

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 5/2020**

Precautionary measures No. 751-19

Williams Alberto Aguado Sequera *et al.* regarding Venezuela
February 5, 2020

I. INTRODUCTION

1. On August 1, 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 NGO “Foro Penal Venezolano” (Venezuelan Penal Forum, “the applicants”), urging the Commission to protect the rights of Mr. Williams Alberto Aguado Sequera and other persons, including members of the military and civilians, who are deprived of liberty at the National Center for Military Processed (CENAPROMIL, by its Spanish acronym, also known as “Ramo Verde”) and are suffering from different health conditions and medical complications as a result, in some cases, of alleged aggressions at the time of detention.

2. The IACHR requested information from the State on August 2, 2019 and granted a 7-day period to reply. To this date, the Commission has not received any response from the State. The applicants provided additional information on September 16.

3. After analyzing the factual and legal allegations submitted by the applicant, the Commission considers that the information proves *prima facie* that Mr. Williams Alberto Aguado Sequera and the other persons declared as beneficiaries of this Resolution are in a serious and urgent situation, given that their rights to life, personal integrity and health face a risk of irreparable harm. Consequently, based on the applicable instruments, the Commission requests that the State of Venezuela: a) adopt the necessary measures to protect the rights to life, personal integrity and health of Mr. Williams Alberto Aguado Sequera and the other persons declared as beneficiaries of this Resolution. In particular, the Commission urges the State to guarantee access to medical treatment in accordance with experts’ opinions; b) agree and consult upon the measures to be taken with the beneficiaries and their representatives; c) adopt measures to investigate the events that led to the adoption of this precautionary measure in order to prevent their repetition.

II. SUMMARY OF FACTS AND ARGUMENTS

1. Information provided by the applicant

4. The potential beneficiaries are twenty-six persons¹ who, according to the allegations, were arbitrarily detained and are deprived of liberty at the CENAPROMIL. The first detentions took place on January 19, 2017, while the most recent one occurred on May 10, 2019, with charges such as “high treason”, “inciting a military rebellion”, “public incitement”, etc. The request alleges difficulties to access proper medical care, despite the apparent seriousness of the state of health of the potential beneficiaries²:

¹ Of these, four detainees were already beneficiaries of previous requests, namely: [Luis Alexander Bandres Figueroa](#), [José Rommel Acevedo Montañez](#), [Luis Alejandro Velazquez Mogollón](#) and [Vasco Manuel Da Costa Corales](#).

² For information regarding those who were already beneficiaries of precautionary measures, refer to the corresponding resolutions.

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- *Javier Rafael Peña*, detained on January 19, 2017. Chronic headaches, depressive states, and weight loss.
 - *Jairon Eli Villegas*, detained on January 19, 2017. Hyperinsulinism, recurrent depressive states, intense headaches, blurry vision, dizziness, loss of balance, and weight loss.
 - *Feydi Rafael Montero*, detained on January 19, 2017. Intense headaches and depression, refusal to eat when the latter intensifies.
 - *Yecson Lozada Matute*, detained on January 19, 2017. Depression, vertigo, and weight loss due to malnutrition.
 - *Rubén Bermúdez Oviedo*, detained on January 19, 2017. Intense headache, fracture on the right front side, blurry vision, and depression.
 - *Juan Francisco Díaz Castillo*, detained on January 19, 2017. Glaucoma, chronic headaches, depression, and fracture on the front side.
 - *Williams Alberto Aguado Sequera*, detained on January 15, 2018. Parenchymal damage, blood in the renal system with acute renal trauma, detachment of a kidney, stage 2 hypertension, left renal lithiasis and depression, left eardrum rupture, skin pigmentation disorders, headaches, lacerated and swollen feet, and weight loss.
 - *Carlos Miguel Aristimuño de Gamas*, detained on April 15, 2018. Renal and vesicular lithiasis, intestinal hemorrhagic stroke, acute stomach pain, headaches, difficulties to stand on his feet, high fever, severe malnutrition, uncontrolled diarrhea, and fractured lateral teeth.
 - *José Luis Santamaría Vargas*, detained on April 16, 2018. Psoriasis, high blood pressure, pain in his left knee, and liver problems derived from Hepatitis A, allegedly contracted during detention.
 - *José Alberto Marulanda Bedoya*, detained on May 19, 2018. Depression with suicidal thoughts, bilateral distal radioulnar dislocation and other injuries in his hand, stage 2 hypertension, diabetes contracted during detention, headaches, convulsions, vertigo, malnutrition, non-Hodgkin lymphoma, intracranial hematoma, difficulty to move his neck, cerebral contusion with alteration in the hematoencephalic barrier, low radicular lumbar compression syndrome due to IV degree L4-L5 discartrosis, hypertrophy and facetogenic sclerosis, and complex and painful facetogenic syndrome.
 - *Rafael Ernesto Díaz Cuello*, detained on October 13, 2018. Chronic high blood pressure, erosive gastritis, asthma, injury on his right hand for ligament loss, and a recent renal colic.
 - *Jesús Alberto Medina Ezaine*, detained on August 29, 2018. Headaches, tooth pain, and depression.
 - *Antonio José Pérez Cisneros*, detained on January 14, 2019. Lacerated and swollen feet, “problems” with his nails, chest pressure due to polytraumatism, headaches, pain in the kidney area, blood and pain when urinating, pain in the ribs, stage 2 hypertension, skin pigmentation disorders, osteochondritis.
 - *Luis Alberto Lobo Medina*, detained on January 21, 2019. Bone pain on his knee and lumbar area, inability to walk due to his pain and swollen leg, and chest pain that prevents him from breathing.
 - *Alberto José Piñango Salas*, detained on January 21, 2019. Dental injury and molars with pus.

