

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 93/2020**

Precautionary Measure No. 1100-20

**Six migrant children regarding Trinidad and Tobago**

December 9<sup>th</sup>, 2020

Original: English

**I. INTRODUCTION**

1. On November 25<sup>th</sup>, 2020, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission” or “the IACHR”) received a request for precautionary measures in favor of 16 Venezuelan migrant children (“the proposed beneficiaries” or “the potential beneficiaries”), filed by the civil society organization “Foro Penal” (“the applicants”), urging the IACHR to request that the State of Trinidad and Tobago (“Trinidad and Tobago” or “the State”) adopt the necessary measures to protect their rights to life and personal integrity. According to the request, the proposed beneficiaries are at imminent risk of being deported to Venezuela without due analysis of their particular situations, where they allegedly face risk to their rights to life and personal integrity.

2. The Commission requested information from the State, pursuant to Article 25 of its Rules of Procedure, on December 2<sup>nd</sup>, 2020. No response has been received to date. The applicants sent additional information on December 8<sup>th</sup>, 2020.

3. Upon analyzing the allegations of fact and law provided by the applicants, the Commission considers that the information shows *prima facie* that six identified migrant children are in a serious and urgent situation given that their rights to life and personal integrity are at serious risk of irreparable harm. Consequently, pursuant to Article 25 of its Rules of Procedure, the IACHR requests that Trinidad and Tobago adopt the necessary measures to guarantee the rights to life and personal integrity of V.A.L.F.; M.A.C.F.; J.A.C.F.; M.S.C.F.; M.V.V.C.; and J.A.R.M. In particular, by refraining from deporting or expelling them to Venezuela until the domestic authorities have duly assessed, in accordance with applicable international standards, the alleged risks faced.

**II. SUMMARY OF FACTS AND ARGUMENTS**

**1. Information provided by the applicants**

4. The applicants informed that the proposed beneficiaries are 16 children<sup>1</sup> in total –some of whom are unaccompanied and/or are as young as 4 months old–. According to the applicants, at the beginning of November, a group of Venezuelans seeking asylum– which included the 16 proposed beneficiaries– arrived on the southern tip of the island of Trinidad. They entered undocumented and were detained and held at the Erin police station in Palo Seco. “While detained, they were not presented in front of a judge, the authorities did not take steps to contact the parents or guardians, and they were denied the opportunity to meet with their attorney, as is required by law in Trinidad and Tobago. While held under custody, the Proposed Beneficiaries were tested for COVID-19 and all tested negative.”

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<sup>1</sup> (1) F.J.U.H.; (2) M.V.V.C.; (3) V.A.L.F.; (4) A.M.; (5) J.D.C.R.; (6) J.A.R.M.; (7) A.V.M.C.; (8) Z.J.M.C.; (9) A.C.C.L.; (10) C.J.C.L.; (11) J.C.M.C.L.; (12) M.A.C.F.; (13) J.A.C.F.; (14) M.S.C.F.; (15) K.E.G.; and (16) K.K.G.N.

5. On November 21<sup>st</sup>, a request for *habeas corpus* was presented on their behalf, however, on November 22<sup>nd</sup>, the referred group, including the 16 identified children, were deported from Trinidad and Tobago on pirogues into international waters, “forced to navigate in the direction of Venezuela,” “only minutes prior to the start of their hearing.” The applicants alleged that the deportation took place without a court order, under an alleged government policy that claims that the pandemic justifies group deportations without a hearing. The request indicated that contact was lost with them from November 22<sup>nd</sup> until November 23<sup>rd</sup> in the afternoon, when they were able to make a phone call from an indigenous community in the Orinoco Delta, near the territorial waters of Trinidad and Tobago.

