INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 19/2014

PRECAUTIONARY MEASURE No. 141-14
Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortelio Abrahante Bacallao
June 30, 2014

I. INTRODUCTION

1. On April 16,2014, the Inter-American Commission on Human Rights (hereinafter "the Commission," "Commission" or "IACHR") received a request for precautionary measures submitted by the Caribbean Institute for Human Rights and the International Human Rights Clinic of the Inter-American University of Puerto Rico, School of Law (hereinafter "the applicants"), initially asking that the Commission request the Commonwealth of The Bahamas (hereinafter "Bahamas" or "the State") to protect the life and personal integrity of 36 Cubans allegedly detained (the "proposed beneficiaries") at Carmichael Immigration Detention Center. However, applicants subsequently submitted information requesting the Commission to protect the life and personal integrity of only 11 Cubans allegedly detained at Carmichael Immigration Detention Center. According to the request, the rights to life and personal integrity of the 11 Cubans detained at Carmichael Immigration Detention Center are at risk, due to their imminent deportation to Cuba, in consideration of the alleged fact that "many of them are openly opposed to the Cuban regime and some have already suffered persecution." The present request for precautionary measures is related to the Petition P-543-14, currently under study.

2. On April 22, 2014 the Commission requested information to both parties. In view of the lack of response, the Commission reiterated its request for information on April 28, 2014. On May 16, 2014 and June 20, 2014, the applicants sent additional information. To date, the State has not presented its observations on the matter.

3. After analyzing the factual and legal allegations by the applicants, the Commission considers that the information presented demonstrates *prima facie* that Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortelio Abrahante Bacallao Cubans detained in Bahamas are currently in a situation that meets the requirements of seriousness, urgency and irreparable harm, as their lives and personal integrity are allegedly at risk. Consequently, in accordance with Article 25 of the Rules of Procedure of the Commission, the IACHR requests the Government of The Bahamas to: "Refrain from deporting Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortelio Abrahante Bacallao, in order to protect their life and personal integrity. Additionally, to provide the beneficiaries a legal remedy observing the principle of non-refoulement to determine if they would have the right to asylum and provide information on its outcome in order for the IACHR to monitor the need to maintain or lift the precautionary measure".

II. SUMMARY OF FACTS AND ARGUMENTS PROVIDED BY THE APPLICANTS

4. The present request for precautionary measures initially sought to prevent the potential deportation of 36 Cuban detainees to Cuba. Subsequently, due to the alleged deportation of 25 out of the 36 proposed beneficiaries, the applicants are currently requesting precautionary measures regarding the remaining 11 Cuban detainees. The request is based on allegations that if they are deported to Cuba, it is likely that the proposed beneficiaries "[c]ould be persecuted and detaine[d]."

5. In their first communication from April 16, 2014, the applicants informed that "the Government of The Bahamas had been engaged in the collective deportation of Cuban nationals without previous notification [...] and without adequate safeguards against refoulement." Additionally, applicants reported that a group of "at least" 21 Cuban nationals allegedly had been deported on April 7, 2014, and another group of approximately 36 detainees was believed to face "forcible repatriation anytime" during that week. Allegedly at least three (3) of the detainees were women, one of whom was pregnant. The applicants were able to identify the names and personal circumstances of 19 detainees out of these remaining 36 detainees. It was informed that two (2) persons, out of the 19 names provided, "had been persecuted [in Cuba] before for their opposition to the government," four (4) persons "had been threatened and persecuted" and one (1) person had been detained, all of this while in Cuba. Nonetheless, no further information was provided about these allegations. Additionally, applicants indicated that if returned to Cuba without due evaluation of their claims, the [36] Cuban detainees would allegedly be in "grave and imminent risk of violation of their rights to life, physical integrity, liberty and personal security." According to the applicants, The Bahamas had been warned of the risk that many Cuban detainees face upon return to Cuba, as allegedly "many of them are openly opposed to the Cuban regime and some had already suffered persecution." Nonetheless, there had allegedly been a lack of procedural guarantees in the case of Asylum Seekers in Bahamas and the State had allegedly failed to provide information on the asylum application process to the Cuban detainees.

