

Enhancing the Standards of the Inter-American Commission on Human Rights for Granting Precautionary Measures to Protect Judicial Independence and Judges at Risk



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The purpose of this report is to provide an analysis of a compilation of precedents regarding the granting of precautionary measures to judges by the Inter-American Commission on Human Rights (“IACHR”). Drawing from a range of cases and precedents, this report aims to delineate the current standards employed by the IACHR for precautionary measures, particularly focusing on instances where criteria related to judicial independence were evaluated.

Additionally, it seeks to present arguments advocating for the expansion of the IACHR's criteria in this regard, supported by a comprehensive rationale grounded in legal precedents, human rights principles, and the pragmatic imperatives of ensuring judicial independence and safety.

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I. Introduction

The IACHR, in its role of protecting and promoting fundamental rights in the region, has established meticulous criteria for assessing and granting precautionary measures to judges facing dangers in the exercise of their functions, particularly when their judicial independence is threatened.

This mechanism is designed to safeguard specific individuals facing situations of seriousness, urgency, and irreparable harm. Importantly, these precautionary measures do not imply a prejudgment of any violations of rights under the American Convention on Human Rights or other relevant instruments. Moreover, they do not require exhaustion of domestic remedies for their initiation. Instead, the focus lies on whether the risk situation has been reported to the appropriate authorities or the reasons for any failure to do so.

Furthermore, these measures do not determine reparatory actions or delve into substantive issues, as they do not necessitate full proof of the facts. However, they must be sufficiently explained and credible to establish the existence of a serious risk situation.

The IACHR and the IACtHR have repeatedly stressed that precautionary and provisional measures have a dual protective and precautionary nature.¹ Under their protective nature, these measures seek to preserve the exercise of human rights,² whereas under their precautionary nature, these measures seek to preserve a legal situation before the consideration of the Inter-American System.³ The aspects that the Commission will take into account to issue a precautionary measure are as follows:

- a. **Seriousness of the situation** means the serious 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 bodies of the Inter-American System;
- b. **Urgency of the situation** is determined by information indicating that the risk or threat is imminent and can materialize, thus requiring preventive or protective action; and
- c. **Irreparable harm** means the impact on rights that, by their own nature, are not susceptible to repair, restoration, or adequate compensation.

¹ See Matter of Yare I and Yare II Capital Region Penitentiary Center regarding Bolivarian Republic of Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R., considerandum 5 (Mar. 30, 2006); Carpio Nicolle et al. v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R., considerandum 16 (July 6, 2009).

² See Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center regarding Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R., considerandum 8 (Feb. 8, 2008); Bámaca Velásquez v. Guatemala, Provisional Measures and Monitoring Compliance with Judgement, Order of the Court, Inter-Am. Ct. H.R., considerandum 45 (Jan. 27, 2009); Fernández Ortega et al. v. Mexico, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R., considerandum 5 (Apr. 30, 2009); Milagro Sala v. Argentina, Request for Provisional Measures, Order of the Court, Inter-Am. Ct. H.R., considerandum 5 (Nov. 23, 2017).

³ See Brenda Evers Andrew regarding the United States of America, Precautionary Measure No. 1028-23, Resolution 6/2024, Inter-Am. Comm'n H.R., ¶ 25 (Feb. 26, 2024).

Precautionary measures may protect individuals or groups of individuals, provided that the beneficiary or beneficiaries can be determined or determinable, through their geographical location or their membership or link to a group, people, community, or organization.

Requests for precautionary measures addressed to the IACHR must include, among other elements:

- a. The data of the individuals proposed as beneficiaries or information allowing their determination;
- b. A detailed and chronological description of the facts supporting the request and any other available information; and
- c. The description of the requested protective measures.

Before making a decision on the request for precautionary measures, the IACHR will require relevant information from the involved State, unless the immediacy of the potential harm does not allow delay. In this case, the measure is reviewed at the next session, taking into account the information provided by both parties. The measure is granted immediately and then reviewed with the data provided by both the state and the applicant.

When considering the request, the Commission will take into account its context and the following elements:

- a. Whether the risk situation has been reported to the relevant authorities, or the reasons why it could not have been;
- b. The individual identification of the proposed beneficiaries of the precautionary measures or the determination of the group to which they belong or are linked; and
- c. The express consent of potential beneficiaries, when the request is submitted by a third party, except in situations where the absence of consent is justified.

The Inter-American Commission requests provisional measures from the Inter-American Court, in accordance with Article 76 of the Rules of Procedure of the Inter-American Commission on Human Rights (the “**Rules**”), in situations where extreme seriousness and urgency are identified and when necessary to prevent irreparable harm to individuals.

Article 76 also defines the criteria for submitting the request for provisional measures:

- a. When the State has not implemented the precautionary measures granted by the IACHR;
- b. When the precautionary measures have not been effective.

In case of a dismissal decision of a request for provisional measures by the Inter-American Court, the IACHR will not consider a new request for precautionary measures unless there are new

facts justifying such a request. In other words, if the IACtHR decides to dismiss a request for provisional measures, the precautionary measures also lose their validity.

It is worth noting that threats to judicial independence come from both internal and external sources. Internally, the state itself, through other branches of government, intervenes in the judiciary to intimidate and threaten judges in order to influence their judicial decisions, sometimes using legal mechanisms. Externally, threats can come from external agents such as organized crime groups that may directly intervene to influence judges' decisions.

When judicial independence is compromised through threats of dismissal, reassignments to distant locations, initiation of unjustified administrative disciplinary proceedings, or even arbitrary deprivation of liberty or attacks on physical integrity, the most relevant question to answer is who defends the human rights of judges.

The answer is clear: there are no sufficient national legal mechanisms for protecting judges whose integrity, life, and tenure are arbitrarily threatened. From this perspective, the precautionary and provisional measures of international bodies such as the Inter-American Commission on Human Rights are important, to which judges can turn for assistance.

II. Compilation and analysis of current standards for “serious situation” to grant precautionary measures

In accordance with Article 25 of the Rules, for the IACHR to request a State to adopt precautionary measures to prevent irreparable harm to individuals, it is necessary to meet the requirements of seriousness, urgency and irreparable harm.