6. The present request for precautionary measures states that “[t]he Proposed Beneficiaries are composed of children who suffer from severe medical conditions, including a girl with heart disease who has failed to receive treatment in Venezuela, and others who believe that their lives and physical integrity are at grave risk in Venezuela.” Because of that, they attempted to return to Trinidad and Tobago, arriving there on November 24<sup>th</sup>, when they were again detained at the Erin police station in Palo Seco. According to the applicants, that afternoon the National Security Minister of Trinidad and Tobago offered a press conference on the matter and indicated that “a person who is not a citizen of Trinidad and Tobago who enters Trinidad and Tobago illegally under the current regulations in accordance with the law, I have declared them to immediately be an undesirable and that has certain effects.”<sup>2</sup>

7. The applicants further claimed that Trinidad and Tobago is engaging “in the collective detention and expulsion of individuals, without a proper legal assessment of each detainee’s situation prior to detention and deportation.” They also affirmed that authorities did not consider the child’s best interest, particularly taking into account that all of the proposed beneficiaries have family members in Trinidad and Tobago who are allegedly “willing and able to retain their custody.” In addition, they recalled that child detention requires special safeguards.

8. On December 8<sup>th</sup>, the applicants provided additional information indicating that the proposed beneficiaries have requested protection before courts in Trinidad and Tobago, receiving “uneven” responses from the courts. Copy of the referred decisions were submitted regarding 13 proposed beneficiaries.<sup>3</sup> In this sense, the courts ordered that:

- the governmental authorities “refrain from taking any steps to remove the Claimant from the jurisdiction pending the determination of this Application before the docketed Judge” in relation to certain proposed beneficiaries<sup>4</sup>;
- other decisions entailed orders to refrain “from taking any steps to remove the Applicant from the jurisdiction during the period of quarantine fixed by the Chief Medical Officer with respect to that Applicant.”<sup>5</sup> The quarantine, according to the applicants, ends on December 8<sup>th</sup>, 2020, and “[a]lthough the attorneys for the proposed beneficiaries in Trinidad and Tobago have appealed the decisions where the judges authorized deportation at the end of quarantine, the deportations

<sup>2</sup> TTT Live Online, National Security Minister Defends Decision To Deport Venezuelans, November 24<sup>th</sup>, 2020. Available at: <https://www.facebook.com/tttliveonline/videos/188260269640066>.

<sup>3</sup> The Commission did not received information about pertinent judicial decisions taken in relation to the proposed beneficiaries J.D.C.R.; A.V.M.C.; and Z.J.M.C.

<sup>4</sup> F.J.U.H.; K.E.G.; K.K.G.N.; A.M.; A.C.C.L.; C.J.C.L.; J.C.M.C.L.

<sup>5</sup> M.A.C.F.; J.A.C.F.; M.S.C.F.; M.V.V.C.; J.A.R.M.

could happen as soon as December 8<sup>th</sup>, 2020”, especially considering, as stated by the applicants, that the State has “indicated an interest in deporting the proposed beneficiaries.”

- Particularly in the case of proposed beneficiary V.A.L.F., the court determined that:

The Court therefore holds the view that it would not be just or convenient to grant the injunctive relief sought so as to restrain the State from enforcing what on the face of it appears to be the existing domestic law and the Court is not satisfied that having regard to all of the outlined circumstances that the reliefs sought in the substantive claim are so clothed with the likelihood of success that the court should adopt the exceptional course of restraining the state from enforcing what appears to be applicable domestic law.<sup>6</sup>

9. The applicants further argued that all the proposed beneficiaries are requesting international protection as asylum seekers, being themselves at risk in Venezuela or as family members of persons at risk. As examples, it was indicated that two children are seeking protection from situations of domestic abuse and two of them suffer from acute heart conditions “that require constant treatment and medication, which has not been available in Venezuela.” Furthermore, the applicants argued, in relation to the proposed beneficiaries allowed to stay in Trinidad and Tobago while their application is pending, that the authorities’ statements on the present matter “showed an intent to repeat [the deportation], which implies that the government of Trinidad and Tobago could once again deport the proposed beneficiaries despite the pending cases.”

10. Particularly regarding the unaccompanied children and adolescents, the applicants identified four of them, V.A.L.F.; K.K.G.N.; K.E.G.; F.J.U.H., two of whom –V.A.L.F. and F.J.U.H.– are allowed to be in contact with their family members during quarantine. However, with regard to the other two, the applicants do not have information of specific protection measures adopted in their favor.