6. Moreover, the applicants indicated that they had been informed that concerning the 21 Cubans who had been deported on April 7, 2014, the Bahamian Immigration Refugee Unit allegedly had received direct information that two of these detainees could face persecution upon return, as "they were openly opposed to the Castro Regime and had credible reasons to believe that." Nonetheless, the State allegedly had deported these individuals to Cuba. Moreover, once repatriated to Cuba, reportedly "the group had remained under detention at the Casablanca Detention Center in Havana for three days where they had been interrogated by Cuban intelligence agents, without the opportunity to communicate with their families or obtain legal advice."

7. Regarding the detention conditions at the Carmichael Immigration Detention Center in Bahamas, applicants alleged that while in detention, the proposed beneficiaries had not been given the right or access to legal counsel and were not allowed to make phone calls. Moreover, according to the applicants, detention conditions at Carmichael Immigration Detention Center had been described by international organizations as "cruel, inhuman and degrading." Allegedly, they had no access to lawyers, no consular assistance, no access to free phone calls and their visiting rights had been restricted. The applicants also had received information indicating that on early Tuesday morning (they did not specify the date, but it is most likely that it occurred in April 2014), "all [the then] 36 Cuban detainees allegedly had been removed from their holding areas and had been placed in a single room, segregated from the rest of the population. Additionally, the applicants indicated that due to the nature of their detention conditions, it was "materially impossible" to have the written consent of the 36 initially proposed beneficiaries.

8. On April 22, 2014, the Inter-American Commission transmitted the report of the applicants to the State, and requested additional information from both parties. From the State it requested information regarding: i) comments on the request for precautionary measures submitted; ii) the current status of their process of deportation; iii) if there was a date set for their deportation; and iv) the place of detention and conditions in which they were held (health or otherwise). From the applicants it requested information regarding: i) the situation of risk that the proposed beneficiaries would face in The Bahamas. Particularly, how the alleged detention conditions were affecting the physical, emotional, and mental integrity of the proposed beneficiaries; and ii) the situation of risk that the proposed beneficiaries could

face if they are deported to Cuba, including information on specific incidents of threats, harassment, and violence against the proposed beneficiaries in Cuba.

9. In view of the lack of response from both parties to the request for information sent on April 22, 2014, on April 28, 2014, the Inter-American Commission reiterated the request for additional information to both parties.

10. On May 16, 2014, applicants provided "new information." Applicants reported that they had traveled to Nassau, Bahamas, from April 29, 2014 to May 2, 2014. On May 1, 2014 applicants had visited the detention center, and had spoken "with some of the remaining Cuban detainees." Allegedly, "a large number of Cuban Detainees – including most of those identified in our original request for precautionary measures – [were] forcibly repatriated" on April 28, 2014. Reportedly, they had been deported "without having been formally notified of the decision of removal [...]," and allegedly eleven (11) Cuban detainees had remained detained at Carmichael Road Migration Detention. It is important to mention that in the applicants' additional submission there is no information about the allegedly pregnant woman who was among the Cubans detainees mentioned in the first communication. In this new communication, applicants frame their allegations as follows:

A) In relation to the arguments related to the non-observance of the principle of *non-refoulement*, applicants indicate that the requirements of seriousness, urgency and irreparable harm are met. In this regard, applicants informed that "all of the detainees interviewed during [their] visit explained that they fear they could be persecuted and detained if repatriated to Cuba." Additionally, the applicants indicated that:

i) Manuel Escalona Sánchez "has already been declared a military deserter for his refusal to participate in the Cuban incursion in Angola." Allegedly, as a result, he had been sent to prison for "several years." Once released, he decided to leave the country settling in the Dominican Republic, where he lived for 30 years with his partner and two children (currently 16 and 6 years old). Moreover, he claimed that if repatriated to Cuba, he would be "in great danger of persecution, and "fears for his physical security;"

ii) Ortelio Abrahante Bacallao allegedly was a "high-ranking military officer in Cuba, and they [indicate] that a decision to leave the country has terrible consequences for members of the military." Allegedly, "he also fears for the safety of his wife [...] and his brother [...], who has been followed, detained in several occasions and interrogated as a result of his departure." He fears "for his security as he believes he may be submitted to harsh interrogation procedures, including corporal punishment and possible execution."