Regarding the “seriousness of the situation”, the Commission has determined that this refers to the serious impact that an action or omission may have on a protected right or on the eventual effect of a pending decision in a case or petition before the bodies of the Inter-American System.⁴

To meet the requirement of seriousness, the IACHR has carefully examined the nature and context of the threats or risks faced by the judge in question, as evidenced in several resolutions⁵. In these, the IACHR emphasizes the importance of assessing the scope of the potential danger and its

⁴ Precautionary Measure No. 255-13, Inter-Am. Comm'n H.R., Resolution No. 001/2013 (Aug. 16, 2013); Precautionary Measure No. 431-17, Inter-Am. Comm'n H.R., Resolution No. 34/2017 (Aug. 29, 2017); Precautionary Measure No. 682-18, Inter-Am. Comm'n H.R., Resolution No. 55/2019 (Oct. 23, 2019); Precautionary Measure No. 1088-23, Inter-Am. Comm'n H.R., Resolution No. 1/2021 (Jan 13, 2024).

⁵ See generally Precautionary Measure No. 255-13, Inter-Am. Comm'n H.R., Resolution No. 001/2013 (Aug. 16, 2013); Precautionary Measure No. 431-17, Inter-Am. Comm'n H.R., Resolution No. 34/2017 (Aug. 29, 2017); Precautionary Measure No. 682-18, Inter-Am. Comm'n H.R., Resolution No. 55/2019 (Oct. 23, 2019); Precautionary Measure No. 28-19, Inter-Am. Comm'n H.R., Resolution No. 56/2019 (Oct. 25, 2019); Precautionary Measure No. 1088-23, Inter-Am. Comm'n H.R., Resolution No. 1/2024 (Jan 13, 2024); Precautionary Measure No. 4-24, Inter-Am. Comm'n H.R., Resolution No. 2/2024 (Jan 13, 2024).

impact on the judge’s life and personal integrity, and sometimes on their relatives. The existence of death threats, acts of harassment, and persecution directed against the judges proposed as beneficiaries of precautionary measures has been considered particularly relevant.

The IACHR has observed that the lack of response or cooperation from the requested State to provide information on the protection measures implemented constitutes a factor for evaluation, although not sufficient on its own to justify the granting of precautionary measures. However, this lack of information limits the Commission’s ability to assess the situation in its entirety and understand the State’s official position regarding the alleged facts.

Similarly, the IACHR has highlighted the need to examine the specific context in which threats or acts of intimidation occur, considering the role and function of the judge within the judicial system. In cases where attacks are directed at judges who play a crucial role in the protection of fundamental rights or in the defense of the rule of law, the Commission has concluded that there is a high risk justifying the adoption of precautionary measures.

In this regard, the IACHR has recognized the importance of State actions to mitigate the identified risks and ensure the adequate protection of threatened judges. However, it has emphasized the need for these actions to be proportional and effective, addressing the underlying causes of the threats and not limiting themselves solely to physical protection measures.

After carefully reviewing the aforementioned resolutions, as has become clear through the many examples, the IACHR considers that the requirement of “seriousness” is only fulfilled when there is a real and tangible threat to the life or physical integrity of the judges. Although the IACHR also evaluates the broader context of a situation, including acts of political or social harassment through various means, this requirement is considered satisfied only when there is sufficient evidence demonstrating the existence of direct real or imminent physical threats against the judges or their close relatives.

In other words, the IACHR does not only consider political or social pressure as a criterion for determining the severity of the situation, but it requires the existence of compelling evidence indicating a real and immediate danger to the life or physical integrity of the judges. Only in such circumstances does the IACHR consider justified the granting of precautionary measures to protect the judicial independence and fundamental rights of the judges in question.

Ultimately, this means that the IACHR may exclude from its scope those cases in which the independence and impartiality of judges and magistrates are affected by circumstances that do not necessarily pose an immediate and direct threat to their physical integrity, such as mechanisms or procedures recognized in local legislation that allow for the revocation of judicial immunity or the criminalization of their actions. This exclusion could limit the IACHR’s ability to intervene in cases where judicial independence is undermined in more subtle but equally concerning ways, such as political pressure, corruption, or lack of judicial autonomy.

Notwithstanding further elaboration on the concept of judicial independence in subsequent sections, it is anticipated that, in accordance with the article titled “*Debido proceso e independencia judicial en América Latina*” published in DiXi Journal of the Cooperativa de Colombia



University, judicial independence is considered essential to guarantee due process and protect human rights. This principle is analyzed from two perspectives: the institutional independence of the judiciary as a whole, which involves protecting it from external interference by factual or state powers, and functional independence, which resides in judges and allows them to resolve conflicts in accordance with the law without external pressures. Additionally, the administration of justice, including law enforcement agencies and the judiciary, as well as an independent legal profession, are crucial to ensure the full realization of human rights without discrimination and are fundamental to processes of democratization and sustainable development, in line with international human rights standards⁶.

III. Arguments to expand the scope of protection for “serious situation” to grant precautionary measures

Article 8.1 of the American Convention on Human Rights establishes that every person has the right to be heard, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or court. This right plays a dual role, as it both recognizes the right of every individual to be heard by a competent, independent, and impartial judge and imposes an obligation on States to ensure that judges are able to fulfill their judicial function within a safe environment that effectively ensures their independence and impartiality. This implies that within the legal frameworks of each State, measures should be included to protect judges in case their independence and impartiality are threatened. This is reinforced by Article 23(C) of the same Convention, which establishes that all citizens must enjoy the right to have access, on general terms of equality, to the public functions of their country.

In light of the foregoing, the IACHR must reconsider its criterion regarding the requirement of “seriousness” to grant precautionary measures to judges in circumstances that endanger their independence and impartiality. Currently, the IACHR only grants measures when there is a real and imminent danger to the life or physical integrity of judges, without considering other relevant elements, such as internal laws that may threaten their tenure, criminalization, procedures to revoke their immunity, among others.

IACHR’s precedents have established standards that recognize the importance of judicial independence and its fundamental role in protecting human rights. This jurisprudence has been developed through dialogue with institutions such as the European Court of Human Rights and the Human Rights Committee. For example, in the case of Tribunal Constitucional Vs. Peru, the IACHR established standards to ensure that judges have specific guarantees related to their appointment process, tenure in office, and protection against external pressures, based on references to European jurisprudence. Additionally, the IACHR has emphasized that judicial independence is not only related to the individual judge but also to the judicial function within the democratic system and the rule of law. Therefore, the protection of this independence not only affects the individual judge but also has a collective impact on society as a whole.