11. Finally, considering their current detention conditions, “[t]here is no sufficiently detailed information on this regard once the proposed beneficiaries were transferred to the Chaguaramas Military Base in the northern area of the island of Trinidad.”

## **2. Response by the State**

12. The Commission requested information from the State on December 2<sup>nd</sup>, 2020. However, no response has been received to date.

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

13. The precautionary measures mechanism is part of the Commission’s function of overseeing Member States 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 41 (b) of the American Convention on Human Rights, as well as in Article 18 (b) of the Statute of the IACHR. The precautionary measures mechanism is regulated 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.

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<sup>6</sup> Claim No. CV2020-04062 VDL v Attorney General, para. 49.

14. The Inter-American Commission and the Inter-American Court on Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that precautionary and provisional measures have a dual nature, both 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 bodies of the Inter-American System analyze 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 *effect 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 provided information 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.

15. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the information is to be assessed under a *prima facie* standard, to determine whether a serious and urgent situation exists.<sup>7</sup>

16. As a preliminary issue, the Commission wishes to clarify that the following analysis will exclusively relate 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 making determinations on the merits. The precautionary measures mechanism is not the applicable mechanism to determine if the potential beneficiaries can be granted asylum status, in accordance with international and domestic law. Such assessment is the responsibility of the competent State organs, within the framework of their constitutional and legal powers.

17. Furthermore, the present procedure is not apt to examine the compatibility of State’s domestic legislation with the American Declaration of the Rights and Duties of Man, or allegations of its violations, given that only the petition and case system may address the merits of the matter.

18. Before proceeding with the analysis of the requirements of Article 25 of the IACHR’s Rules of Procedure, it is important to clarify the universe of proposed beneficiaries. In the case of the children F.J.U.H.; K.E.G.; K.K.G.N.; A.M.; A.C.C.L.; C.J.C.L.; and J.C.M.C.L., although it was initially indicated that there were attempts to deport them (see *supra* para. 5), the Commission observes, in contrast with the circumstances of their first deportation, that they have been granted judicial orders allowing their stay in Trinidad and Tobago while their applications are pending. In this sense, the factual

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<sup>7</sup> In that regard, for instance, in relation to the provisional measures, the Inter-American Court has considered that this standard requires a minimum of details and information that allow for the *prima facie* assessment of the situation of risk and urgency. 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 at: [http://www.corteidh.or.cr/docs/medidas/febem\\_se\\_03.pdf](http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf)

circumstances that gave rise to the application for precautionary measures have changed significantly, and they now have domestic court decisions in their favor that suspend deportations until their particular situations are analyzed. Similarly, although precautionary measures were requested in favor of J.D.C.R., A.V.M.C., and Z.J.M.C., the Commission does not have sufficient elements to analyze their current situations under the terms of Article 25 of the Rules of Procedure. Notwithstanding, the Commission recalls the individual rights of those seeking asylum (see *infra* para. 22) and States' obligations regarding the principles of *non-refoulement* and the child's best interest (see *infra* para. 20-23).

19. Therefore, the Commission will analyze compliance with the requirements of the Rules of Procedure with respect to children and adolescents, V.A.L.F.; M.A.C.F.; J.A.C.F.; M.S.C.F.; M.V.V.C.; and J.A.R.M., who it will consider as potential beneficiaries in analyzing this request.

20. Regarding the requirement of seriousness, the Commission will evaluate the present situation with regard to international law standards on migrant and children rights as developed through the organs of the Inter-American System. Therefore, it is paramount to recall that the IACHR has affirmed that "[...] in all legislative, administrative, judicial, financial, and other measures concerning children and adolescents, the best interests of the child shall be a primary consideration."<sup>8</sup> "The principle of the best interests of the child entails that children's and adolescents' holistic development and full enjoyment of their rights must be considered the guiding principles in establishing and applying standards and policies to the lives of children and adolescents."<sup>9</sup>

