

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 13/2013**

Matter of leaders and human rights defenders of the Community of Nueva Esperanza
and the Regional Board of Florida Sector
regarding Honduras
MC 195-13
December 24, 2013

I. INTRODUCTION

1. On June 14, 2013, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "IACHR") received a request for precautionary measures submitted by the "Movimiento Amplio por la Dignidad y la Justicia" (MADJ)¹, among other organizations, seeking that the Commission require the Republic of Honduras (hereinafter "Honduras" or "the State") to protect the life and personal integrity of Adonis Romero and other persons identified in the documents provided (hereinafter "the proposed beneficiaries"), who are alleged leaders and human rights defenders in the "Community of Nueva Esperanza and the Regional Board of the Florida Sector", in the municipality of Tela, Department of Atlántida, Honduras. According to the request, the proposed beneficiaries find themselves in a risk situation due to their opposition against various mining projects that presumably been developed in the area.

2. On August 28, 2013, the IACHR requested information to the State. To the date of the adoption of this resolution, the State has not answered the request for information. The applicants provided additional information on October 1, 2013.

3. After analyzing the factual and legal arguments put forth by the applicants, the Commission considers that the information presented shows *prima facie* that the proposed beneficiaries are in a serious and urgent situation, as their lives and personal integrity are threatened and at severe risk. Consequently, in accordance with Article 25 of its Rules of Procedure, the Commission requests the State of Honduras to: a) adopt the necessary measures to guarantee the life and personal integrity of the 18 identified leaders and human rights defenders, from the Community of Nueva Esperanza and the Regional Board of the Florida Sector; b) agree on the measures to be adopted with the beneficiaries and their representatives; c) report on the actions taken to investigate the facts that gave rise to the precautionary measures, in order to prevent its repetition.

II. POSITIONS OF THE PARTIES

4. According to the request and the subsequent information provided by the applicants, there is currently a context of alleged physical aggressions, intimidations and threats against the leaders and human rights defenders in the Community of Nueva Esperanza and the Regional Board of the Florida Sector, due to the activities they presumably carry out in the defense of human rights and especially, the right to a healthy environment. The facts alleged by the applicants are summarized as follows:

- a) Since 2011, the inhabitants of the Community of Nueva Esperanza and the rest of communities that integrate the Regional Board of the Florida Sector, in the municipality of Tela, had supposedly expressed their rejection to the pretension of opencast mining exploitation by several company owners through the use force, allegedly for the extraction of iron oxide. According to the applicants, the company owners, with the support of the "National Police" and the Mayor of Tela, "had [allegedly] increased the intimidations, threats and aggressions against the community and the leaders of the social and ecclesiastical organizations".

¹ "Movimiento Ambientalista de Atlántida" (MAA) and "Equipo de Reflexión, Investigación y Comunicación de la Compañía de Jesús" (ERIC-SJ)

- b) Under an alleged context of aggression and violence against the leaders and human right defenders from the Community of Nueva Esperanza and Regional Board of the Florida Sector, the following facts are indicated: i) on June 3, 2013, in the context of the resistance against mining projects in the area, the inhabitants of the Community of Nueva Esperanza had been subject to aggressions, death threats and intimidation. These attempts had been allegedly perpetrated by members of the National Police. In particular, they indicate that a police officer had allegedly shot the proposed beneficiary, Mr. Enrique Castillo of 79 years old, and on 3 occasions, members of the community that were present had been shot; ii) on June 5, 2013, “strongly armed men”, along with members of the National Police, had allegedly guarded the area aimed for exploitation. Since that event, the death threats and intimidations against the leaders of the area had allegedly intensified. The applicants highlight that even a “*de facto* curfew [had been ordered] prohibiting the inhabitants to go out or reunite after 7 in the evening”; iii) on July 25, 2013, armed men, supposedly at the service of the mining company owners, had intercepted an international mission from the “Honduras Accompaniment Project” (PROAH), and had allegedly proceeded to intimidate and threaten them not to return to the area. Additionally, [the applicants] assure that they had been warned no to file any complaints regarding the events occurred. Afterwards, they had allegedly been abandoned in the community of New Florida in Tela, Atlántida.
- c) The applicants indicate that they had presented multiple complaints before the Office of the Public Prosecutor, due to the death threats, harassment and intimidations supposedly perpetrated by mining company owners, municipal servants, members of the National Police and other persons. Nonetheless, the applicants affirmed that they had not been notified with “any results obtained from the investigations made by the Office of the Public Prosecutor”. Likewise, supposedly no protective measures were provided on their behalf.

