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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 87/2020**

Precautionary Measure No. 80-11  
Maurice Tomlinson regarding Jamaica<sup>1</sup>  
November 4, 2020

**I. BACKGROUND**

1. On March 21, 2011, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures in favor of Maurice Tomlinson, in Jamaica. The request alleged that Maurice Tomlinson was at risk due to his work as an advocate for the rights of lesbian, gay, bisexual, trans and intersex (LGBTI) persons in Jamaica. Allegedly, State authorities did not adopt any protection measures despite death threats the beneficiary received via email. The IACHR required the State of Jamaica to adopt, in agreement with the beneficiary, the necessary measures to guarantee his life and physical integrity, and to inform the IACHR on actions taken to investigate the facts that led to the adoption of this precautionary measure.

**II. SUMMARY OF INFORMATION PROVIDED DURING THE TIME THE MEASURES WERE IN FORCE**

2. Upon granting the measures, the IACHR continued to monitor the matter through requests for information and corresponding transfers of information between the parties, to determine whether these precautionary measures should remain in force. In 2013, the State requested the lifting of these measures, noting that the procedural requirements were not met.<sup>2</sup> Regarding the representatives in this matter, the last information received concerning the beneficiary's situation was in 2013. After various requests for information to the representatives between 2013 and 2016<sup>3</sup>, the IACHR has not received a response on the beneficiary's situation.

3. In 2011, the State reported that it had not been possible to contact the beneficiary, despite various attempts to communicate with him by phone or email. The State indicated that it sought to contact the beneficiary to take the necessary actions, as well as to continue with the investigations. In 2012, the representatives provided various news reports on events that had occurred in Jamaica and questioned the way in which the press presented this information and referred to the LGBTI community. In 2012, the representatives also confirmed that the beneficiary met with the State on April 29, 2011. However, they questioned in a general way that no measures had been adopted. In that year, it was also reported that the beneficiary married his husband in Canada. The event allegedly appeared in Jamaican media.<sup>4</sup>

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<sup>1</sup>In accordance with the provisions of Article 17.2.a. of the Commission's Rules of Procedure, Commissioner Margarete May Macaulay, a Jamaican national, did not participate in the debate or in the decision of this resolution.

<sup>2</sup>After requesting additional information from the State in 2016, no further scope or information was provided in this regard.

<sup>3</sup>The IACHR requested detailed and specific information on the beneficiary's situation on August 1, 2013, December 2, 2013, and October 3, 2016. The Commission has not received the information requested over time, and the timelines granted have expired. The Commission has also not received additional information in this regard. In particular, the representatives were asked to provide a detailed description on the time, manner, and place of presumed threats, intimidation or acts of violence carried out against the beneficiary. Moreover, they were asked to indicate whether the beneficiary had requested protection from the competent authorities and the result obtained.

<sup>4</sup>Such media outlets allow the option of comments via Tweets. In some comments, messages such as, "Bullet", "Fire", and "Kaboom" were posted.

4. In 2013, the State indicated that on February 27, 2011, the beneficiary reported a threat received by email on his cell phone, to the Montego Bay police station. The police informed him that the information would be forwarded to the Organized Crime Division to determine if it would be possible to identify the person who sent the emails. Moreover, the beneficiary was advised to return to the police station to meet with members of the “Criminal Investigation Bureau” to continue with the investigations. The State stressed that, according to the visitation report, the beneficiary did not return to the police station. On April 29, 2011, the beneficiary met with the “Jamaica Constabulary Force (JCF)” to discuss the implementation of the precautionary measures. The beneficiary purportedly indicated to the JCF that he did not want to be accompanied by the police nor did he want them to continue with the investigations. It was suggested to the beneficiary that he provide a written statement presenting his objections or refusal to cooperate with the JCF in implementing security measures and strategies in his favor. The beneficiary reportedly indicated that he would not provide information about his life to the police.

5. On May 6, 2011, the beneficiary was contacted by telephone by the JCF to inform him that his complaint was being investigated. The beneficiary allegedly indicated that he would close his email and that they could contact him via his phone. Subsequently, the JCF made a series of calls to the beneficiary, who did not answer. Furthermore, the beneficiary reportedly did not provide a written response to the communications sent to his personal address. In turn, the State indicated that the beneficiary had not reported other threats or attacks against him since then.

