
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 22/2021**

Precautionary Measure No. 395-09
Inhabitants of the Maho Indigenous Community regarding Suriname
March 2, 2021

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures pursuant to Article 25.9 of its Rules of Procedure. In particular, despite various requests for information made to the beneficiaries' representatives, the IACHR has not obtained sufficient information to determine whether these precautionary measures should remain in force. Notwithstanding, the IACHR will continue with the corresponding analysis in the framework of Case 12.897, if the prerequisites thereof are met.

II. BACKGROUND INFORMATION

2. On October 27, 2010, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures to the inhabitants of the Maho Indigenous Community in Suriname. The request for precautionary measures alleged that since 1990, the organization Stichtung Mohsiro and other third parties have been encroaching upon the 65 hectares of land that was reserved for the Maho Community in 1971. It was also alleged that on different occasions, the invaders destroyed the community's crops and threatened its members' physical integrity. The representatives noted the potential extinction of this community as a result of these actions. Therefore, the IACHR requested that the State of Suriname take the necessary measures to ensure that the Maho Indigenous Community can survive on the 65 hectares that have been reserved for it, free from incursions from persons alien to the community, until the Commission has decided on the merits of the petition.

3. On March 8, 2011, the IACHR decided to extend the subject matter of the precautionary measure by requesting that the State: a) guarantee that the Maho community can survive on the 65 hectares that have been reserved for it, free from the incursion of third parties until the IACHR has made a final decision on petition 1621-09; and b) ensure the survival of the community within its territory by supplying it with the food resources that are necessary given the destruction of their harvest.

III. SUMMARY OF THE INFORMATION PROVIDED DURING THE TIME THE PRECAUTIONARY MEASURES WERE IN FORCE

4. During the time the precautionary measures were in force, the Commission followed up on the situation by requesting information from the parties. On March 25, 2011, the representatives reported that third parties continue to encroach into the area and that the situation persists. At the time, the representatives asked that provisional measures be requested from the Inter-American Court of Human Rights.

5. On March 25, 2011, the State requested a timeline extension to send its response. On April 4, 2011, the State reported that land titles had been granted to third parties only on lands that are outside of the reserved 65 hectares. The State indicated that no extraction or road construction activities had taken place within those 65 hectares. However, the police had purportedly requested that the third

party involved suspend its activities for the sake of order and security, and not because there had been any violation of rights. The State also reported minor damage to the plots of land of a third party, and that this did not impact the community's capacity to feed itself. According to the State, the representatives have presented false and exaggerated information on alleged violations of traditional rights. Therefore, the State considered that the precautionary measures were based on incorrect factual circumstances.

6. The State explained that the representatives were trying to claim the land outside the reserved area. According to the State, this reserved area is sufficient for the 17 members of the community to maintain and develop their own ways of life. In this sense, the beneficiaries purportedly do not have traditional possession over the territory beyond the 65 hectares granted to them nor have they involuntarily lost ownership.

7. On May 11, 2011, the IACHR forwarded the information provided by the State to the representatives and requested additional information.¹ Due to a lack of response, on December 12, 2011, the IACHR reiterated its request while further requiring updated information. On January 24, 2012, the representatives requested a timeline extension, which was granted on January 27, 2012. On July 6, 2012, the IACHR insisted once again on its request for information to the representatives given the lack of response. The representatives did not respond to the requests of the IACHR.

8. The IACHR requested information from the representatives on another occasion, on May 29, 2019, in view of the lack of response. On July 3, 2019, the representatives requested that the deadline be extended to August 21, 2019. However, to date no response to the request for information has been provided. On October 1, 2020, the IACHR reiterated its request for information to the representatives, informing them that it would proceed to analyze whether the precautionary measures at hand should remain in force. To this date, the Commission has not received a response from the representatives.

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

9. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with human rights obligations established in the Charter of the Organization of the American States and, in the case of Member States that have not yet ratified the American Convention, in the Declaration of the Rights and Duties of Man. These general oversight functions are set forth in Article 18 of the Statute of the Commission, while the precautionary measures mechanism is described in Article 25 of the Commission's Rules of Procedure. 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.

10. 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 protective and precautionary. 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

¹ The Commission requested information concerning the following matters: 1) a visual aid that clearly describes the location of the Maho Community, the boundaries of the community's 65-hectare territory, and the locations of the encroachments by third parties; 2) current information regarding any recent encroachments that have taken place, including a reference to the State's position that "no damage was inflicted to crops allegedly planted by Petitioner on its land and no extraction or road building activities had taken place on the 65 ha territory of the Petitioner"; and 3) further details regarding the community's state of health, including any available reports regarding the alleged malnutrition suffered by its members.

purpose of preserving legal situations that are under the consideration of 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.

11. 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 must assess whether the serious and urgent situation and the risk of irreparable harm that gave rise to these precautionary measures still remain. In addition, it shall consider whether there are new situations that may comply with the requirements set forth in Article 25 of the Rules of Procedure.

12. When analyzing this matter, the Commission recalls that, according to the Inter-American Court, those representatives who request that the measures be kept in force must submit proof regarding their reasons.² While the review of the procedural requirements when adopting precautionary measures is made from a *prima facie* standard, keeping such measures in force requires a more rigorous evaluation.³ In this sense, the burden of proof and argument increases as time goes by and no imminent risk is identified.⁴

13. In view of the above, the Commission notes that precautionary measures were granted in 2010 on the grounds that the inhabitants of the Maho Indigenous Community were facing a series of risks. Such events were attributed to third parties that had encroached upon the 65 hectares granted to the community since 1971.

