolivia, make it possible to consider the existence of a risk situation against the proposed beneficiaries.

27. The above, especially the role of defenders allegedly performed by both proposed beneficiaries in a criminal proceeding for a massacre at a time when the release a high authority that had been involved in the events was allegedly decided and the case was pending resolution by the Supreme Court of Justice of the said criminal proceeding. In this sense, although the available information, as indicated by the State, does not allow us to consider that the release of Mr. Leopoldo Fernández constitutes a situation of risk in itself, this fact purportedly contributes to the climate of animosity that was reportedly created against Ms. Carrasco and Mr. Alipaz.

28. The Commission notes that the proposed beneficiaries reportedly submitted applications for protection in 2011, without information on the outcome thereof. In addition, with regard to the recent events alleged, the Commission recalls the indications of the Inter-American Court that "it is up to the State authorities that become aware of a situation of special risk to identify or assess whether the person who is the object of threats and harassment requires protection measures or to refer the matter to the competent authority to do so, as well as to offer the person at risk timely information on the available measures. The assessment of whether a person requires protective measures and what the appropriate measures are is a State's obligation and cannot be restricted to the victim itself 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 officials for this purpose⁴. In this regard, the Commission notes with concern the lack of protection for the proposed beneficiaries, against which the State in its report has only indicated that no complaints have been filed.

29. In view of the above, the Commission notes that in light of the current context and given the specific circumstances of the proposed beneficiaries, a comprehensive assessment of the case, which includes the seriousness of the facts alleged and the current status of the criminal proceeding, as well as

⁴ I/A Court H.R. *Case Luna López v. Honduras*. Merits, Reparations and Costs. Judgment dated October 10, 2013. Serie C. No. 269, para. 127. Available (in Spanish) at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_269_esp.pdf See *inter alia*: IACHR, Resolution 67/18. PM 807/18 - Yaku Pérez Guartambel, Ecuador, August 27, 2019, para. 30. Available (in Spanish) at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/67-18MC807-18-EC.pdf>

its high sensitivity, allows for the consideration from the applicable *prima facie* standard that the rights to life and personal integrity of Ms. Mary Elizabeth Carrasco Condarco and Mr. Juan Alipaz Aparicio are at serious risk, the requirement of seriousness being met. The Commission also deems that, in view of the alleged facts, this situation of risk also extends to the members of Ms. Mary Carrasco's family, considering the threats made to her children and about burning down her house and office.

30. With regard to the requirement of urgency, the Commission considers that it has been met since the facts described suggest that the situation of risk is likely to continue and to be exacerbated over time, so that in view of the imminent materialization of the risk it is immediately necessary to adopt measures to safeguard their rights to life and personal integrity. The foregoing, taking into account that the criminal proceeding is reportedly at a very important stage, given that a possible final decision may be taken at the same time as the decision to release one of the main convicted persons, which would be exacerbated by the current climate of polarization in the country and constant harassment against the proposed beneficiaries. The Inter-American Commission notes that, in light of the threats received, Ms. Carrasco would have had to leave her home to take shelter, given the lack of protection and her role as a spokesperson in the criminal proceedings.

31. With regard to the requirement of irreparability, the Commission considers that this requirement has also been met, since the potential impact on the rights to life and personal integrity constitutes the maximum situation of irreparability.

IV. BENEFICIARIES

32. The Commission declares Ms. Mary Elizabeth Carrasco Condarco and Mr. Juan Alipaz Aparicio, who are duly identified in this proceeding, to be the beneficiaries of this precautionary measure. Furthermore, this resolution extends to the nuclear family of Ms. Carrasco Condarco.

V. DECISION

33. The Commission considers that the present case meets *prima facie* the requirements of seriousness, urgency and irreparability set forth in Article 25 of its Rules of Procedure. Consequently, the Commission requests that the Plurinational State of Bolivia:

- a) adopt the necessary measures to protect the rights to life and personal integrity of Mary Elizabeth Carrasco Condarco and Juan Alipaz Aparicio, as well as of the nuclear family of Ms. Carrasco Condarco, in accordance with the standards established by international human rights law, including the protection of their rights in relation to acts of risk attributable to third parties;
- b) consult upon the measures to be adopted with the beneficiaries and their representatives; ; and
- c) report on the measures adopted in order to investigate the alleged facts that led to the adoption of this precautionary measure and thus prevent their reoccurrence.

34. The Commission requests that the Plurinational State of Bolivia kindly inform the Commission, within a period of 15 days as of the date of notification of this resolution, about the adoption of precautionary measures agreed upon, and periodically update this information.

35. The Commission emphasizes that, in accordance with Article 25 (8) of the Commission's Rules of Procedure, the granting of precautionary measures and the adoption of those measures by the State do not constitute a prejudgment on the possible violation of the rights protected in the American Convention on Human Rights and other applicable instruments.

36. The Commission instructs its Executive Secretariat to notify this Resolution to the Plurinational State of Bolivia and to the applicants.

37. Approved on January 8, 2020, by: Esmeralda Arosemena de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola Noguera, Second Vice President; Flávia Piovesan, Margarette May Macaulay, Julissa Mantilla Falcón, and Edgar Stuardo Ralón Orellana, members of the IACHR.

María Claudia Pulido
By authorization of the Executive Secretary