⁶ Arnel MedinaCuenca, Ernesto Salcedo-Ortega, Omar Huertas-Díaz. Debido proceso e independencia judicial en América Latina. Dixi 26. May 2017. Pp. 40-41. doi: <http://dx.doi.org/10.16925/di.v19i26.1950>

Furthermore, the IACHR has emphasized that judicial independence is not only about the individual judge but also about the judicial function within the democratic system and the rule of law. Therefore, protecting this independence doesn't just affect the judge individually but also has a collective impact on society as a whole. Contextual narrative is crucial for understanding the importance of judicial independence and the need to protect it. Cases like Corte Suprema de Justicia (Quintana Coello y otros) Vs. Ecuador and the Case of Tribunal Constitucional (Camba Campos y otros) Vs. Ecuador demonstrate how the arbitrary removal of judges can destabilize democratic order and undermine the rule of law, thereby negatively affecting citizens' rights and human rights protection.

Ensuring true judicial independence and impartiality not only supports the democratic systems of Latin American countries but also aligns with the provisions of the Ibero-American Statute adopted at the VI Ibero-American Summit of Supreme Courts and Supreme Courts of Justice, held in Santa Cruz Tenerife, Canary Islands, Spain.

The provisions contained in this Statute highlight the importance of respecting judicial independence, as it essentially: (i) imposes an obligation on all branches of the State and other entities to guarantee this independence; (ii) prohibits the misuse of media to influence judicial decisions; (iii) establishes that judges must operate without being subordinate to higher authorities and must be protected against any threats to their independence; and (iv) emphasizes the need for adequate funding to ensure the economic independence of the Judiciary.

In line with this, the IACHR should expand its criteria for assessing the “seriousness” when granting precautionary measures to judges facing risks. This means moving beyond the assessment of immediate physical threats and also taking into account the presence of internal legal mechanisms that safeguard their independence and tenure. It involves evaluating the effectiveness of anti-corruption measures, shielding judges from political pressures, ensuring support from higher authorities, securing material conditions to maintain their independence from other state organs, and fostering an environment conducive to their impartial performance of duties. Alongside evaluating security measures provided by the State, such as personnel and armored vehicles, the Commission must consider these broader perspectives to ensure comprehensive protection of judicial independence and, ultimately, human rights in the region.

IV. Compilation and analysis of current standards for “urgent situation” to grant precautionary measures

Article 25(2)(b) of the Rules provides that an “Urgent Situation” is the risk or threat that is imminent and capable of materializing, thus necessitating immediate preventive or protective action.



In several resolutions, the IACHR establishes the urgency requirement by assessing the specific circumstances of each case. In Resolution 34/2017⁷, the IACHR notes that Magistrate Porras remains involved in cases linked to her risk situation, which could escalate due to her participation in high-impact cases. In Resolution 55/2019⁸, the Commission emphasizes the increasing risk of rights violations faced by the proposed beneficiary, acting as a judge, given the nature of the reported threats and their context. Similarly, in Resolution 001/2013⁹, the IACHR recognizes the urgency stemming from the imminent execution of Mr. Robert Gene Garza, scheduled within a month, necessitating timely intervention to prevent a violation of his rights. In Resolution 56/2019¹⁰, it is observed that the reported threats could subject the proposed beneficiaries to a progressively hazardous environment on a daily basis. Finally, in Resolution 1/2024¹¹, the Commission alerts to the ongoing risk sources facing the proposed beneficiary, compounded by inadequate protection measures and the absence of investigations into incidents against her, underscoring the urgent need for immediate action to safeguard her life and personal integrity. In each instance, the IACHR grounds the urgency requirement on the imperative to intervene promptly to avert actual or imminent harm to the rights and physical well-being of the beneficiaries.

This analysis demonstrates the practical application of the IACHR’s procedural rules and principles in safeguarding fundamental rights, particularly in instances where individuals face threats related to their judicial roles within the inter-American system.

V. Arguments to expand the scope of protection for “urgent situation” to grant precautionary measures

Beyond the obvious potential violations of the human rights of any individual — *whether a judge or not* — being harassed, intimidated, or worse, judges present a unique case in relation to urgency and protective measures, for at least one reason: their conduct, and their ability to perform their functions independently, often (if not always) has a direct impact on individuals’ human rights, and, in particular, on whether or a not a trial is fair.

More concretely, where a judge’s human rights are being violated, conducting a trial that meets the standards for a fair trial under any given human rights paradigm may become much more difficult, if not impossible in some cases. There is recent jurisprudence at the IACHR related to the issue of protective measures related to a judge’s human rights as an individual.

In Precautionary Measure Resolution 1088-23,¹² the IACHR addressed a request for protective measures from an anonymous requesting party on behalf of Irma Elizabeth Palencia

⁷ Precautionary Measure No. 431-17, Inter-Am. Comm’n H.R., Resolution No. 34/2017 (Aug. 29, 2017)

⁸ Precautionary Measure No. 682-18, Inter-Am. Comm’n H.R., Resolution No. 55/2019 (Oct. 23, 2019)

⁹ Precautionary Measure No. 255-13, Inter-Am. Comm’n H.R., Resolution No. 001/2013 (Aug. 16, 2013)

¹⁰ Precautionary Measure No. 28-19, Inter-Am. Comm’n H.R., Resolution No. 56/2019 (Oct. 25, 2019)

¹¹ Precautionary Measure No. 1088-23, Inter-Am. Comm’n H.R., Resolution No. 1/2024 (Jan 13, 2024)

¹² Precautionary Measure No. 1088-23, Inter-Am. Comm’n H.R., Resolution No. 1/2024 (Jan. 13, 2024) (available at https://www.oas.org/en/iachr/decisions/mc/2024/res_1-24_mc_1088-23%20_gt_en.pdf) (last accessed Apr. 10, 2024).

Orellana, a judge of the Supreme Electoral Tribunal of Guatemala, whose rights to life, personal integrity, and privacy were at risk.¹³ The requestor alleged that Judge Orellana was harassed, followed, surveilled, and threatened; that her government-provided security detail was not adequate, and that the security plan with which she was provided was weak; and that the highest levels of State authority had perpetrated political persecution by planning for and effectuating the removal of several judges' immunities. In analyzing the requirement of urgency, the IACHR noted that the fact that the risk sources for the proposed beneficiary remain at present and are connected with the events she has been facing, shows that her situation requires the immediate intervention of the State. In view of the foregoing, the situation placing her at risk is likely to continue to worsen, particularly in the context of her performance as a sitting judge of the Supreme Court. This, insofar as the reported facts persist coupled with the alleged lack of adequate implementation of protection measures and the lack of investigation into the incidents that occurred against her, and the assessments of the exceptional context faced by Guatemala.¹⁴

Finding that this met the urgency requirement, and that the other two elements (*i.e.*, a serious situation, the risk of irreparable harm) required for the implementation of protective measures were met, the IACHR held that Judge Orellana should benefit from such measures.