- *Jorge Enrique Rico Arrieta*, detained on January 21, 2019. Dental pain.
- *Yordanis Alirio Camacaro González*, detained on January 21, 2019. Ophthalmologic pain and blurry vision.
- *Andrés Alfonso Paredes Soler*, detained on January 21, 2019. Chronic headaches and depression. On August 29 his lawyers went to visit him, but the detainee was not able to meet with them because “[...] he was unable to walk, or even get out of bed, since he has deep pain on his chest and on the right side of his face”. A medical examiner reportedly “confirmed” damage on his ribs and jaw.
- *Carlos Andrés Villa Torres*, detained on January 24, 2019. Renal discomfort, serious asthma, sinusitis, and allergies.
- *Junior José Pineda Lamus*, detained on April 12, 2019. Bipolar disorder (“medicated patient”), depression, blood in the urine and pain “in the kidney area”.
- *Emilio José Boulanger Cova*, detained on May 10, 2019. High blood pressure, respiratory issues, and acute pain on the chest.
- *José Vicente Méndez Tenias*, detention date unknown. Hepatitis, malaria, and cellulitis.

5. The applicants did not provide a copy of the medical records or specify when the potential beneficiaries developed the abovementioned pathologies or conditions. They did mention, however, that at least Aguado, Pérez Cisneros, Marulanda and Aristimuño were assaulted at the time of detention. In the case of Mr. Marulanda, they reported that

[...] they put a weapon in his mouth, they stepped on his hands. He is an orthopedic surgeon specialized in hands and they tightened his handcuffs so much that they damaged his radial nerve. He was hit hard on his thorax and testicles, he was put upside down and was left out of breath. They put a bag over his head and he fainted three times, which led to a respiratory failure with relaxation of sphincters, resulting in bowel movement and urination [...].

6. In some cases, the applicants mentioned “reports” carried out by specialists, but did not specify the date. However, they stated that some of the potential beneficiaries are doctors. Moreover, they claimed that

[i]n every case [...] the [relevant] courts [...] have been asked to authorize the medical and/or dental care that they need [...]. None of the requests has been timely and properly attended. Even in the few cases in which the courts have ordered to carry out medical examinations, CENAPROMIL authorities have refused, for different reasons, to transfer the detainees to adequate medical centers or to allow them to receive the medical care and treatment that they so urgently need [...].

7. Regarding medical care, the applicants stated that none of them was transferred to a medical center or is receiving medical care, except in the cases of the detainees mentioned below, who are also the only ones (together with Mr. Rafael Ernesto Díaz Cuello) who have received a medical prescription, which, however, has not been complied with:

- *Williams Alberto Aguado Sequera*, transferred on February 15, 2019 to the military hospital “Dr. Carlos Arvelo” for acute diarrhea and dehydration. The authorities were asked to authorize his hospitalization, but it was not approved. He was admitted at 2 p.m. and released at 11 p.m. According to the applicants, he did not receive medical care or follow-up examinations. He has not been transferred to the hospital again ever since or received medical treatment.