iii) Wilfredo Matos Gutierrez claimed that "he and his family have been vocally opposed to the government, and that one of his brothers was sentenced to prison for 7 years." Additionally, he had stressed that "his unauthorized departure may strengthen the ground for retaliation against him and his family."

iv) Yuniesky Escalona Calzadilla allegedly "was imprisoned in Foxhill for 2 months and then sent to Carmichael, where he has been detained for 20 months;"

v) Luis Carlos Alvarez allegedly left Cuba in 2003 and lived in the United States until 2013. Applicants informed that "last year he decided to go to Bahamas to fish and was granted permission of stay

to 60 days. He overstayed his visa and was told to leave the country. Allegedly he took a flight to Cuba but [he was] denied entry," and returned to Bahamas where he had been "immediately detained."

vi) Jeison Espino Ramos, Rey Arismendi Bernal Llul, Yasmani Morales, Manuel Fernandez Capote, Angel Luis García Sosa and Ronald Fernandez Papo, allegedly "are young adults that left the country in an effort to find employment in the United States to help support their families. They fear that the Cuban government can use them to set an example for other young Cubans on the consequences of leaving the country," and "also fear that their families could be in danger upon their return, as the government will stigmatize them as members of the opposition."

11. Concerning existing mechanisms for protection of asylum seekers and refugee, the applicants reported that "the government asserts that it has established a process for 'Refugee Status Determination' (RSD) and that "persons found to have a well-founded fear of persecution upon their return to their country of origin have been granted refugee status or received assistance with relocation to a third country." Moreover, applicants indicated that, notwithstanding "the government claims that its RDS process conforms to international standards, the UNHCR has stated that the Government is in charge of the refugee determination procedure" and that they are not regularly consulted or even provided with all "information regarding new asylum claims or decisions on pending claims." Additionally, "all of the Cuban detainees that were interviewed expressed that they have not been given a meaningful opportunity to apply for asylum and have not been allowed to speak with [a] UNHCR protection officer." Applicants also reported that "migration officials affirmed that all of the Cuban detainees have been interviewed and were given an opportunity to apply for asylum. If, as the government asserts, they were interviewed for asylum, detainees were not fully aware that the interview was being conduct with that purpose." Allegedly, at the time of the applicants' visit, "detainees had not been informed on the status of their request," and the applicants allegedly were able to "confirm that even when there are strong grounds to believe that some detainees may be in danger of persecution upon return, the RSD process is not consistently applied in many cases [...]."

B) As complementary factual information, the Commission takes note of the alleged lack of adequate access to medical treatment in favor of the proposed beneficiaries and the alleged lack of minimum conditions of hygiene in the detention center. Regarding this aspect, applicants reported that:

i) The detainees identified in their communication from May 16, 2014, "claim that they are living under dismal conditions and that the treatment received from the detention officer is abusive." The applicants indicated that: i) "detainees claim the dormitory buildings are infested with mosquitoes, cockroaches, mice and rats." Additionally, allegedly "there are only 20 bunk beds for more than 50 persons living in the same dormitory;" ii) allegedly "there is only one functioning toilet and one shower for all detainees [...];" iii) detainees "complained of excessive use of force during dormitory searches, including physical and verbal abuse." Reportedly, "in one incident Manuel Escalona Sánchez, who suffers from a hernia, was beaten and bled as a result of his injuries;" iv) "there had [allegedly] been a lack of proper medical care," and "only one doctor would visit the detention center once a week (Tuesdays)." The applicants listed three (3) Cuban detainees who allegedly need "urgent care:" Mr. Manuel Escalona Sánchez "suffers from a hernia and needs surgery" and also "needs an eye examination to address his claim of loss of sight," Mr. Wilfredo Matos Gutierrez "developed a strange skin condition during his detention at Carmichael," and Mr. Yuniesky Escalona Calzadilla "suffers from a hernia and hemorrhage." In addition, applicants informed that Mr. Luis Carlos Alvarez allegedly "suffers from stomach

