

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 71/2020**

Precautionary Measure 199-09

Inhabitants of Human Settlement *Puerto Nuevo*, Callao regarding Peru¹

October 20, 2020

Original: Spanish

I. BACKGROUND INFORMATION

1. On December 27th, 2010, the Inter-American Commission on Human Rights (IACHR) requested the adoption of precautionary measures to protect the life and personal integrity of 300 inhabitants of *Puerto Nuevo*, Callao in Peru. According to the request, the lead storage and transportation activities have reportedly caused serious health issues in the 300 inhabitants of the Human Settlement *Puerto Nuevo*. These inhabitants now present high levels of lead in their blood. The applicants alleged that those affected by the contamination do not have adequate medical attention in order to receive diagnosis, treatment and prevention of their conditions. In addition, the applicants declared that the measures taken by the State in view of protecting the inhabitants of *Puerto Nuevo* from the effects of the contamination were reportedly not effective in reducing the risk they are exposed to.

2. In this sense, the Commission requested that the State of Peru adopt the necessary measures to suspend the lead storage and transportation activities in the Port of Callao until measures are taken to eliminate the environmental contamination, or until the population or the lead storage be relocated; take the necessary measures to carry out a specialized medical diagnosis for the beneficiaries and provide the corresponding and adequate specialized medical treatment for those whose diagnosis shows that they are at risk of irreparable harm to their personal integrity or life; and continue to take the necessary measures to mitigate the environmental contamination, among others.

II. INFORMATION PROVIDED DURING THE TIME THE PRECAUTIONARY MEASURE WAS IN FORCE

3. Upon granting the precautionary measure, the Commission continued to monitor the situation by requesting information from the parties. On December 21st, 2011, the Commission requested information from the parties regarding the precautionary measures adopted.² Between 2012 and 2019, on various occasions, the State requested to reevaluate the necessity of maintaining the precautionary measures in force as it considered that the procedural requirements are not met at present. For its part, the female representative submitted her observations on the information provided by the State. The last communication from the representative was received in 2017 and the last communication from the State was in 2019, reiterating its previous requests.

4. The State reported that, on two occasions in 2011, it asked the legal representative for the beneficiaries' identification documents, which were purportedly forwarded to the State in June 2011. On July 19th, 2011, the State reportedly formally contacted the legal representative to coordinate the medical screening and treatments in favor of the beneficiaries during 3 consecutive days. The State also included the methodology to be used and awaited her response. On July 23rd, 2011, the representative

¹ In accordance with the provisions in Article 17.2.a of the Commission's Rules of Procedure, Commissioner Julissa Mantilla, a Peruvian national, did not participate in the discussion or decision of this precautionary measure.

² In particular, regarding the specialized medical diagnosis to the beneficiaries; the provision of medical treatment; and the condition of the hermetic conveyor belt of minerals for the Port of Callao and the date foreseen for its operation.

stated that the beneficiaries were unwilling to undergo the tests as they had already undergone prior medical tests and requested that the appropriate medical treatments be provided. The representative indicated that if the State insisted on carrying out the tests, it would have to coordinate directly with each of the beneficiaries.

5. The State reportedly informed the representative its willingness. The State emphasized that the medical evaluation is necessary as the last blood test was carried out in 2009 and was only performed on minors, which means that not all 300 beneficiaries were screened. The State reported that in 2011 the mobile conveyor belts came into operation and the construction of the hermetic conveyor belt for minerals was implemented. In addition, the State reported the implementation of an environmental adaption and management program at the Port Terminal of Callao. According to the State, those measures allegedly reduced the impact generated by the activity.

6. On February 29th, 2012, the representative declared that the State did not suspend any activity and that the new blood screening that the beneficiaries have to undergo is a delaying action. The representative stated that the beneficiaries are not refusing the screening, but it is impossible to convince the 300 inhabitants given their current conditions and expect the tests to be performed in 3 days. In this sense, the representative requested that the medical tests be performed by a private entity separate from the State. The representative also mentioned that the State carried out a study called “Study on the Determination of Responsibility and Remediation in the Callao Concentrate Deposits during the Handling of Mineral Concentrates” by Ground Water International.