21. Additionally, the Inter-American Court Advisory Opinion on Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, stresses that "States are obliged to identify non-national children who require international protection within their jurisdictions, through an initial evaluation with guarantees of safety and confidentiality, in order to provide them with the necessary, suitable and individualized attention based on the child's age, and in case of doubt about the age, assess and determine it."<sup>10</sup> Furthermore, "[i]n the context of migration, any immigration policy that respects human rights, as well as any administrative or judicial decision concerning the entry, stay or expulsion of a child, or the detention, expulsion or deportation of her or his parents associated with their own migratory status, must give priority to the assessment, determination, consideration and protection of the best interest of the child concerned. Closely related to this, is the obligation to respect fully the right of the child to be heard with regard to all the aspects of immigration and asylum proceedings, and that her or his views be adequately taken into account."<sup>11</sup>

22. On this matter, the Article XXVII of the American Declaration of the Rights and Duties of Man (the "American Declaration") establishes that "[e]very person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements." Additionally, the American Convention, in its Article 22.8, affirms: "[i]n no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions. This principle, known as the principle of *non-refoulement*, has been, in turn, developed in the Cartagena Declaration of 1984, in which the definition of refugee was broadened to "[...] persons who have fled

<sup>8</sup> IACHR, Fulfillment of Children's Rights, OEA/Ser.L/V/II.166Doc. 206/1, November 30<sup>th</sup>, 2017, para. 326.

<sup>9</sup> IACHR, Fulfillment of Children's Rights, 2017, para. 327.

<sup>10</sup> IACTHR, Advisory Opinion OC-21/14, 2014, Opinion para. 3.

<sup>11</sup> IACTHR, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, 2014, para. 70.



their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.” In line with that, the Commission adopted on March 2<sup>nd</sup>, 2018 the Resolution 2/18, urging OAS Member States to

Respect the principle and right to non-refoulement to the territory of Venezuela, whether through deportation proceedings, expulsion, or any other action of the authorities, of Venezuelans who would be in danger of persecution or other serious violations of human rights—including serious risk to their health or life due to medical conditions—in accordance with the right to non-refoulement established in Article 22.8 of the American Convention on Human Rights, Article 13 of the Inter-American Convention to Prevent and Punish Torture, and the American Declaration on the Rights and Duties of Man. The foregoing includes the prohibition of rejection at the border and the prohibition of collective expulsions.

23. In particular, regarding the application of the principle of *non-refoulement* in relation to children, “[...] the Committee on the Rights of the Child has concluded that the obligation not to return them is not limited to the real danger that may exist for the child of irreparable harm to her or his rights, contemplated in Articles 6 and 37 of the Convention on the Rights of the Child, but also applies to other serious violations of the rights guaranteed by this instrument, such as “the insufficient provisions of food or health services [...]”. The [Inter-American] Court agrees with the Committee on the Rights of the Child that the “[r]eturn to the country of origin shall in principle only be arranged if such return is in the best interest of the child” so that it is prohibited “if it would lead to a ‘reasonable risk’ that such return would result in the violation of fundamental human rights of the child, and in particular, if the principle of *non-refoulement* applies.”<sup>12</sup>

24. In addition, the IACHR has observed with extreme concern how the effects of the humanitarian crisis are one of the factors behind the displacement of millions of Venezuelans, who have been forced to migrate as a survival mechanism. The Commission has received information, through its monitoring function, that reveals the precarious situation in which certain groups of people who have historically suffered discrimination and exclusion find themselves, as is the case of children and adolescents, women, pregnant women, elderly persons, persons living in poverty, persons with disabilities, indigenous peoples, LGBTI persons, and persons of African descent, among others.

25. In previous matters related to deportations or extradition, the Commission has granted precautionary measures based on available information that suggested a real risk to the rights to life, personal integrity and health of the proposed beneficiaries in the event of their return to their countries of origin, in light of the principle of *non-refoulement*. In those instances, the IACHR had detailed information available on the risks alleged as well as on the petitions pending, filed through the petition and case system, alleging violations of the American Convention and/or American Declaration in the deportation decisions. Thus, the Commission granted precautionary measures also in light of the precautionary nature of the mechanism, to protect the *effect utile* of its final decision on merits (see *supra* para. 14).<sup>13</sup>

26. Furthermore, in the matter of *M.B.B.P. regarding Panama* <sup>14</sup>, the Commission granted precautionary measures strictly through its protective nature, requesting that the State refrain from

<sup>12</sup> IACtHR, Advisory Opinion OC-21/14, 2014, para. 231.