14. However, upon granting the measures, the Commission notes that the State questioned the factual circumstances that were taken into account for the granting of these precautionary measures. The State indicated that the events that served as grounds for the request occurred outside the 65 hectares reserved for the community, and that the damages that had occurred were minor. Furthermore, the State sustained that the rights of the community were not being violated. In view of those allegations, the Commission forwarded the report sent by the State to the representatives and requested specific information from them in order to assess the situation. Upon reiterating the request for information four times between 2011 and 2020, to date the Commission has yet to receive the information requested from the representatives or any type of information, beyond general questionings of the actions of the State, that would attest to concrete and current facts against the beneficiaries over the last 9 years in the framework of this procedure.

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

³ Ibidem

⁴ Ibidem

15. In light of the aforementioned, and despite having requested information from the representatives on several occasions, the Commission reiterates that it has no specific information regarding the current situation of the beneficiaries. Consequently, the Commission concludes that it lacks specific and current information sufficient to verify compliance with the requirements of seriousness, urgency, and risk of irreparable harm to the life and integrity of the beneficiaries.

16. In view of the above and considering the exceptional and temporary nature of the precautionary measures,⁵ the Commission deems it appropriate to lift these precautionary measures. The decision to lift this precautionary measure does not preclude the IACHR from assessing a new request in accordance with the requirements set forth in Article 25 of the Rules of Procedure.

17. Furthermore, the Commission notes that there is a petition within the framework of the Petition and Case System, currently under Case 12.897. In the framework of that petition, the IACHR identified at the admissibility stage a dispute over the ownership of certain areas, which would require an analysis on the merits and a ruling on a possible violation of the territorial rights of the indigenous community, and on the alleged violations of rights derived thereof. In this regard, in Admissibility Report No. 9/13 dated March 19, 2013, the Commission indicated:

48. Based on the information and documents provided by the parties, the IACHR considers that the facts alleged concerning the State's failure to take measures to protect the Maho Community's land and territory, and the alleged collaboration of State agents with third parties that explored for and exploited the natural resources on the Maho Community's traditional territory, could tend to characterize violations of the rights recognized in articles 3, 5(1), 13, 21 and 25 of the American Convention, read in conjunction with articles 1(1) and 2 thereof. The question raised by Suriname as to whether the Maho Community's relocation in 1960 severed the Community's traditional ties to its land goes to the merits of the case, and not the petition's admissibility. Therefore, the Commission considers that the petition does state facts that, if proven at the appropriate stage of the proceedings, could tend to characterize violations of the rights guaranteed by the American Convention, pursuant to Article 47(b) thereof.⁶

18. In this regard, the Commission will continue, as appropriate, with the analysis of that petition, insofar as the normative prerequisites under the terms of the Convention and the relevant procedural provisions are met.

19. Lastly, and as indicated by the Inter-American Court in various matters,⁷ the lifting of measures by no means implies that the State has effectively implemented the precautionary measures granted, nor does it imply that the State is relieved of its general protection obligations contained in Article 1.1 of the Convention, according to which the State is especially obliged to guarantee the rights of persons at risk and must promote the necessary investigations to clarify the facts, followed by any specified consequences. Moreover, in conformity with the Inter-American Court's own findings, the lifting or declaration of non-compliance with precautionary measures in no way presupposes a potential decision

⁵ 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.

⁶ IACHR, Report No. 9/13, Petition 1621-09, Admissibility, Maho Indigenous Community, Suriname, March 19, 2013. Available at <http://www.oas.org/en/iachr/decisions/2013/SUAD1621-09EN.doc>

⁷ See: I/A Court H.R. Case of Velásquez Rodríguez. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considerandum 3, and Matter of Giraldo Cardona et al. Provisional measures regarding Colombia. Order of the Inter-American Court of Human Rights of January 28, 2015, Considerandum 40.

on the merits of a case if it were to become known to the Inter-American System through a petition, nor does it constitute a prejudgment of any responsibility of the State for the incidents reported.⁸

V. DECISION

20. The Commission hereby decides to lift the precautionary measures granted to the inhabitants of the Maho Indigenous Community.

21. The Commission wishes to recall that, in accordance with Articles 4 and 5 of the American Convention, in conjunction with Article 1(1) thereof, the State of Suriname has the obligation to respect and guarantee the rights of the inhabitants of the Maho Indigenous Community, regardless of the Commission's decision to lift these measures.

22. The decision to lift this precautionary measure does not preclude the IACHR from reviewing a new request in accordance with the requirements set forth in Article 25 of the Rules of Procedure.

23. The Commission requests that the Executive Secretariat of the Inter-American Commission notify this resolution to the State of Suriname and the representatives.

24. Approved on March 2, 2021, by: Joel Hernández, President; Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay, Esmeralda Arosemena de Troitino, Edgar Stuardo Ralón Orellana and Julissa Mantilla Falcón, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary

⁸ See: I/A Court H.R. Matter of Guerrero Larez. Provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of August 19, 2013, Considerandum 16, and Matter of Natera Balboa. Provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of August 19, 2013, Considerandum 16.