7. On August 19th, 2016, the State questioned the suspension of the lead storage and transportation, as this implies an exceedance regarding the universe of persons that were included in the request for precautionary measures before the IACHR, given that the beneficiaries are only 300 specific inhabitants, and not the whole population of the Port of Callao. The State further indicated that it would be of high technical complexity for the IACHR to examine and determine if the measures taken by the State eliminate the alleged contamination. In addition, the State indicated that the context is completely different from that at the time the precautionary measures were granted. In this regard, the State mentioned that the works were completed 2014 with *Consorcio Transportadora Callao*, by which the Mineral Concentrates Shipping Terminal was designed, financed, conserved and operated, with the aim of providing services to ships and cargo through the use of an Automated System for Receiving, Transporting and Loading the Concentrates intended to handle the transportation and loading of various mineral concentrates coming from the different deposits owned by third parties. The State declared that this concessionary work has already been completed and is in full operation, hence the request for precautionary measures regarding the suspension of lead transportation activities is devoid of purpose.

8. In 2012, the Ministry of Health of Peru indicated that the population’s exposure to lead is dynamic and multifactorial. Therefore, results from two years ago are not the most adequate to take into account when making a decision regarding specific treatment for each category. In 2016, the State recalled its willingness and openness, and even presented a timetable for the carrying out two medical screenings. Regarding the representative’ allegations on a study of minerals, the State indicated that it would not be appropriate to address that issue in the framework of this procedure.

9. On June 22nd, 2017, the representative indicated that the conveyor belt was not 100% operational and that trucks continue to be used at night to transport the lead concentrate mineral to the Port of Callao. In the same way, the representative mentioned that in October 2014 a group of youths from “*Escuela de Talentos*” (School of Talents) carried out a research study titled “Raising Awareness of the Effects of Lead Contamination on Children in Puerto Nuevo” which reportedly concluded that the

conveyor belt was still under construction and that the contamination persists. According to that report, a child (who was not included in the universe of beneficiaries) had 23% of lead in his blood. For the representative, the State should have, *inter alia*, sent a medical team to *Puerto Nuevo* to obtain blood tests and give the inhabitants more flexibility regarding screening dates.

10. On October 6th, 2017, the State reaffirmed the previously exposed considerations. In particular, the State specified that it could not coerce the beneficiaries to undergo the planned screenings. Lastly, the State questioned that the representative' argument was based on a text prepared by school students, which reportedly lacks technical or scientific support and does not have the necessary methodology to say that the study has technical credibility, among other aspects.

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

11. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with human rights obligations set forth in the Charter of the Organization of American States and, in the cases of the Member States which have not yet ratified the American Convention, the American Declaration of the Rights and Duties of Man. These general oversight functions are established in Article 18 of the Statute of the IACHR. 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.

12. The Inter-American Commission and the Inter-American Court on Human Rights 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 being considered the bodies of the Inter-American System. 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" refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c) "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

13. 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. Moreover, 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.

14. 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.³ In the same way, the representatives of the beneficiaries that want the measure to continue must present evidence of the reasons why.⁴ While the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, the maintenance of such measures requires a more rigorous evaluation.⁵ In this sense, the burden of proof and argument increases as time goes by and there is no imminent risk.⁶

15. In view of the above, the Commission notes that these precautionary measures were granted in 2010 in favor of 300 inhabitants of the Human Settlement *Puerto Nuevo*, Callao in Peru, as a consequence of the lead storage and transportation activities which reportedly caused health issues given the alleged high levels of lead in their blood.

16. Upon requesting information from both the State and the representative over the time, the Commission notes that since 2011 the State has sought to implement the precautionary measures. It also notes that according to the State, and despite having previously coordinated with the representative of the beneficiaries, those screenings and diagnoses have not been performed to date. In this regard, the State mentioned that carrying out the screenings was important with a view to determining the corresponding medical treatment, in needed, and because the most recent screenings were dated 2009 and were limited to the children of the area. In this framework, the Commission emphasizes that the representative indicated that [the State] could directly coordinate with each of the inhabitants and that, in any case, the medical studies and treatments should be provided by a private entity.

17. The Commission notes that the State indicated that it is not able to coerce the beneficiaries who do not wish to undergo the respective screenings. In that sense, and in respect for the will of the beneficiaries and their desire not to undergo medical tests, it is reasonable to understand why the State has not been able to carry out such medical evaluations taking into account their refusal over time.

18. Following the request filed, and reiterated over the time, to lift these precautionary measures, it is necessary to evaluate whether the beneficiaries continue to be at serious and urgent risk of irreparable harm. In this sense, the Commission notes that during the last 7 years it has not received actual information on the health situation of the beneficiaries, especially in view of the existence of a hermetic conveyor belt, environmental mitigation measures and the completion of the work in question since 2014. The above substantially changes the circumstances that previously called for the granting of precautionary measures, since lead is no longer stored or transported by truck.

