

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 64/2020**

Precautionary Measure No. 111-10¹

Rosa Díaz Gómez *et al.* regarding Mexico

September 28, 2020

Original: Spanish

I. BACKGROUND INFORMATION

1. On May 19, 2011, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) granted precautionary measures in favor of Rosa Díaz Gómez and other members of the Jotolá *ejido*, in Mexico (hereinafter, “Mexico” or “the State”). The request for precautionary measures indicated that Rosa Díaz Gómez and other members of the Jotolá *ejido* had been subject to attacks and threats by individuals since March 24, 2010. It was alleged that the measures adopted by the government were not effective, and that the situation of risk had increased with the release on bail of the alleged attackers in April 2011. The Inter-American Commission asked the State of Mexico to adopt any necessary measures to guarantee the life and physical integrity of Rosa Díaz Gómez, Carmela Sánchez Cruz, César Augusto Sánchez Gómez, Anita Méndez Aguilar, Marcos Moreno Méndez, Francisco Moreno Méndez, Enriqueta Gómez Santis, Maikon Pakal Sánchez Gómez, Sami Santiago Sánchez Gómez, Ricardo Sánchez Luna, Mario Sánchez López, Marcelina Arco Pérez, Débora Sánchez Arco, Marcela Sánchez Arco, Mario Sánchez Arco, Isaías Sánchez Arco, Hilaria Pérez Jiménez, Mario Josué Sánchez Pérez, and Saraí Sánchez Pérez, and that it reach agreement with the beneficiaries and their representatives on the measures to be adopted.

II. INFORMATION PROVIDED DURING THE TIME THE MEASURES HAVE BEEN IN FORCE

2. During the time the precautionary measures have been in force, the Commission has followed up on the situation of the beneficiaries by making requests for information. During 2011, 2012 and 2013 the Commission continued receiving information from the parties and monitoring the situation of the beneficiaries through requests for information. In February 2014, the State provided a report on the protective material measures that it had implemented in favor of the beneficiaries. In particular, the State reported that preventive patrols are carried out “repeatedly.” In addition, the State allegedly holds meetings with the beneficiaries and their representatives, to discuss the events that have led to the adoption of this precautionary measure. For their part, the applicants reported that the situation of risk has remained due to alleged new acts of violence against the beneficiaries. The Commission forwarded the communication from the representatives to the State and requested updated information from it. Subsequently, in May 2015, the State alleged that it was carrying out the relevant investigations on the facts reported by the representatives, and that the security actions in favor of the beneficiaries had been strengthened, particularly regarding Ms. Rosa Díaz Gómez, who allegedly has two escorts.

3. In March 2016, the Commission received information from the representatives informing that the police patrols had been suspended since April 2015 despite recent threats against the beneficiaries, especially directed at Ms. Rosa Díaz. Regarding the foregoing, the State argued that a new risk assessment has been scheduled on the beneficiary's situation. In November 2017, the representatives provided information confirming that the police patrols have been resumed, even though these are not constant.

¹Pursuant to the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Joel Hernandez, a Mexican national, did not participate in the debate or in the decision of this precautionary measure.

4. In January 2018, the State requested the lifting of these precautionary measures. According to its submissions, the situation of risk of the beneficiaries does not persist. Except for Ms. Rosa Díaz Gómez, the State reported that it did not have information from the representatives that could be of help to determine the risk of the other beneficiaries, at least since 2016. Regarding Rosa Díaz Gómez' situation, the State alleged that her protection was maintained with two escorts who had not reported any incidents of risk.

5. Subsequently, on June 11, 2019, the representatives indicated that “[...] we agree on the lifting of the precautionary measures for the majority of the beneficiaries, not for Ms. Rosa Díaz Gómez [...]”. The representatives also reported that, at present, the beneficiary has an escort 24 hours a day. On another note, the representatives presented general questions regarding the fact that agrarian issues have not been addressed since 2017.

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

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

7. The Inter-American Commission and the Inter-American Court of Human Rights have established repeatedly that precautionary and provisional measures have a dual nature, one being precautionary and the other being protective. As regards the protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations while they are being considered by the IACHR. Regarding the process of decision making and, according to Article 25(2) of the Rules of Procedure, the Commission considers that:

- a) “serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American System;
- b) “urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c) “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

8. With respect to the foregoing, Article 25.7 of the Commission's Rules of Procedure establishes that “the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25.9 establishes that “the Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force.” In this regard, the Commission should evaluate if the serious and urgent situation and the possible generation of irreparable harm, that caused the adoption of the precautionary measures, persist. Likewise, the Commission should consider if new situations that might meet the requirements set forth in Article 25 of the Rules of Procedure have subsequently arisen.