<sup>13</sup> See also IACHR, Matter of D.S. regarding the United States of America, Resolution 21/2016 (PM152-16), April 9, 2016. Available at: [www.oas.org/en/iachr/decisions/pdf/2016/MC152-16-EN.pdf](http://www.oas.org/en/iachr/decisions/pdf/2016/MC152-16-EN.pdf). IACHR, E.G.S. and A.E.S.G. regarding the United States of America, Resolution 30/2016 (PM 297-16), May 11, 2016. Available at: [www.oas.org/es/cidh/decisiones/pdf/2016/MC297-16-Es.pdf](http://www.oas.org/es/cidh/decisiones/pdf/2016/MC297-16-Es.pdf).

<sup>14</sup> IACHR, *M.B.B.P. regarding Panama*, Resolution 81/2018 (PM 490-18), October 15, 2018. Available at [www.oas.org/es/cidh/decisiones/pdf/2018/93-18MC823-18-NI.pdf](http://www.oas.org/es/cidh/decisiones/pdf/2018/93-18MC823-18-NI.pdf).

deporting or expelling the proposed beneficiary to Venezuela until the domestic authorities have duly assessed the alleged risk faced. The Commission took into account the information on the alleged risk that the proposed beneficiary faced in Venezuela regarding access to health and that the immigration authorities had allegedly not taken into account the risk to her life that could possibly come to fruition in Venezuela despite having had full knowledge of her state of health at the time.

27. The Commission understands that the situation of V.A.L.F.; M.A.C.F.; J.A.C.F.; M.S.C.F.; M.V.V.C.; and J.A.R.M. takes place in an exceptional context, in which the proposed beneficiaries are allegedly at risk, given that they may be deported without due consideration of their particular situations in light of the alleged risks to their life and personal integrity upon their return to Venezuela, and without proper consideration of their best interest, in accordance with international law and the rights of the child. In contrast with previous matters regarding the principle of *non-refoulement*, the Commission received information stating that the potential beneficiaries could be deported while the merits of their individual risk allegations were not examined. In the decision regarding the proposed beneficiary V.A.L.F., the Commission observes that the merits of the alleged risk were not assessed, and that the question of the “likelihood of success” of her case was emphasized in order to support it (see *supra* para. 8).

28. Considering the above, the Commission observes in this matter that the proposed beneficiaries V.A.L.F.; M.A.C.F.; J.A.C.F.; M.S.C.F.; M.V.V.C.; and J.A.R.M. have alleged that they face risks to their life and personal integrity upon their return to Venezuela –including, for instance, domestic abuse (see *supra* para. 9). The Commission has been monitoring the situation in Venezuela (see *supra* para. 24) and has identified that “[t]he impact of the severe food and health crisis has particularly impacted groups in situations of exclusion and historical discrimination, such as children and adolescents, [...]”.<sup>15</sup> Hence, the potential beneficiaries’ risk allegations are compatible with the information gathered through IACHR’s monitoring work. In this manner, their deportation without any assessment of their particular situations can, in principle, present a serious risk.

29. Moreover, the lack of the referred assessment encompasses further risks of irreparable harm in light of their specific vulnerabilities as children, and prevents an analysis on their best interest (see *supra* para. 20). This risk is further exacerbated regarding the particular protection needs of the potential beneficiaries who are unaccompanied, such as V.A.L.F. In this regard, the IACHR recalls that the Inter-American Court has “stresses[ed] that the situation of being unaccompanied or separated exposes children to ‘various risks that affect their life, survival and development such as trafficking for purposes of sexual or other exploitation or involvement in criminal activities which could result in harm to the child, or in extreme cases, in death,’ especially in those countries or regions where organized crime is present.”<sup>16</sup>

30. In light of the above well-established standards, the IACHR takes into account, in the present matter, that the potential beneficiaries have already been deported from Trinidad and Tobago before a due analysis of their particular circumstances and alleged risks was carried out, despite their pending legal proceedings. The Commission notes, with great concern, that the deportation was carried out by placing children and other adults on pirogues into international waters, “forced to navigate in the direction of Venezuela,” which by its on nature, entails a serious risk to their lives.