A similar case, also recently decided, involved a judge of Guatemala's Constitutional Court, Leyla Susana Lemus Arriaga, who requested protective measures.¹⁵ She received a threatening telephone call at her office, in which the caller told a member of the judge's staff to "warn the justice that 'we are not going to allow her to continue meddling in matters that don't concern her,'" and that "if she does not comply she will have to suffer the consequences."¹⁶ She was also harassed online, where individuals using fake profiles published her telephone number and home address.¹⁷ Although she was assigned a security detail, they were not always present due to orders from the chief of the police substation to which they belonged.¹⁸ On one occasion, persons with keys to the security detail's car—located in front of the judge's residence—entered the vehicle while the detail was not present and set fire to it.¹⁹

Noting that there was an event that materialized—*i.e.*, *the aforementioned threats and the car fire*—that "demonstrates failures in the protection plan of the [judge],"²⁰ and that "the [judge] allegedly continues to have the same [ineffective] protection plan, with no further adjustments,"²¹ the IACHR found that the risk to the judge was "likely to persist and worsen over time, as long as the

¹³ See *id.*, at ¶¶ 5-17.

¹⁴ *Id.* at ¶ 58.

¹⁵ Precautionary Measure No. 4-24, Inter-Am. Comm'n H.R., Resolution No. 2/2024 (Jan. 13, 2024) (available at https://www.oas.org/en/iachr/decisions/mc/2024/res_2-24_mc_4-24%20_gt_en.pdf (last accessed Apr. 10, 2024).

¹⁶ *Id.* at ¶ 5.

¹⁷ *Id.* at ¶ 8.

¹⁸ *Id.* at ¶ 9.

¹⁹ *Id.* at ¶ 10.

²⁰ *Id.* at ¶ 32.

²¹ *Id.*

[judge] continues with her functions as a justice.”²² It was “therefore urgent to adopt adequate measures” for the protection of her life and personal integrity.²³

While judges as individuals appear to have access to protective measures from the IACHR due to their individual human rights, judges as an institution and as a group more generally do not currently seem to be as well protected. One potential way to reframe the issue of urgency in relation to the protection of judges is to view judicial independence as urgent *per se*, so that judicial protection is always an urgent matter, making proactive—as opposed to reactive—protective measures necessary. Both rule of law principles and human rights jurisprudence and practice suggest that trials should be fair and that justice should not be delayed; it seems reasonable to assert that interference with judicial independence and processes—and, in particular, interference that amounts to harassment (even at a level that is less serious than that which could result in a judge fleeing out of fear) or that removes judicial immunity—is very likely to result in *unfair* trials, and in undue delay in relation to judicial activity.

Internationally, the right to a fair and expeditious trial is found in, among other instruments (and most pertinently for our human rights-focused purposes here), the International Covenant on Civil and Political Rights (“**ICCPR**”).²⁴ International law also has numerous examples of jurisprudence that support the protection of this right. The Human Rights Committee, for instance, has addressed expeditiousness, both in civil and criminal matters, in General Comment No. 32 stating that a crucial element of ensuring a fair trial is the promptness with which it is conducted. Although the ICCPR directly addresses concerns about undue delays in criminal cases in paragraph 3 (c) of Article 14, similar delays in civil proceedings, which cannot be attributed to the complexity of the case or the conduct of the parties, undermine the principle of a fair trial outlined in paragraph 1 of the same provision. When such delays stem from inadequate resources and chronic underfunding, additional budgetary allocations should be made, to the extent possible, to support the administration of justice²⁵.

Additionally, it provides that the right of the accused to a prompt trial is intended to prevent prolonged uncertainty about their fate and ensure that any detention during the trial is not excessive. This right serves both individual fairness and the broader interests of justice. All stages of the legal process, including both initial trials and appeals, should proceed without unnecessary delays²⁶.

²² *Id.*

²³ *Id.*

²⁴ See International Covenant on Civil and Political Rights art. 14, Dec. 12, 1966, 999 U.N.T.S. 171 [hereinafter “ICCPR”]. The ICCPR is not the only international instrument in which such a guarantee can be found, however. It is also present, for example, in the 1948 Geneva Conventions and the first and second additional protocols thereto, and in customary international humanitarian law. See, e.g., Convention (III) relative to the treatment of prisoners of war arts 3, 84, & 103, Aug. 12, 1949, 75 U.N.T.S. 135; Convention (IV) relative to the Protection of Civilian Persons in Time of War arts. 3 & 71, Aug. 12, 1949, 75 U.N.T.S. 287; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) art. 75, Jun. 8, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II) art. 6, Jun. 8, 1977, 1125 U.N.T.S. 609; *Rule 100: Fair Trial Guarantees*, INT’L COMMITTEE OF THE RED CROSS, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule100> (accessed Apr. 10, 2024).

²⁵ Human Rights Committee, General Comment No. 32, ¶ 27, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007)

²⁶ *Id.* at ¶ 35 (emphasis added).

All of the major regional human rights treaties also provide for the right to fair and expeditious trials. In Africa, the African Charter on Human and Peoples’ Rights (“**Banjul Charter**”) provides that “every individual shall have the right to have his cause heard.”²⁷ This comprises, *inter alia*, “the right to be tried within a reasonable time by an impartial court or tribunal.”²⁸ In addition, “the African Commission has said that no circumstances, whether the threat of war or armed conflict, or any emergency, justifies denying people their right to a fair trial.”²⁹ In Europe, the European Convention on Human Rights (“**ECHR**”) provides that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”³⁰ And, in the Americas, the right is protected by two different instruments. First, the American Declaration of the Rights and Duties of Man provides that “every person accused of an offense has the right to be given an impartial and public hearing [...]”³¹ And, second, the American Convention on Human Rights (“**Pact of San José**”) provides that every individual has the right to a fair and timely trial before a competent, independent, and impartial tribunal, as established by law. This applies to both criminal accusations and the determination of rights and obligations in civil, labor, fiscal, or any other type of proceedings³².