9. When analyzing this matter, the Commission recalls that when a State requests the lifting of a precautionary measure, it must present evidence and arguments sufficient to support its request.² In the same way, the representatives of the beneficiaries that want the measure to continue must present evidence of the reasons why.³ While the assessment of the regulatory requirements when adopting precautionary measures is carried out from a *prima facie* standard, the maintenance of such measures requires a more rigorous evaluation.⁴ In this sense, the burden of proof and argument increases as time goes by and there is no imminent risk.⁵

10. The Commission notes that these precautionary measures were granted in 2011 with the purpose of adopting measures aimed at protecting the life and personal integrity of the beneficiaries. During the monitoring of the implementation of these measures, from May 19, 2011 to date, the Commission has received information from both the representatives and the State on actions taken to protect the beneficiaries. However, since 2016 the Commission has not received updated and specific information on the beneficiaries, despite the information transfers made and the communications sent by the representatives on November 14, 2017 and June 11, 2019.

11. After the request to lift filed by the State in 2018, the Commission notes that the representatives indicated that “[...] we agree on the lifting of the precautionary measures for the majority of the beneficiaries, not for Ms. Rosa Díaz Gómez [...]” (vid. *supra* para. 5). However, no information was provided that could help to analyze a situation of risk for Ms. Rosa. On the contrary, the information available indicates that Ms. Rosa Díaz has a security scheme from the State. Despite having requested information from the representatives, the Commission does not have information regarding events of risk since 2016, after approximately 4 years. Even the last communication from the representatives, dating from 2019, does not refer to events of risk sufficient to indicate the existence of an imminent situation of risk pursuant to Article 25 of the Rules of Procedure.

12. In view of the foregoing, the Commission does not identify a serious and urgent situation of risk of irreparable harm to the beneficiaries’ rights, pursuant to the provisions in Article 25 of the Rules of Procedure. Therefore, taking into account the exceptional and temporary nature of precautionary measures,⁶ the Commission deems it appropriate to lift these precautionary measures.

IV. DECISION

13. The Commission decides to lift the precautionary measures in favor of Rosa Díaz Gómez, Carmela Sánchez Cruz, César Augusto Sánchez Gómez, Anita Méndez Aguilar, Marcos Moreno Méndez, Francisco Moreno Méndez, Enriqueta Gómez Santis, Maikon Pakal Sánchez Gómez, Sami Santiago Sánchez Gómez, Ricardo Sánchez Luna, Mario Sánchez López, Marcelina Arco Pérez, Débora Sánchez Arco, Marcela Sánchez Arco, Mario Sánchez Arco, Isaías Sánchez Arco, Hilaria Pérez Jiménez, Mario Josué Sánchez Pérez and Sarafí Sánchez Pérez.

² I/A Court H.R. Provisional measures regarding Mexico. Order of February 7, 2017, paras. 16 and 17. Available in Spanish at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ I/A Court H.R., Matter of Adrián Meléndez Quijano *et al.* Provisional Measures regarding El Salvador. Order of the Court of August 21, 2013, para. 22, and Matter Galdámez Álvarez *et al.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24.

14. The Commission highlights that, regardless of the lifting of these measures, in accordance with Article 1.1 of the American Convention, it is the obligation of the State of Mexico to respect and guarantee the rights recognized therein, including the life and personal integrity of Rosa Díaz Gómez, Carmela Sánchez Cruz, César Augusto Sánchez Gómez, Anita Méndez Aguilar, Marcos Moreno Méndez, Francisco Moreno Méndez, Enriqueta Gómez Santis, Maikon Pakal Sánchez Gómez, Sami Santiago Sánchez Gómez, Ricardo Sánchez Luna, Mario Sánchez López, Marcelina Arco Pérez, Débora Sánchez Arco, Marcela Sánchez Arco, Mario Sánchez Arco, Isaías Sánchez Arco, Hilaria Pérez Jiménez, Mario Josué Sánchez Pérez and Sarafí Sánchez Pérez.

15. The Commission recalls that the lifting of these measures does not prevent the representatives from submitting a new request for precautionary measures should they deem that they are in a situation of risk that meets the requirements established in Article 25 of the Rules of Procedure.

16. The Commission instructs the Executive Secretariat of the IACHR to notify the State of Mexico and the representatives of this resolution.

17. Approved on September 28, 2020 by: Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Julissa Mantilla Falcón and Edgar Stuardo Ralón Orellana, members of the IACHR.

María Claudia Pulido
Assistant Executive Secretary