5. In virtue of the information provided, on August 28, 2013, the IACHR requested information from the State. To date, the State has not responded to the request.

6. On October 1, 2013, the applicants presented new reports, indicating that:

a) On September 12, 2013, it was presumably acknowledged that a mining company had allegedly filed “complaints against community leaders”, accusing them of “violating the rights of the company, obstruction of free circulation, deprivation of liberty and alleged threats”. The accused persons allegedly are members of the Board of the community of Nueva Esperanza and Martín Fernandez, member of the national management of the MADJ, among others. According to the applicants, “this fact clearly shows the pretension to criminalize the actions carried out by human right defenders and environmental leaders”.

b) The applicants state that the leaders and defenders continue to be subject to multiple threats and intimidations and that no protective measures had been adopted on their behalf. In particular, they indicate that “some of the persons threatened had been forced to abandon the community in which they have always lived”. They add that the risk level would be exacerbated, since the communities “in fact do not know who is formally responsible for all violations of their rights”.

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

7. The mechanism of precautionary measures is part of the Commission’s function of overseeing Member State compliance with the human rights obligations set forth in Article 106 of the Organization of American States Charter. These general oversight functions are set forth in Article 41 (b) of the American Convention on Human Rights, in Article 18 of the Commission’s Statute and the mechanism of precautionary measures is detailed in Article 25 of the Commission’s Rules of Procedure. According to this Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

8. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”) have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the

exercise of human rights. Regarding the precautionary nature, the measures have the purpose of preserving a legal situation while being considered by the IACHR. The precautionary nature aims to preserve those rights at risk until the petition in the Inter-American System is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the concerned State to fulfill the final decision and, if necessary, to comply with the reparations ordered. As such, for the purpose of making a decision, and in accordance with article 25.2 of its Rules of Procedures, the Commission considers that:

- a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a 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

9. In the present matter, the Commission notes that the State has not responded to the information request made by the IACHR on August 28, 2013, which was intended to receive its observations concerning the request for precautionary measures FILED and the protective measures that would have been eventually implemented, on the grounds of the situation alleged by the applicants. In this scenario, although the lack of response from a State does not constitute sufficient motive to grant precautionary measures, it does constitute an element of evaluation when making a decision. In this sense, the lack of information from the State prevents the Commission to learn about eventual measures implemented and, in general, its position on the alleged facts.

10. The Commission considers that the requirement of seriousness is met in the present situation, in view of the nature of the alleged acts of aggression, death threats, intimidation and harassment presumably perpetrated by members of the National Police, who are supposedly acting at the service of mining companies, against the leaders and human rights defenders from the Community of Nueva Esperanza and the Regional Board of the Florida Sector. In particular, the information provided indicates that State authorities are allegedly collaborating with "strongly armed men" who are supposedly taking actions to intimidate community leaders and human rights defenders whom allegedly opposed to the exploitation of natural resources inside their territories.

11. In its analysis of this requirement, the Commission notes that the information provided by applicants would be consistent with information, in general, the IACHR has received in the course of the hearings "Situation of human rights defenders human rights in Honduras"² "Prior consultation and mega projects in Honduras"³ and "Implementation of precautionary measures in Honduras"⁴. Especially, the possible critical situation that faces in Honduras those human rights defenders that work in the protection of natural resources. Similarly, the Special Rapporteur on the Situation of Human Rights Defenders of the United Nations, in its report on the situation of human rights defenders in Honduras, in 2012, said that "certain categories of human rights defenders are particularly at risk in Honduras, Included [a]s (...) indigenous and Afro-Honduran communities as well as those working on issues related to the environment and land rights"⁵.