Many domestic systems around the world also include fair trials and / or undue delay in their descriptions of a fair trial. The United States, for example, addresses the issue in the Sixth amendment.³³ Germany addresses it (albeit slightly circumspectly, *i.e.*, from the point of view of compensation for delays) in Sections 198 and 199 of its Courts Constitution Act.³⁴ In Mexico article 14 of the Federal Constitution recognizes the human right to a fair trial which encompasses a of a fair and expeditious trial.

In essence, being able to conduct a hearing fairly and expeditiously fulfills a basic human right that is guaranteed at the international, regional, and domestic levels, and it is thus *always* necessary for a judge to be able to do so. Anything that interferes, and, more importantly, anything that *could* interfere with that ability, whether that interference materializes or not, makes a situation *de facto* urgent. And, as noted previously, *de facto* urgency in this context would best be addressed proactively, rather than reactively.

It could be argued, of course, that the right to a fair and expeditious trial applies only to those sitting before the judge, and not to the judge him-, her-, or herself. However, as noted, restricting a

²⁷ See Regional human rights treaties also protect these rights. See African Charter on Human and Peoples’ Rights art. 7, Jun. 27, 1981, 1520 U.N.T.S. 217.

²⁸ *Id.*

²⁹ AMNESTY INTERNATIONAL, A GUIDE TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS 16 (2006) (available at <https://www.amnesty.org/en/wp-content/uploads/2021/08/ior630052006en.pdf> (accessed Apr. 10, 2024)).

³⁰ Convention for the Protection of Human Rights and Fundamental Freedoms art. 6, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter “ECHR”].

³¹ U.N. Economic and Social Council, American Declaration of the Rights and Duties of Man, Art. XXVI, U.N. Doc E/CN.4/122 (June 10, 1948).

³² American Convention on Human Rights art. 8, Nov. 22, 1969, 1144 U.N.T.S. 123.

³³ U.S. CONST. Amend. VI.

³⁴ Gerichtsverfassungsgesetz [GVG] [Courts Constitution Act], May 9, 1975, BUNDESGESETZBLATT TEIL I [BGBl I] at 2363, §§ 198-199 (Ger.)

judge’s ability to perform his, her, or their functions—which intimidation, threats, and other harassment do—also limits the human rights of some, if not all, of those sitting before said judge(s).

If a judge disappears or flees due to threats or harassment, or is removed due to a removal of immunity, a replacement judge could just as easily conduct a speedy trial. This, however, flies in the face of fair trial guarantees more generally: such a trial would almost certainly not be considered fair, despite perhaps being expeditious.

VI. Compilation and analysis of current standards for “irreparable harm” to grant precautionary measures

As discussed above, Article 25(1) of the Rules requires a “risk of irreparable harm to persons or to the subject matter of a pending petition or case before the organs of the inter-American system.”³⁵ Article 25(2)(c) of the Rules defines “irreparable harm” as “injury to rights which, due to their nature, would not be susceptible to reparation, restoration, or adequate compensation.”³⁶

When considering irreparable harm from a protective perspective, the IACHR noted that precautionary measures are granted “particularly in order to avoid irreparable harm to the *life and personal integrity* of the beneficiaries.”³⁷ The IACHR repeatedly recognized the “potential impact on rights to life and personal integrity constitutes the *maximum situation of irreparable harm*.”³⁸ The IACHR has found such threats to life and personal integrity to exist in matters of threat, harassment, persecution, and/or disappearances.³⁹ The IACHR has also considered health as part of this

³⁵ Rules of Procedure of Inter-Am. Comm’n H.R., art. 25(1), 2013.

³⁶ Rules of Procedure of Inter-Am. Comm’n H.R., art. 25(2)(c), 2013.

³⁷ *About Precautionary Measures: their practice as a guarantee of respecting fundamental rights and preventing irreparable damage*, IACHR, <https://www.oas.org/en/IACHR/jsForm/?File=/en/IACHR/decisions/MC/about-precautionary.asp> (last visited 14 Apr. 2010) (emphasis added).

³⁸ See Julio César Góngora Millo regarding Cuba, Precautionary Measure No. 280-24, Resolution 21/2024, Inter-Am. Comm’n H.R., ¶ 20 (Apr. 10, 2024) (emphasis added); see also Thirteen members of the La Plata Bahía Málaga Community Council regarding Colombia, Precautionary Measure No. 73-24, Resolution 19/2024, Inter-Am. Comm’n H.R., ¶ 33 (April 8, 2024); Certain families of the native Kichwa community Santa Rosillo de Yanayacu regarding Peru, Precautionary Measure No. 1109-23, Resolution 13/2024, Inter-Am. Comm’n H.R., ¶ 60 (Mar. 25, 2024); Cindy Vanessa Arenas Fernández and her family regarding Colombia, Precautionary Measure No. 51-24, Resolution 12/2024, Inter-Am. Comm’n H.R., ¶ 32 (Mar. 22, 2024); J. Santos Rosales Contreras and twelve other members of the Nahua indigenous community of Ayotitlán regarding Mexico, Precautionary Measure No. 674-21, Resolution No. 11/2024, Inter-Am. Comm’n H.R., ¶ 34 (8 Mar. 2024); Carlos Alberto Bojorge Martínez regarding Nicaragua, Precautionary Measures No. 274-24, Resolution 10/2024, Inter-Am. Comm’n H.R., ¶ 32 (Mar. 6, 2024).

³⁹ *About Precautionary Measures: their practice as a guarantee of respecting fundamental rights and preventing irreparable damage*, IACHR, <https://www.oas.org/en/IACHR/jsForm/?File=/en/IACHR/decisions/MC/about-precautionary.asp> (last visited 14 Apr. 2010)

“maximum situation of irreparability.”⁴⁰ The IACHR has thus granted precautionary measures regarding access to medical treatment for serious health situations regardless of the urgency.⁴¹

From a precautionary perspective, the IACHR has found irreparable harm given a pending domestic execution of a current petitioner before the Inter-American system.⁴² The IACHR determined that if the petitioner is executed before the Commission evaluates the petition, “the final decision would be rendered moot, since the situation of irreparable harm would already have materialized.”⁴³

In a case of a threat of harm to life, personal integrity, or health, the IACHR does little to elaborate the standard of irreparable harm.⁴⁴ Determining the standard of irreparable harm is further complicated by the fact that the IACHR only publishes decisions granting precautionary measures but not those rejecting such measures.⁴⁵

Instances in which the IACHR has granted precautionary measures involving judges included instances of harassment, threats, surveillance, and/or smear campaigns on social media.⁴⁶ In these instances, the Commission found a risk of irreparable harm given the risk to life and personal

⁴⁰ See Eddy Antonio Castillo Muñoz, Nelly Griselda López García and Juan Carlos Baquedano regarding Nicaragua, Precautionary Measure No. 95-24, Resolution No. 7/2024, Inter-Am. Comm’n H.R., ¶ 42 (Mar. 1, 2024); see also Juan Carlos Hollman regarding Argentina, Precautionary Measure No. 999-23, Resolution 3/2024, Inter-Am. Comm’n H.R., ¶ 31 (Jan. 12, 2024).