conditions including gastritis," and that after talking with him, applicants could "confirm that his physical and emotional conditions is deteriorating." Furthermore, applicants indicated that "more recently a report by the US Department of State on the situation of Human Rights in The Bahamas concluded that conditions of detention at Carmichael fail to meet international standards."

ii) Additionally, applicants reported that: i) there was allegedly an "insufficient and inadequate [supply of] food and water;" ii) detainees "are, [allegedly], not allowed to make phone calls," and a "visit occurs without the benefits of any structure or edifice to protect the detainees or his visitors from the elements;" iii) allegedly "there is no pre-established maximum period for the detention of migrants in the Bahamas and there are no administrative or judicial remedies available to question the continuity of the detention." Applicants reported that allegedly "at least one of the Cuban detainees has been detained for more than 20 months and another for 14 months." Moreover, the applicants affirmed that "the indefinite detention has already [inflicted] psychological effects on these detainees; and" iv) it is alleged that "currently there is no formal and independent complaint mechanism available [...]."

12. To date, the State has not answered both requests for information by the Inter-American Commission sent on April 22, 2014 and on April 28, 2014.

13. On June 20, 2014, the Commission received information from the applicants concerning the allegedly imminent deportation of Mr. Ortelio Abrahante Bacallao. The applicants reiterated the risk situation that he could face if deported to Cuba, and affirmed that he would fear for his safety if deported to Cuba as he believes that he could "be subjected to harsh interrogation procedures, including corporal punishment and possible execution."

III. ANALISIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABLE HARM

14. The precautionary measures mechanism is part of the Commission's function to monitor compliance with the human rights obligations set forth in article 106 of the Charter of the Organization of American States. These general monitoring functions are provided for in article 41 (b) of the American Convention on Human Rights and in article 18 (b) of the IACHR's Statute, and 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 situations of gravity and urgency, in which such measures are necessary to prevent irreparable harm to the person.

15. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "I/A Court H.R.") have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding the precautionary nature, the measures have the purpose of preserving a legal situation while being considered by the IACHR. The precautionary nature aims to preserve those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the usual purpose (effect utile) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the reparations ordered. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its Rules of Procedures, 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 casa 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.

16. Given the specific information provided by the applicants regarding Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortelio Abrahante Bacallao, the Commission will examine, in light of Article 25 of its Rules of Procedure, the request in relation to their alleged situation. In this regard, the Commission observes that the State has not replied to the request for information made by the IACHR on April 22, 2014, and reiterated on April 28, 2014, which was intended to receive the State's observations regarding the request for precautionary measures, and the measures of protection which might have been implemented based on the situation alleged by applicants. In this scenario, even though the lack of response from a State is not enough to grant precautionary measures, it constitutes an element to be taken into consideration when making a decision. In this sense, the lack of information from the State makes it impossible for the Commission to learn about measures implemented, and in general, the State's position about the alleged facts.

17. The Commission considers that the requirement of seriousness is met, to the extent that, according to the information provided by the applicants, Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortelio Abrahante Bacallao could face serious risk if deported to Cuba. In particular, the applicants have presented the following information:

i) regarding Manuel Escalona Sánchez, the applicants stated that he "has already been declared a military deserter for his refusal to participate in the Cuban incursion in Angola," and allegedly as a result, he had been sent to prison for "several years." Additionally, he claimed that if repatriated to Cuba, he would be "in great danger of persecution," and "fears for his physical security;"
ii) concerning Wilfredo Matos Gutierrez, the applicants indicated that he claimed that "he and his family have been vocally opposed to the government, and that one of his brothers was sentenced to prison for 7 years." Additionally, he reported that "his unauthorized departure may strengthen the ground for retaliation against him and his family;"
iii) in relation to Ortelio Abrahante Bacallao, the applicants affirmed that he was a "high-ranking military officer in Cuba, and they [indicate] that a decision to leave the country has terrible consequences for members of the military." Additionally, he fears "for his security as he believes he may be submitted to harsh interrogation procedures, including corporal punishment and possible execution."