6. In July 2013, the beneficiary indicated that he continues to work for the rights of LGBTI Jamaicans. In this respect, he has purportedly continued to file various legal actions at the domestic and regional levels. The beneficiary considers that his actions do not coincide with fundamentalist groups in the country, who sustain homophobic views. With regard to protection measures, the beneficiary indicated that he has adopted his own security protocol, which includes a secure driver, traveling accompanied, and limiting his social interactions. The beneficiary indicated that he does not report the events to the police because he considers that they have no interest in his safety. Subsequently, the beneficiary indicated that in August 2013 he received a message on Facebook from a person he allegedly knew from his youth. That message is purportedly in line with the questions the beneficiary has towards Christian fundamentalism against the LGBTI movement in Jamaica. The beneficiary indicated that he had filed the respective complaint.

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

7. The precautionary measures mechanism is part of the Commission’s function of overseeing compliance with the human rights obligations set forth in the Charter of the Organization of American States and, in the case of the Member States that have not yet ratified the American Convention, the Declaration of the Rights and Duties of Man. These general oversight functions are established in Article 18 of the Statute of the IACHR, and the precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm to persons.

8. The Inter-American Commission and the Inter-American Court of Human Rights 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, these measures seek to

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avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are being considered by the IACHR. 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” 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.

9. With respect to the foregoing, Article 25.7 of the Commission's Rules of Procedure establishes that “the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25.9 establishes 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 evaluate if the serious and urgent situation and the possible generation of irreparable harm that caused the adoption of the precautionary measures, persist. Moreover, the Commission should consider if new situations that might meet the requirements set forth in Article 25 of the Rules of Procedure have subsequently arisen.

10. As a preliminary issue, the Commission recalls that in this proceeding it is not appropriate to determine violations of the rights recognized in the American Convention on Human Rights, such as violations of due process. In this regard, the Commission is not called upon to rule on the questions made in light of Articles 8 and 25 of the American Convention, which exceeds the mechanism of precautionary measures. The analysis carried out herein by the Commission is exclusively related to the requirements of seriousness, urgency, and risk of irreparable harm established in Article 25 of its Rules of Procedure, which can be resolved without entering into determinations on the merits, which is specific to a petition or case.

11. In this sense, although the beneficiary has questioned the investigations initiated by the State, the Commission notes that he filed a petition in 2018 registered under P-1628-18. If the corresponding requirements are met, the Commission will have the opportunity to analyze the corresponding questions in the petition in light of the American Convention and applicable standards.

12. With regard to the analysis of this matter, the Commission recalls that when a State requests the lifting of a precautionary measure, it must present sufficient evidence and arguments to support its request.<sup>5</sup> In the same way, the beneficiaries’ representatives who want the measures to continue must present evidence of reasons for this.<sup>6</sup> While the assessment of regulatory requirements when adopting precautionary measures is carried out from a *prima facie* standard, the maintenance of such measures requires a more rigorous evaluation.<sup>7</sup> In this sense, the burden of proof and argument increases as time goes by and there is no imminent risk.<sup>8</sup>

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<sup>5</sup>I/A Court H.R. Provisional measures regarding Mexico. Order of February 7, 2017, paras. 16 and 17. Available (in Spanish) at: [http://www.corteidh.or.cr/docs/medidas/fernandez\\_se\\_08.pdf](http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf)

<sup>6</sup>Ibidem

<sup>7</sup>Ibidem

<sup>8</sup>Ibidem

13. Considering the above, the Commission notes that the precautionary measures were granted in 2011 in order to guarantee the life and physical integrity of Mr. Tomlinson in the face of threats that he reportedly received that year in the framework of his work in the defense of the rights of lesbian, gay, bisexual, trans and intersex (LGBTI) persons.

14. After granting the measures, the Commission received information from the parties. Upon analyzing the information received, the Commission notes that the State has attempted to reach an agreement with the beneficiary on security measures in his favor, as well as to continue with the corresponding investigations. For this purpose, the State indicated that it sought the collaboration of the beneficiary and tried to contact him after a meeting held in April 2011. However, it was reported that no response had been received from the beneficiary, despite various attempts. In this regard, it is also noted that the State has not been able to implement security measures as the beneficiary, of his own free will, has not consented to them, as reported in 2013. In this respect, the beneficiary indicated that same year, that he has his own security scheme and that he would continue to defend the rights of LGBTI persons in Jamaica.