⁴¹ Resolution 3/2018: Strengthening of the processing of requests for precautionary measures, Inter-Am. Comm’n H.R. (May 10, 2018), <https://www.oas.org/en/iachr/decisions/pdf/Resolution-3-18-en.pdf>.

⁴² See Brenda Evers Andrew regarding the United States of America, Precautionary Measure No. 1028-23, Resolution 6/2024, Inter-Am. Comm’n H.R., ¶ 1 (Feb. 26, 2024).

⁴³ Brenda Evers Andrew regarding the United States of America, Precautionary Measure No. 1028-23, Resolution 6/2024, Inter-Am. Comm’n H.R., ¶ 25 (Feb. 26, 2024).

⁴⁴ See Juliana Cano Nieto, *The protection of ESCR in the Inter-American System through the use of precautionary and provisional measures*, 45 REVISTA IIDH 59, 78 (2007) (noting “[t]he first problem one comes across when analyzing the Commission’s measures is the fact that when granting them, the Commissioners do not specify the ‘urgency’ or the ‘irreparable harm’ trying to be prevented”).

⁴⁵ See Juliana Cano Nieto, *The protection of ESCR in the Inter-American System through the use of precautionary and provisional measures*, 45 REVISTA IIDH 59, 79 (2007). In terms of precautionary measures in general, the IACHR has stated that “over the years a consolidated practice has developed, according to which it is considered that precautionary measures is not the suitable mechanism to address requests mainly related to alleged violations of the rights to due process and fair trial, and that domestic legal frameworks.” It likewise has systematically dismissed “requests for precautionary measures that are related to the payment of compensations or to economic embargos in civil or commercial matters, dismissals from private or public institutions, among other issues of that nature.” See *About Precautionary Measures*, IACHR, <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/decisions/about-precautionary.asp#:~:text=The%20Inter%2DAmerican%20Commission%20wishes,fair%20trial%2C%20and%20that%20domestic> (last visited 14 Apr. 2010).

⁴⁶ See Matter of Érika Lorena Aifán regarding Guatemala, Precautionary Measure No. 682-18, Resolution No. 55/2019, Inter-Am. Comm’n H.R., ¶ 6 (Oct. 23, 2019); Matter of Gloria Patricia Porras Escobar regarding Guatemala, Precautionary Measures No. 431-17, Resolution 34/2017, Inter-Am. Comm’n H.R., ¶¶ 5-9 (Aug. 29, 2017); Matter of Miguel Ángel Gálvez and family regarding Guatemala, Precautionary Measures No. 366-16, Resolution No. 45/16, Inter-Am. Comm’n H.R., ¶ 3 (Aug. 21, 2016).



integrity.⁴⁷ In Matter of Gloria Patricia Porras Escobar regarding Guatemala concerning acts of intimidation and surveillance of a judge of the Constitutional Court of Guatemala, the Commission further emphasized the importance of protecting life and personal integrity as those rights are “essential” for the judge “to carry out her functions as Magistrate of the Constitutional Court independently, free of threats, attacks or harassment.”⁴⁸

II. Arguments to expand the scope of protection for “irreparable harm” to grant precautionary measures

When one considers the dangers that confront a judge whose judicial immunity is pending revocation or under threat, it seems as if the criteria of irreparable harm would surely be met. And yet, the IACHR has denied petitions for precautionary measures on the grounds that in this situation, there is insufficient gravity, urgency, or potential for irreparable harm. The scope of irreparable harm should be expanded to protect judges whose judicial immunity might be revoked, because the revocation of judicial immunity threatens both the lives and the personal integrity of judges. While the risk to these human rights might not be immediate upon the revocation of judicial immunity, the many examples from the legal precedent set by the IACHR show that there is a reasonable probability that the harm will materialize. Further, because the harm that judges face threatens both their right to life and their right to personal integrity, a violation of these rights cannot be remedied. Violations of the right to life or the right to personal integrity are not susceptible to reparation, restoration, or compensation. Therefore, it can be said that the requirements for irreparable harm are met, and precautionary measures should be granted every time a judge’s judicial immunity is threatened.

As has become clear through the many examples that have come before the IACHR,⁴⁹ judicial immunity is not only critical to protect judges from civil and criminal liability, but it is also critical to protect the lives and personal integrity of judges. Without judicial immunity, judges are at risk of retaliation for their official lawful actions. Retaliation can take several forms, from threats and harassment to physical attacks, to arbitrary imprisonment and torture while imprisoned. Judges have even had to flee their home countries to due threats of harm. The probability these kinds of harms will materialize when judicial immunity is revoked is not remote; rather, there is a reasonable probability that judges will be threatened with these kinds of dangers.

⁴⁷ See Matter of Érika Lorena Aifán regarding Guatemala, Precautionary Measure No. 682-18, Resolution No. 55/2019, Inter-Am. Comm’n H.R., ¶ 18 (Oct. 23, 2019); Matter of Gloria Patricia Porras Escobar regarding Guatemala, Precautionary Measures No. 431-17, Resolution 34/2017, Inter-Am. Comm’n H.R., ¶ 25 (Aug. 29, 2017); Matter of Miguel Ángel Gálvez and family regarding Guatemala, Precautionary Measures No. 366-16, Resolution No. 45/16, Inter-Am. Comm’n H.R., ¶ 14 (Aug. 21, 2016).

⁴⁸ Matter of Gloria Patricia Porras Escobar regarding Guatemala, Precautionary Measures No. 431-17, Resolution 34/2017, Inter-Am. Comm’n H.R., ¶ 25 (Aug. 29, 2017).