² IACHR, thematic hearing "Situation of Human Rights Defenders in Honduras", 141^o Period of Ordinary Sessions, March 25, 2011.

³ IACHR. "Prior Consultation and Mega-Projects in Honduras". 149^o Period of Ordinary Sessions. October 28, 2013. Available in: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=132&page=1>

⁴ IACHR. "Implementation of precautionary measures in Honduras". 149^o Period of Ordinary Sessions. October 28, 2013. Available in: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=132&page=1>

⁴ IACHR. "Implementation of precautionary measures in Honduras". 149^o Period of Ordinary Sessions. October 28, 2013. Available in: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=132&page=1>

⁵ See: Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, December 13, 2012. Available in: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2247Add.1_English.pdf

12. Taking into consideration the information provided, evaluated as a whole, the Commission considers that it has been established *prima facie* that the rights to life and personal integrity of the leaders and human rights defenders from the Community of Nueva Esperanza and the Regional Board of the Florida Sector are at serious risk.

13. Regarding the requirement of urgency, the Commission considers that it is met, to the extent of the alleged acts of violence, which are continuously increasing by the passage of time. In this regard, the alleged worsening of the risk situation in the past months, and the supposed absence of measures seeking to address the situation, suggest that the proposed beneficiaries are in a situation of vulnerability.

14. On the requirement of irreparable harm, the Commission considers that is accomplished, to the extent that the possible effect to the right to life and personal integrity is the highest irreparable situation.

15. The Commission wishes to reaffirm the importance of the work of human rights defenders in the region. In this regard, the Commission has consistently indicated the importance of the work carried out by persons engaged in the promotion, monitoring and advocacy of human rights and the organizations to which many of them are affiliated and has analyzed the particular risk situation of the defenders of a healthy environment⁶. Also, the Inter-American Court has indicated that “States have the particular obligation to protect those persons who work in non governmental organizations, as well as to provide effective and adequate guarantees to human rights defenders to enable them to act freely, preventing actions that might limit or obstruct their work, since the work they carry out constitutes a positive and complementary contribution to the efforts put forward by the State in virtue of its obligation to respect human rights and to guarantee their free and full enjoyment by any person under its jurisdiction.”⁷ To the same extent, it has stated that “[t]he recognition of the work in defense of the environment and its link to human rights is becoming more prominent across the countries of the region, in which an increasing number of incidents have been reported involving threats and acts of violence against and murders of environmentalists owing to their work⁸”. Under these circumstances, the Commission considers that acts of violence and other attacks against human rights defenders not only affect the guarantees of any human being, but they undermine their fundamental role in society and plunged into helplessness all those people for whom they work.

IV. BENEFICIARIES

16. The request has been presented in favor of human rights defenders and leaders of the Community of Nueva Esperanza and the Regional Board of the Florida Sector, of whom the applicants identified 18 persons in the documents provided in the present procedure.

V. DECISION

17. In view of the above-mentioned information, the Commission considers that this matter *prima facie* meets the requirements of gravity, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests the Government of Honduras to:

- a) Adopt the necessary measures to guarantee the life and personal integrity of the 18 identified leaders and human rights defenders, from the Community of Nueva Esperanza and the Regional Board of the Florida Sector;
- b) Agree on the measures to be adopted with the beneficiaries and their representatives; and,

⁶ See IACHR. “Second Report on the Situation of Human Rights Defenders in the Americas.” OEA/Ser.L/V/II. Doc.66, December 31, 2011.

⁷ Inter-American Court of Human Rights, Request for Provisional Measures regarding Venezuela Matter of COFAVIC, Case of the Caracazo, May 28, 2010.

⁸ Inter-American Court of Human Rights, Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196.

c) Report on the actions taken to investigate the facts that gave rise to the precautionary measures, in order to prevent its repetition.

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

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

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

21. Approved on the 24 day of December, 2013 by: José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice President; Rosa Maria Ortiz, Second Vice President; Commissioners Felipe González, Dinah Shelton, Rodrigo Escobar Gil and Rose-Marie Belle Antoine.