15. Furthermore, the Commission notes that, over the course of time, no specific information has been provided on direct events of risk against the beneficiary, having already passed approximately 9 years since the initial granting of these precautionary measures. More recently, the representatives merely indicated, that in 2013 the beneficiary received a Facebook message from a person he had known since his youth. According to the representatives, the message is in line with objections made by religious sectors against LGBTI rights in Jamaica. However, the isolated message from 7 years ago, does not allow the Commission to identify a risk of an “imminent” nature, or that such risk is likely to come to fruition, which could indicate an urgent situation. The Commission also observes that, although initially the beneficiary questioned the investigative work of the State, later he lodged the respective complaints, which must be addressed in accordance with Articles 8 and 25 of the Convention, and as indicated, such analysis exceeds this mechanism. In this sense, the Commission does not have sufficient elements to indicate that the beneficiary is in a serious situation or is subjected to direct and sustained threats, intimidation, harassment or acts of violence throughout the time the measures have been in force, or in more recent times.

16. In addition to the above, the Commission notes that, despite requests and reiterations to the representatives since 2013, no information has been received on the beneficiary’s situation for approximately 7 years. In this regard, the Commission recalls, taking up what was indicated by the Inter-American Court, that its procedural activity in the framework of this proceeding is necessary in order to timely analyze the relevant observations and, in general, provide specific and detailed information to evaluate whether the precautionary measures should remain in force taking into account its considerations.<sup>9</sup> Otherwise, the Commission does not have sufficient elements to analyze the maintenance of the precautionary measures. As the I/A Court H.R. has indicated, the representatives of the beneficiaries who wish that the measures remain in force must present proof of these reasons.<sup>10</sup>

<sup>9</sup>I/A Court H.R. Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Provisional Measures. Order of the Inter-American Court of Human Rights of February 6, 2019. Considerandum 12. Available (in Spanish) at: [http://www.corteidh.or.cr/docs/medidas/coc\\_se\\_02.pdf](http://www.corteidh.or.cr/docs/medidas/coc_se_02.pdf)

<sup>10</sup>I/A Court H.R. Matter of Luisiana Ríos et al. regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of August 22, 2018. Considerandum 3. Available (in Spanish) at [http://www.corteidh.or.cr/docs/medidas/rios\\_se\\_10.pdf](http://www.corteidh.or.cr/docs/medidas/rios_se_10.pdf)

17. In summary, in response to the request to lift the measures filed by the State in 2013, the actions taken in implementing these measures, the lack of information from the representatives for approximately 7 years, and considering the exceptional and temporary nature of the precautionary measures,<sup>11</sup> the Commission deems that these measures should be lifted.

18. Lastly, the IACHR recalls that States have a specific obligation to protect human rights defenders. In this sense, States must provide the necessary means so that they can carry out their activities freely; protect them when they are threatened to avoid any attempt on their life or safety; refrain from placing restrictions that hinder the performance of their work; and in the event of any violation against them, carry out serious and effective investigations, and prevent impunity. In this respect, even though the IACHR decides to lift these precautionary measures, it deems it prudent to reiterate that those who defend the human rights of LGBTI persons play a fundamental role in the region, despite the serious challenges they face in carrying out their work, including threats, attacks, and the criminalization of their activities, which make them vulnerable to violence.

#### **IV. DECISION**

19. The Commission deems it appropriate to lift the precautionary measures in favor of Maurice Tomlinson.

20. The IACHR 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 Jamaica to respect and guarantee the rights recognized therein, including the life and personal integrity, of Mr. Maurice Tomlinson.

21. The Commission recalls that the lifting of these measures does not preclude the representatives from submitting 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.

22. The IACHR instructs the Executive Secretariat of the IACHR to notify the State of Jamaica and the representatives of this resolution.

23. Approved on November 4, 2020 by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice-president; Esmeralda Arosemena de Troitiño; and, Julissa Mantilla Falcón, members of the IACHR.

María Claudia Pulido  
Acting Executive Secretary

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<sup>11</sup>/A Court H.R., Matter of Adrián Meléndez Quijano *et al.* Provisional Measures regarding El Salvador. Order of the Court of August 21, 2013, para. 22, and Matter Galdámez Álvarez *et al.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24