18. The Commission notes that the information provided by the applicants concerning these persons suggests possible risk to life and personal integrity, due to their position regarding the State authorities and possible retaliation in relation to the particular situation of each individual. In these circumstances, the IACHR observes that the applicants stated that "all of the detainees interviewed during [their] visit explained that they fear they could be persecuted and detained if repatriated to Cuba." In addition, the Commission considers that it is important to take into account the allegation that the State does not observe the principle of *non-refoulement* when making the determination to deport a person. In this scenario, the Commission considers that indicia concerning alleged persecution against these persons and the alleged lack of respect for the principle of *non-refoulement* suggest *prima facie* that the rights to life

and personal integrity of Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortelio Abrahante Bacallao could be at risk if they are deported to Cuba.

19. The Commission also takes into account that the UNHCR has expressed concern about the lack of specific legislation to implement the States obligations under the UN 1951 Convention Relating to the States of Refugee and its Protocol.[1] Further, with respect to the procedures that are in place in such country, the UNHCR has expressed concern that the process is under the control of the Government, and UNHCR officials are not regularly consulted or provided with all relevant information regarding claims or decisions made.[2]

20. Regarding the requirement of urgency, the Commission believes that it is met, in view of the summary proceedings conducted to determine their deportation to Cuba. According to the applicants, "a large number of Cuban Detainees – including most of those identified in [their] original request for precautionary measures – [were] forcibly repatriated" on April 28, 2014. In this scenario, applicants assert that it is very likely that these persons may be deported any time in the near future.

21. Regarding the requirement of irreparable harm, the Commission deems the risk to the right to life and personal integrity could materialize in light of the possible imminent deportation of the beneficiaries and the alleged risks that they could face in Cuba.

IV. BENEFICIARIES

22. The IACHR decided to evaluate the situation of Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortelio Abrahante Bacallao, which are fully identified in the documents provided by the applicants.

V. DECISION

23. In view of the above-mentioned information, the Commission considers that this matter *prima facie* meets the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure, as the life and personal integrity of the Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortelio Abrahante Bacallao are presumably at risk. Consequently, the Commission request that the Government of The Bahamas to: "Refrain from deporting Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortelio Abrahante Bacallao, in order to protect their life and personal integrity. Additionally, to provide the beneficiaries a legal remedy observing the principle of non-refoulement to determine if they would have the right to asylum and provide information on its outcome in order for the IACHR to monitor the need to maintain or lift the precautionary measure."

24. The Commission requests the Government of The Bahamas to inform the IACHR, within 15 days from the date of this resolution, on the adoption of the precautionary measures requested and update such information regularly.

25. The Commission emphasizes that, according to Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State shall not constitute a prejudgment on any possible violation of the rights protected in the American Declaration of the Rights and Duties of Man or other applicable instruments.

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[1] *UNHCR Report on Bahamas*, UPR Submission 15th Session, page 1.

[2] *Ibid.*

26. The Commission orders the Executive Secretariat of the Inter-American Commission on Human Rights to notify the Government of The Bahamas and the applicants of this resolution.

27. Approved on the 30th day of June, 2014 by: Tracy Robinson, President; Rose Marie Belle Antoine, First Vice-President; Felipe González, Second Vice-President; Commissioners José de Jesús Orozco Henriquez, Rosa María Ortiz, and James Cavallaro.

Elizabeth Abi-Mershed
Assistant Executive Secretary