- *Alberto José Piñango Salas*, transferred on May 6, 2019 to the military hospital after trying to remove his infected molars himself. He was examined by a dentist who prescribed antibiotics and anti-inflammatories “that he never obtained”. He was not examined either for his general state of health. He has not been transferred to the hospital again or received medical care.
- *Andrés Alfonso Paredes Soler* was not transferred to the hospital despite the fact that a medical expert confirmed that he had damage in his ribs and jaw, which have not been examined.
- *José Alberto Marulanda Bedoya* was transferred to the military hospital to be examined in the traumatology, psychiatric and neurosurgery units. The last time he was taken to the hospital was on June 6, 2019 (no details were provided regarding previous occasions). According to the information, he has the corresponding medical reports but they are filed in the legal counseling unit of the military hospital, but the applicants have not been allowed to have access to them. According to the applicants, a rehabilitation plan was ordered but it has not been complied with and “[l]ater he was taken to the military hospital again, but remained in the legal counseling unit and was not examined by any physicians”.
- *Antonio José Pérez Cisneros* was examined in 2018 but has not been transferred to the hospital or received medical care ever since.

8. The applicants explained that they have been unable to attach a copy of the judicial resolutions regarding the transfers or in response to the requests for medical care, among others, since they were not submitted by the relevant bodies. In some cases, “[...] particularly in the case of the Third Military Court for Control, none of the requests made by the defense obtained a reply [...]”. However, they attached to the file a copy of the requests made in favor of the potential beneficiaries.

9. Regarding the detention conditions, the information provided only states that the CENAPROMIL [...] does not comply with any of the minimum national or international standards [...]”. It only has a poorly-equipped nursing station and the only available doctors are the potential beneficiaries Aguado and Marulanda, who help the other inmates as far as possible. They added that the center does not have running water, “[...] which explains the recurrent renal conditions [...]” and that inmates must buy their own water and food.

2. Response from the State

10. The IACHR requested information from the State on August 2, 2019 and granted a 7-day period to reply. To this date, the Commission has not received any response from the State.

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

11. The precautionary measures mechanism is part of the Commission’s function of overseeing Member State compliance with human rights obligations established in Article 106 of the Charter of the Organization of the American States. These general oversight functions are set forth in Article 18 (b) of the Statute of the IACHR. Furthermore, the precautionary measures mechanism is described in Article 25 of the Commission’s Rules of Procedure. Pursuant to this article, the Commission grants precautionary measures in serious and urgent situations, and when these measures are necessary to prevent an irreparable harm.

12. The Inter-American Commission and the Inter-American Court on Human Rights (hereinafter “the Inter-American Court” or “IAHR Court”) have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective. Regarding the protective

nature, these measures seek to avoid irreparable harm and to protect the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations while the IACHR analyzes a petition or case. The precautionary nature of the mechanism seeks to protect those rights that are potentially at risk until the resolution of the petition brought to the Inter-American system. 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” is determined through 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.

13. In the analysis of the requirements mentioned above, 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 exists³.

14. First, taking into account the nature of the facts described by the applicants, the Commission wishes to recall that the Inter-American Convention to Prevent and Punish Torture, to which the State of Venezuela is a party since its ratification on August 26, 1991, includes in the definition of torture “[...]any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose”, as well as “[...]the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish”. In this sense, it is important to highlight that, according to Article 1 of said Inter-American instrument, the State Parties undertake to prevent and punish torture and, at the same time, Article 17 requires them to “inform the Inter-American Commission on Human Rights of any legislative, judicial, administrative, or other measures they adopt in application of this Convention”.

15. Under this logic, the Commission reiterates its powers with respect to the States, as established in Article 18 (b) of its Statute, by virtue of which it may “make recommendations to the governments of the states on the adoption of progressive measures in favor of human rights in the framework of their legislation, constitutional provisions and international commitments, as well as appropriate measures to further observance of those rights”. In this sense, the precautionary measures system has undergone a

³ In this regard, see I/A Court HR. *Matter of the People from the Miskitu Indigenous Communities of the North Caribbean Coast regarding Nicaragua*. Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018. Considerandum 13. IACHR, *Matter of the children and adolescents deprived of their liberty in the “Complexo do Tatuapé” of the Fundação CASA*. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23. Available in Spanish at: http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf

progressive development to constitute itself as a protection mechanism of the Inter-American system, in accordance with its conventional and statutory obligations and as a result of the IACHR's function to safeguard the fulfillment of the international commitments acquired by the State Parties.

16. In addition, the Commission wishes to recall that, in the case of persons deprived of liberty in general, the State's role as a guarantor is particularly important, given that prison authorities exercise control or power over persons under their custody⁴. This results from the unique relationship and interaction of subordination between the State and inmate, which is characterized by the intensity with which the State may regulate their rights and duties and by the detention conditions themselves, where the detainees are prevented from satisfying on their own several basic necessities essential to the development of a dignified life⁵.