<sup>15</sup> IACHR, Forced Migration of Venezuelans, Resolution 2/18, March 2, 2018.

<sup>16</sup> IACtHR, Advisory Opinion OC-21/14, 2014, para. 90.

31. Additionally, the Commission observes that the proposed beneficiaries were allegedly declared to be “undesirable” by a senior State authority upon their return to Trinidad (see *supra* para. 6). As it is of public knowledge, recent further declarations by senior authorities, indicated that unregistered migrants will be deported, including affirmations that state “[w]e are not putting up a flag saying all children can come here.”<sup>17</sup> In this context, the Commission observes that the potential beneficiaries are in a situation of uncertainty regarding a potential immediate deportation without due assessment of their situation and best interest, which in the present case poses a serious risk to their life and personal integrity.

32. Despite any relevant information that might have been submitted by the State to assess these serious allegations, the Commission regrets that no response has been received yet. Even though the above does not justify per se the granting of a precautionary measure, it does prevent the Commission from further assessing whether the applicants’ allegations may be disproved, especially considering that the proposed beneficiaries are under the custody of the State and its special obligations to protect children. In that sense, the Commission does not have elements that indicate whether the situation of the proposed beneficiaries will be effectively analyzed after the end of the judicial decision on December 8<sup>th</sup>, 2020, or if they will be immediately deported without such an evaluation.

33. In view of the above, the Commission concludes that, under the *prima facie* standard of review applicable to the precautionary measures’ mechanism, the rights to life and personal integrity of **V.A.L.F.; M.A.C.F.; J.A.C.F.; M.S.C.F.; M.V.V.C.; and J.A.R.M.** are at serious risk.

34. As for the requirement of urgency, the Commission notes that the current judicial decisions allow the potential beneficiaries **V.A.L.F.; M.A.C.F.; J.A.C.F.; M.S.C.F.; M.V.V.C.; and J.A.R.M.** to remain in Trinidad and Tobago only until the end of their quarantine, which is allegedly on December 8<sup>th</sup>, 2020. One attempt to deport the proposed beneficiaries has already taken place on November 22<sup>nd</sup>, 2020. Additionally, recent declarations made by senior authorities, indicating that unregistered migrants will be deported and affirming that the potential beneficiaries are “undesirable,” create a context of uncertainty regarding the likelihood of an imminent deportation without due assessment of their individual situations. Therefore, the Commission acknowledges that urgent measures are required, in light of information indicating that a deportation without due assessment of their particular situations may happen at any moment.

35. As for the requirement of irreparable harm, the Commission considers that it has been met, insofar as the potential impact on the rights to life and personal integrity of the proposed beneficiaries constitutes the maximum situation of irreparability.

36. In addition, the Commission recalls that, as cited *supra* (para. 16-17), the precautionary measures mechanism is not the applicable mechanism to examine claims that require analyses on the merits to establish whether there has been a violation of the American Declaration of the Rights and Duties of Man or other applicable instruments. Nevertheless, it is pertinent to reaffirm that, specifically regarding migrant children, the Inter-American Commission has provided certain guidelines in its Inter-American Principles on the human rights of all migrants, refugees, stateless persons and victims

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<sup>17</sup> CNC3, PM Rowley: Migrants can’t have more rights than citizens, December 1, 2020. Available at: <https://www.cnc3.co.tt/pm-rowley-migrants-cant-have-more-rights-than-citizens/>; CNC3, We will deport those entering T&T illegally—PM, December 1, 2020. Available at: <https://www.cnc3.co.tt/we-will-deport-those-entering-tt-illegally-pm/>.



of human trafficking, in analyzing the adequateness of migratory procedures to basic standards of due process applicable to migration and protection procedures.<sup>18</sup>

37. Finally, the IACHR also notes that the proposed beneficiaries were still detained at the time of the filing of this request for precautionary measures. Although at present the Commission does not have sufficient information on the conditions of their detention to reach a determination, it recalls that the Inter-American Court “[...] finds that the deprivation of liberty of children based exclusively on migratory reasons exceeds the requirement of necessity, because this measure is not absolutely essential in order to ensure their appearance at the immigration proceedings or to guarantee the implementation of a deportation order. Adding to this, the Court finds that the deprivation of liberty of a child in this context can never be understood as a measure that responds to the child’s best interest.”<sup>19</sup>