⁴⁹ See *generally* Precautionary Measure No. 682-18, Inter-Am. Comm’n H.R., Resolution No. 55/2019 (Oct. 23, 2019); Precautionary Measure No. 28-19, Inter-Am. Comm’n H.R., Resolution No. 56/2019 (Oct. 25, 2019); Precautionary Measure No. 1088-23, Inter-Am. Comm’n H.R., Resolution No. 1/2024 (Jan. 13, 2024); Precautionary Measure No. 4-24, Inter-Am. Comm’n H.R., Resolution No. 2/2024 (Jan. 13, 2024).

At the foundation of international human rights law is the right to life and the protection of human dignity. These rights are protected by every major international human rights convention. In the Inter-American system, this right is codified through Article 4 of the Inter-American Convention on Human Rights, which states that “[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”⁵⁰ In Article 5, the Convention further holds that “Every person has the right to his physical, mental, and moral integrity respected. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.”⁵¹ These rights are so inherently entwined with a human being’s dignity that there is no possible way that a violation of these rights can be remedied. Because these are the very rights that are at risk when judicial immunity is threatened, it seems as though the requirements for irreparable harm are easily met.

The IACHR has previously granted precautionary measures for judges on several occasions. Precautionary Measure Resolution No. 682-18 and Precautionary Measure Resolution No. 28-19 involved a Guatemalan judge and several Constitutional Court magistrates, respectively, who were facing a series of pressures, acts of harassment and retaliation, and threats to their rights in connection with their involvement in certain cases that had a high profile in the media.⁵² The IACHR especially stressed the existence of a smear campaign on social media, which interfered with their work as a judge and as magistrates. The IACHR found that the judge and the magistrates were seriously at risk, particularly given the progress made in the cases they were working on and in a potential increase in attacks against them. The IACHR concluded, therefore, that the elements of precautionary measures had *prima facie* been met.⁵³ Precautionary Measure Resolution No. 1088-23 and Precautionary Measure Resolution No. 4-24 both involved instances where Guatemalan judges were harassed and threatened. In these instances, the IACHR found that the requirements for protective measures were met, as the situation placing these judges at risk were likely to continue to worsen, and because the lives and personal integrity of the judges were threatened.⁵⁴

The legal precedent of the IACHR shows that the IACHR recognizes the specific, irreparable harms that threaten judges by the nature of their work. Indeed, in the last 40 years, precautionary measures have been invoked to protect thousands of persons or groups of persons at risk by virtue of their work or affiliation.⁵⁵ They include human rights defenders, journalists, trade unionists, vulnerable groups such as women, children, indigenous people, displaced persons, LGBTBI communities and persons deprived of their liberty. They have also been used to protect witnesses, officers of the court, persons about to be deported to a country where they might be subjected to torture or other forms of cruel and inhuman treatment, persons sentenced to the death penalty, and

⁵⁰ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 at Art. 4 (entered into force July 18, 1978).

⁵¹ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 at Art. 5 (entered into force July 18, 1978).

⁵² See *generally* Precautionary Measure No. 682-18, Inter-Am. Comm’n H.R., Resolution No. 55/209 (Oct. 23, 2019); Precautionary Measure No. 28-19, Inter-Am. Comm’n H.R., Resolution No. 56/2019 (Oct. 25, 2019).

⁵³ Precautionary Measure No. 682-18, Inter-Am. Comm’n H.R., Resolution No. 55/209 at ¶ 20 (Oct. 23, 2019); Precautionary Measure No. 28-19, Inter-Am. Comm’n H.R., Resolution No. 56/2019 at ¶ 24 (Oct. 25, 2019).

⁵⁴ See *generally* Precautionary Measure No. 1088-23, Inter-Am. Comm’n H.R., Resolution No. 1/2024 (Jan. 13, 2024); Precautionary Measure No. 4-24, Inter-Am. Comm’n H.R., Resolution No. 2/2024 (Jan. 13, 2024).

⁵⁵ PHILIP ALSTON AND RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS at 993 (2012).

others.⁵⁶ It follows, therefore, that judges should fall under a category of equally vulnerable persons, placed at risk of irreparable harm due to the nature of their work.

Finally, granting precautionary measures in these instances will serve the practical need to ensure the independence and safety of the judiciary moving forward. Although precautionary measures are not recognized as binding by all Member States of the Organization of American States (OAS), the OAS General Assembly has encouraged Member States to pay attention to and follow up on the IACHR's recommendations and precautionary measures.⁵⁷ In doing so, Member States can gather information on the types of conduct that will warrant precautionary measures, and better protect human rights moving forward. For example, when the General Assembly adopted the Inter-American Convention on Forced Disappearance of Persons in 1994, the Member States acknowledge how effective precautionary measures were for purposes of examining allegations of this nature. If the scope of precautionary measures were expanded to protect judges whose judicial immunity is at risk, then there would be a dearth of Precautionary Measures Resolutions on the issue that Member States could use in order to learn the type of conduct that will trigger precautionary measures in the future. This would hopefully prevent violations from happening at the outset, and ultimately work to secure the independence and safety of the judiciary.

III. Analysis on the process/consequences regarding the lifting of immunity for judges

Judicial immunity, understood as a means of protecting judicial officers to prevent them from being subject to civil, criminal, or administrative liability for decisions or acts carried out in the performance of their official duties, is one of the methods to ensure that judges can perform their professional duties independently. Thus, judicial immunity directly impacts not only the personal and professional lives of judicial officers but also all those individuals who require access to a country's judicial system, as it is necessary that decisions made in judicial proceedings are issued with absolute impartiality and are free from external pressures or influences on judicial discretion.

Thus, like any right, judicial immunity is governed by specific legal frameworks, which vary depending on the internal regulations of each country. There are places where immunity may be absolute and others where it is limited under diverse circumstances and depends on the specific conduct of judicial officers. In this regard, the procedure for its lifting varies from region to region depending on the legal system of each State. In some cases, this procedure can be carried out through the judicial system itself, while in other scenarios, the removal and prosecution of judges may fall under a different public authority function, such as through the legislative congress or parliament.

In such cases, the IACHR may play an active role in protecting the safety and rights of judges. For instance, on February 9, the IACHR was informed that the Supreme Court of Justice of Guatemala, had ruled to declare a request for the impeachment of Judge Pablo Xitumul de Paz to

⁵⁶ PHILIP ALSTON AND RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS at 993 (2012).