17. With respect to the requirement of seriousness, the Commission notes that of all the possible sources of risk that could affect the potential beneficiaries in the context of their deprivation of liberty, the applicants highlighted the existence of certain diseases or health concerns that are not being properly treated by the competent authorities. In this regard, particular attention should be paid to the allegations regarding the difficulty to access information to verify with greater accuracy the current state of the potential beneficiaries, given that most of it is being kept by the authorities and both the detainees and their representatives have faced obstacles to access such information due to an alleged reluctance and even hostility from certain civil servants or institutions. Under these circumstances, the Commission wishes to acknowledge the efforts deployed by the applicants to provide the information required for this matter in the best possible manner.

18. In light of the situation of the potential beneficiaries identified by the applicants, the Commission notes that some of them show particularly worrying conditions or symptoms, which could in principle cause serious and irreparable harm to their rights to life and personal integrity. In particular, these include renal pathologies, hepatitis and malaria, or significant trauma allegedly caused as a result of mistreatment or aggressions at the time of detention, among others. This risk is amplified even further due to an alleged lack of medical care, since only a few of the detainees were transferred to the hospital, and even in those cases deficiencies were reported both in terms of the quality of the care received and in terms of the lack of measures to ensure the correct implementation of the treatment. Taking into account that some of the potential beneficiaries have health issues resulting from aggressions allegedly committed by state agents, the lack of treatment becomes an even more significant factor in the assessment of the authorities' willingness to protect the rights of the potential beneficiaries and of the applicants' allegations in this regard. On the other hand, even though the Commission understands that the rest of the potential beneficiaries are not in good health and that the State has the obligation of preserving their rights, the available information, even under the circumstances described above, is not enough to this date to establish, from the applicable *prima facie* criteria, that all of them are facing an equivalent level of risk or that they are in a situation that complies with the regulatory requirements.

19. In this context, the Commission regrets the lack of response from the State of Venezuela to its request for information. Although a lack of response from a State does not justify *per se* the granting of a precautionary measure, it does prevent the Commission from learning whether the authorities are

⁴ Court H.R.. Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C No. 260., par. 188. See also: IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, par. 49.

⁵ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, par. 49 and ss.

adopting measures to protect the rights of the potential beneficiary and thus assess whether the situation of risk is valid or not.

20. Consequently, from the *prima facie* parameter, the Commission concludes that the existence of a situation of serious risk against the rights to life, personal integrity and health of Mr. Williams Alberto Aguado Sequera and the other persons declared as beneficiaries in this Resolution is sufficiently proven.

21. Regarding the requirement of urgency, the Commission determines that it is complied with, since the potential beneficiaries are not allowed to access proper medical care, and therefore their serious pathologies may evolve and cause them even greater afflictions. Thus, the situation calls for the adoption of immediate measures.

22. Regarding the requirement of risk of irreparable harm, the Commission considers that it is complied with insofar as the possible impact on the right to life and personal integrity constitutes the maximum situation of irreparability.

IV. BENEFICIARIES

23. The Commission declares that the beneficiaries of this precautionary measure are Williams Alberto Aguado Sequera, Carlos Miguel Aristimuño de Gamas, José Luis Santamaría Vargas, José Alberto Marulanda Bedoya, Rafael Ernesto Díaz Cuello, Antonio José Pérez Cisneros, Luis Alberto Lobo Medina, Andrés Alfonso Paredes Soler, Junior José Pineda Lamus and José Vicente Méndez Tenias.

V. DECISION

24. The Inter-American Commission on Human Rights considers that the present case meets *prima facie* the requirements of seriousness, urgency and irreparability contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests that the State of Venezuela:

- a) adopt the necessary measures to protect the rights to life, personal integrity and health of Mr. Williams Alberto Aguado Sequera and the other persons declared as beneficiaries of this Resolution. In particular, the Commission urges the State to ensure access to medical treatment in accordance with experts' opinions;
- b) agree and consult upon the measures to be taken with the beneficiaries and their representatives; and
- c) adopt measures to investigate the events that led to the adoption of this precautionary measure in order to prevent their repetition.

25. The Commission requests that the State of Venezuela report, within 15 days from the date of this resolution, on the adoption of the precautionary measures requested and to update this information periodically.

26. The Commission emphasizes that, in accordance with Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment on any violation of the rights protected in the applicable human rights instruments.

27. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the State of Venezuela and to the applicants.

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

Mario López-Garelli
Under the authorization of the Executive Secretary