#### **IV. BENEFICIARIES**

37. The Commission declares that the beneficiaries of the present precautionary measure are V.A.L.F.; M.A.C.F.; J.A.C.F.; M.S.C.F.; M.V.V.C.; and J.A.R.M. who are duly identified in these proceedings pursuant to Article 25(6)(b) of the Rules of Procedure.

#### **V. DECISION**

38. The Commission considers that this matter meets *prima facie* the requirements of seriousness, urgency and risk of irreparable harm set forth in Article 25 of its Rules of Procedure. Consequently, the Commission requests that Trinidad and Tobago adopt the necessary measures to guarantee the rights to life and personal integrity of V.A.L.F.; M.A.C.F.; J.A.C.F.; M.S.C.F.; M.V.V.C.; and J.A.R.M. In particular, by refraining from deporting or expelling them to Venezuela until the domestic authorities have duly assessed, in accordance with applicable international standards, the alleged risks faced.

39. The Commission requests that the Government of Trinidad and Tobago inform it, within a period of 15 days, as from the date of notification of the present resolution, about the adoption of the precautionary measures that have been consulted with and agreed upon and to periodically update this information.

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<sup>18</sup> IACHR, [Resolution 4/19](#) - Inter-American principles on the Human Rights of all migrants, refugees, stateless persons and victims of human trafficking. **Principle 51: Due process in procedures involving children and adolescents.** Procedures involving children shall focus primarily on determination of the principle of the best interests of the child. In addition to the guarantees contained in Section XII applicable to all migrants, proceedings involving children must offer the following additional guarantees: a. Access to the territory, regardless of the documentation they have or lack thereof, and referral to authorities in charge of evaluating their needs in terms of protection of their rights and/or restitution of their rights, ensuring that the corresponding procedural safeguards are in place; b. The obligation to appoint a guardian from the first moment of the proceedings in the case of unaccompanied or separated children or adolescents, who must be chosen by the child or adolescent; c. The right to have the proceedings conducted by a specialized officer or a judge, and any interviews carried out in person by professionals trained in communicating with children and adolescents; d. The right to be notified of the existence of a procedure and of any decision taken within the framework of the migration process, as well as the right to know the duration of the procedure to be carried out, which should abide by the principle of celerity; e. To be fully informed throughout the entire procedure, together with their guardian and legal adviser, of their rights and of any relevant information that could affect them, in a simple, clear and accessible way; f. The right to be heard, to participate actively in the different stages of the procedure, and that their opinion is taken into consideration in accordance with their age, their maturity, and their gradually evolving autonomy; g. The right to receive child-sensitive and rights-based consular protection, when it is appropriate and not contrary to international refugee law; h. To be assisted by an attorney trained and/or experienced in representing children and adolescent at all stages of the proceedings and communicate freely with the representative, and have access to free legal aid; i. The right to be assisted by a translator and interpreter in their own language; j. Priority handling of applications and procedures involving children, ensuring ample time to prepare for proceedings and observance of all due process guarantees; k. Access to contact with their families and not to be separated from them; a. To have their best interests evaluated before the making of any decision regarding their life.

<sup>19</sup> IACTHR, Advisory Opinion OC-21/14, 2014, para. 154.

40. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of precautionary measures and their adoption by the State do not constitute a prejudgment on the possible violation of rights protected in the American Declaration and other applicable instruments.

41. The Commission requests that the Executive Secretariat of the Inter-American Commission to notify the present resolution to the State of Trinidad and Tobago and to the applicants.

42. Approved on December 9<sup>th</sup>, 2020 by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice-president; Flavia Piovesan, Second Vice-president; Margarette May Macaulay; Esmeralda Arosemena de Troitiño, Julissa Mantilla Falcón, Edgar Stuardo Ralón Orellana, members of the IACHR.

María Claudia Pulido  
Acting Executive Secretary