⁵⁷ PHILIP ALSTON AND RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS at 993 (2012).

stripping him of his judicial immunity. The Supreme Court also issued instructions to proceed with impeachment proceedings against Judge Erika Aifán. Both judges had been granted precautionary measures by the IACHR. In these scenarios, the IACHR reminded the State of its obligation to protect those working in the judiciary from attacks, intimidation, threats, and harassment by investigating and appropriately sanctioning those who violate their rights. Failure by States to ensure that judicial personnel are safeguarded from all forms of pressure could seriously jeopardize the exercise of judicial authority and thwart effective access to justice⁵⁸.

The excessive or improper lifting of judicial immunity by a State should be considered a threat to the principle and right of judicial independence. Without this protective measure, judges will be at risk of facing external pressures or interference when issuing their rulings within judicial proceedings. Therefore, the risks associated with the lifting of judicial immunity can be categorized from various perspectives, as the consequences of such actions have impacts on various individuals and areas, which may include the following.

(i) Concerning the principle of judicial independence. The IACHR has ruled that a justice operator, in addition to being competent in the performance of their duties, must be independent and impartial⁵⁹. In this regard, judges must make their decisions in strict adherence to the law, free from influences, interferences, threats, or direct or indirect pressures of any kind⁶⁰. In this way, it can be ensured that the resolutions made by judges to settle matters arising between private parties or various government bodies are absolutely impartial and objective, with the aim of achieving the most fundamental purposes of the law such as justice, legal certainty, the common good, and social peace.

Thus, judicial immunity, being a component that constitutes the principle of judicial independence, is fundamental in order for the justice operator to fulfill the purposes previously mentioned. Consequently, the lifting of such immunity can have serious consequences for the administration of justice, as it would result in a clear diminution of the principle of judicial independence and would affect the objectives it aims to achieve.

(ii) Regarding the Rule of Law. The independence of justice operators, largely fostered by the principle of judicial immunity, is a fundamental goal that influences the purposes for which the separation of powers within a State was established⁶¹. This contributes to the strengthening of the Rule of Law in the democratic life of a country, thereby necessitating the assurance that judges

⁵⁸ https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/037.asp

⁵⁹ IACHR, Case of Radilla a Pacheco Vs. México. Judgment of November 23, 2009 Series C No. 209, para. 273; in similar vein, see Case Ivcher Bronstein Vs. Perú. Fondo, Reparations, and Costs. Judgment of February 6, 2001, Series C No. 74, para. 112; and Case of 19 Merchants v. Colombia. Merits, Reparations, and Costs. Judgment of July 5, 2004, Series C No. 109, para. 167.

⁶⁰ Principle 2 of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from August 26 to September 6, 1985, and endorsed by the General Assembly in its resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985.

⁶¹ IACHR, Case of the Constitutional Court v. Peru. Judgment of January 31, 2001, Series C No. 71, para. 73, and Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Judgment of August 5, 2008, Series C No. 182, para. 55. See also IACHR, Democracy and Human Rights in Venezuela, para. 184.



perform their professional duties without subjection or interference from various branches of public power, such as the executive, legislative, or any other governmental body⁶².

The foregoing is due to the fact that judges are the principal actors in defending the conventionality, constitutionality, and legality of the acts issued by the various public functions of a state. Therefore, ensuring judicial independence consequently fosters a proper exercise of checks and balances in a country that aspires to have a democratic life.

Therefore, the improper or excessive use by a State of lifting judicial immunity would seriously undermine the purposes of the principle of separation of public powers. As a result, the decisions made by justice operators could be affected by interference from various public functions external to the judiciary, which would weaken the rule of law that should prevail in any democratic country.

(iii) Regarding the Judge. The IACHR has determined that "*the State must ensure that judicial officials, prosecutors, investigators, and other justice operators have an adequate system of security and protection, taking into account the circumstances of the cases they handle and the location where they are working, which allows them to perform their duties with due diligence.*"⁶³ In the same vein, the Court has determined that it is the responsibility of each State to protect not only the judges but also their families from attacks, acts of intimidation, threats, and harassment, as failure to do so can seriously impair the exercise of judicial functions, thereby thwarting access to justice⁶⁴.

Thus, the improper lifting of judicial immunity undermines the principle of judicial independence, which can lead to a failure to guarantee personal and familiar protection for judges, having serious consequences for themselves and their families, as in matters in which the IACHR became aware of the assassination of Judge Patricia Lourival Acioli in Rio de Janeiro, Brazil, or the case in Colombia where, during the period from 1979 to 2011, 359 murders of justice operators were committed⁶⁵.

(iv) Regarding Users of the Judicial System: Judicial independence is understood as a foundational principle of the Fundamental Right to access to justice, as it must be ensured that the justice system is trustworthy and autonomous in its function, so that the governed may have confidence in such institution. Thus, the United Nations Special Rapporteur on the Independence of Judges and Lawyers notes that the absence of judicial independence directly affects the governed's

⁶² IACHR Petition to the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz ("First Court of Administrative Disputes") v. Venezuela, Case No. 12.489, November 29, 2006, para. 83.

⁶³ IACHR, Case of the La Rochela Massacre v. Colombia. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 297.

⁶⁴ <http://www.oas.org/es/cidh/prensa/comunicados/2013/055.asp>

⁶⁵ Corporación Fondo de Solidaridad con los Jueces Colombianos (FASOL), Banco de datos de víctimas. Acciones violatorias de 1979 a 2022. Disponible en: <https://corpofasol.org/banco-de-datos/>

ability to access justice, as such a situation generates mistrust and even fear, thereby deterring users of the judicial system from seeking justice⁶⁶.

Therefore, the administration of justice that is not independent carries the risk of failing to fulfill one of the fundamental principles set forth by the IACHR, which states that every person who has suffered a violation "*has the right to have competent state organs clarify the facts of the violations and establish the corresponding responsibilities through investigation and prosecution as provided for in Articles 8 and 25 of the Convention.*"⁶⁷ Consequently, the lifting of judicial immunity has clear implications not only for the judicial officer but also for the governed who seek to access the judicial system in order to present their disputes for resolution.

⁶⁶ United Nations General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/8/4, May 13, 2008, para. 34.

⁶⁷ IACHR. Case Barrios Altos v. Peru. Judgment of March 14, 2001. Series C No. 75, para. 48.