19. In this regard, the Commission notes that the State reported on certain measures aimed at mitigating the environmental situation in the area, referring to a hermetic conveyor belt, as well as the completion of a construction in 2014 by which lead transportation activities were carried out. Even though the representative indicated in a very general, brief, documentarily unsupported manner that the conveyor belt was not adequately operating, mainly based on a paper by students, the Commission does not have actual and updated information regarding the health status of the beneficiaries. Therefore, it is not possible to analyze whether a “serious” and “imminent” risk to their rights exists. The questioning has been of a general nature without providing details or specific situations of the

³ 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

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

beneficiaries, despite requests for information by the Commission. In any case, such questions allegedly correspond to 2014, before the conclusion of the work, as reported by the State in 2016.

20. In this regard, the IACHR does not have elements sufficient to identify whether the situation persist, or on the contrary, whether it has worsened, despite the measures adopted by the State that were reported throughout this procedure. The representative has not provided documentary support, either of a technical or scientific nature, or even regarding health diagnoses of the beneficiaries,⁷ hence the Commission does not have information to analyze whether the risk persists in light of Article 25 of the Rules of Procedure, in the face of the new circumstances and the actions taken by the State.

21. With respect to the above, the Commission notes that the representative only submitted a study prepared by students in 2014, in which no technical or health information prepared by technical or health personnel was provided. Hence, it is not possible to infer that the health of the beneficiaries is at imminent risk at present. In this vein, for instance, the representative has not explained or detailed whether the beneficiaries currently have diseases or medical conditions that are not being treated in medical facilities, nor has she alleged that the beneficiaries are receiving inadequate medical care. This is relevant given that the factual circumstances analyzed in 2010 reportedly do not persist to date, when more than 9 years since the implementation of environmental mitigation measures and 6 years since the completion of the work have gone by. The Commission also notes that, despite several requests for information, the representative has not provided any specific information on the health of the beneficiaries sufficient to analyze their situation in light of Article 25 of the Rules of Procedure.

22. In summary, taking into account the fact that the State filed a request to lift these precautionary measures in 2012 and has reiterated it over 7 years, as well as the change in the circumstances that gave rise to the precautionary measures in 2010 and the general nature of the information offered by the representative over time, the IACHR does not identify elements sufficient to support compliance with the procedural requirements. In this sense, taking into consideration the exceptional and temporal nature of the precautionary measures,⁸ the Commission deems it appropriate to lift these precautionary measures.

23. In adopting this decision, the Commission avails itself of the opportunity to remind the State of Peru of its international obligations in the context of business activities in the light of Inter-American standards, in line with what is indicated in the 2020 report “Business and Human Rights: Inter-American Standards.”⁹

24. **DECISION**

25. The Commission has decided to lift the precautionary measures granted to 300 inhabitants of the Human Settlement *Puerto Nuevo*, Callao.

26. The Commission recalls that, pursuant to Articles 4 and 5 of the American Convention in relation to Article 1.1 of the same instrument, the State of Peru is under the obligation to respect and

⁷ See *inter alia*: IACHR, Resolution 52/17, PM 120/16 – Community of *Cuninico* and another, Peru, December 2, 2017. Available [in Spanish] at <http://www.oas.org/es/cidh/decisiones/pdf/2017/52-17MC120-16-PE.pdf>; and Resolution 38/17, PM 113/16 – Indigenous community “*Tres Islas*” in *Madre de Dios*, Perú, September 8, 2017. Available [in Spanish] at <http://www.oas.org/es/cidh/decisiones/pdf/2017/38-17MC113-16-PE.pdf>

⁸ I/A Court H.R., Case of Adrián Meléndez Quijano *et al.* Provisional Measures regarding El Salvador. Court order of August 21, 2013, para. 22, and Galdámez Álvarez *et al.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24

⁹ Available [in Spanish] at <http://www.oas.org/es/cidh/informes/pdfs/EmpresasDDHH.pdf>

guarantee the rights of the population of the Human Settlement *Puerto Nuevo*, Callao, notwithstanding the lift of these precautionary measures.

27. The Commission also recalls that the lift of the precautionary measures does not preclude the representative from submitting a new request for precautionary measures should she consider that they are in a situation of risk that meets the requirements set out in Article 25 of the Rules of Procedure.

28. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the State of Peru and the representative.

29. Approved on October 20th, 2020 by Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay; and Esmeralda Arosemena de Troitiño; commissioners of the IACHR.

María Claudia Pulido
Acting Executive Secretary