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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 46/2021**

Precautionary Measure No. 207-12

Telma Yolanda Oqueli Veliz and her nuclear family regarding Guatemala<sup>1</sup>

June 2, 2021

Original: Spanish

**I. SUMMARY**

1. The Inter-American Commission on Human Rights (IACHR) decides to lift the precautionary measures at hand in favor of Telma Yolanda Oqueli Veliz and her nuclear family. At the time of making this decision, the Commission observes that Ms. Oqueli left the national territory “definitively” in 2018, leading the State to request the lifting of this matter. The Commission assessed the actions taken by the State in implementation of these measures, as well as the observations provided by the beneficiaries’ representation up to 2017.

**II. BACKGROUND INFORMATION**

2. On August 24, 2012, the IACHR requested the adoption of precautionary measures for Telma Yolanda Oqueli Veliz and her nuclear family, in Guatemala. As alleged in the request, Telma Yolanda Oqueli Veliz, a human rights defender and member of the community group Northern Front of the Metropolitan Area Peoples in Resistance (*Frente Norte del Area Metropolitana Pueblos en Resistencia*), reportedly received threats in the framework of opposition actions to the mining project. It is indicated that on June 13, 2012, Telma Yolanda Oqueli Veliz was shot in her back and was hospitalized for several days. It is also alleged that her brother was threatened. The IACHR requested that the State of Guatemala adopt the necessary measures to guarantee the life and physical integrity of Telma Yolanda Oqueli Veliz, consult and agree upon the measures to be adopted with the beneficiaries and their representation, and inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.

**III. INFORMATION PROVIDED DURING THE TIME THE MEASURES WERE IN FORCE**

3. During the time the precautionary measures were in force, the Commission has followed-up on the situation subject matter of these precautionary measures through the request for information from the parties. The Commission has made the corresponding forwarding of information between the parties.<sup>2</sup> On December 5, 2018, the State requested the lifting of these precautionary measures. On September 18, 2019, the IACHR requested information from the representation, particularly in relation to the State’s request to lift them. The representation has not provided a response to the IACHR’s request, and the deadlines granted have expired. The last communication from the representation is dated May 4, 2017.

**A. Information provided by the State**

4. On July 27 and October 24, 2012, the State reported on the proceedings carried out in the framework of the investigation process. It was indicated that the beneficiary has perimeter security at

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<sup>1</sup> In accordance with Article 17(2)(a) of the IACHR Rules of Procedure, Commissioner Edgar Stuardo Ralón Orellana, citizen of Guatemala, did not participate in the meeting or deliberation for this matter.

<sup>2</sup> The IACHR requested information from the parties on November 27, 2012, January 29, 2013, March 11, 2013, October 11, 2013, February 6, 2014, March 27, 2014, April 15, 2014, May 20, 2015, June 30, 2015, April 12, 2016, April 5, 2017, and July 28, 2017.

her house, and that it was agreed to add personal security and a fixed position security to her protection detail. On January 7, 2013, the State reported that, according to the risk analysis prepared by the Division for the Protection of Persons and Security (DPPS), the beneficiary's level of risk is "low" because she is outside the zone. However, her family had a "medium" risk level by remaining in San José del Golfo. In view of the above, it was recommended to grant personalized security to the beneficiary with 2 agents in eight-day shifts, a fixed security post at the place of house of the beneficiary's parents, with two security agents, and the review of the protection detail every three months for 6 months after a risk assessment. By December 14, 2012, the beneficiary was allegedly at her parents' house for financial reasons. Therefore, another risk assessment was conducted. The results indicated that the beneficiary's risk increased from low to medium; thus, it was decided to maintain personal, fixed position, and perimeter security.

5. On May 10 and 22, 2013, the State reported on the analyses made regarding the concerns raised by the beneficiary in relation to the rotation of security agents. Regarding this aspect, it clarified that the said provision sought to strengthen the beneficiary's security detail and avoid breach of its obligations. For these reasons, the Ministry of the Interior recommended that the security personnel be rotated every 30 days in order to prevent conditions that violate the beneficiary's safety in response to the events reported regarding the actions of the police institution. These modifications allegedly occurred as a result of a routine and operational police procedure.

6. On December 11, 2013, the State indicated that it continued to implement security measures in favor of the beneficiary and her nuclear family, which consist of personal, fixed position, and perimeter security. Moreover, the State expressed its concern that the precautionary measures are extended in time and are related to facts or circumstances unrelated to the aims and purposes of the precautionary mechanism. The State also asserted that the lack of results and clarification of the alleged criminal acts reported does not mean a breach of its obligations. In this regard, it made reference to the fact that "the precautionary measure acts within a limited time and space margin, by virtue of having been granted as a consequence of specific facts in a certain place (municipality of San José del Golfo)," which must be taken into account to avoid its denaturalization. Under this premise, the State requested that the period of compliance be evaluated from approximately one year, without major incidents. For its part, the Ministry of the Interior allegedly continues reviewing this measure in order to improve the mechanisms for monitoring and implementing protection details.

7. As indicated in the report of June 19, 2014, the Public Ministry continued to carry out proceedings in relation to the different investigation processes for the alleged crimes committed against the beneficiary.<sup>3</sup> In particular, it referred, *inter alia*, to the collection of information and evidence, interviews with the beneficiary and her relatives, expert opinions, analysis of reports and statements, and profiling. Regarding the protection measures implemented, the State indicated that it assigned four security officers in two protection details, which include personal security provided by two agents and fixed post security for the protection of her nuclear family provided by two agents installed at her house. The State emphasized that the precautionary measures mechanism has fulfilled its purposes, and that a significant reduction in risk has been identified. It was indicated that the situation placing the beneficiary at risk allegedly remains at a "medium" level according to the reports of January 21 and April 3, 2014. For this reason, the National Civil Police did not increase the number of security officers, nor provided vehicles.

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<sup>3</sup> Complaint for the alleged crime of attempted murder against the beneficiary in June 2012; complaint in relation to the right to demonstrate; and complaint for alleged gunshots fired in front of the beneficiary's residence.

8. On July 1, 2016, the State reported that the beneficiary and her family continued with two protection details, one for personal security and the other for perimeter security at her parents' house. Perimeter security was momentarily suspended because the beneficiary's family decided to change residence and were carrying out the corresponding coordination with the Police. For its part, the DPPS has been preparing a new risk assessment for the beneficiary as part of the follow-up to these measures. The state authorities clarified that they took the necessary measures to improve the beneficiary's security detail by responding to her requirements and replacing agents when the situation so warrants. Regarding the investigation processes, the State provided information on the proceedings carried out by the Public Ministry, which include interviews with witnesses and the collection of pertinent evidence and information.

9. In June 2017, the State reiterated the preventive security measures implemented in favor of the beneficiary and her family. Regarding the investigation of the reported facts, they informed on the proceedings carried out in the different processes to clarify such facts. Later, in December 2018, the State reported that on January 21, 2018, the beneficiary traveled, indicating that "she would not return to the national territory." In order to follow up on the matter, on February 2, 2018, the state authorities held a meeting with the representation, who confirmed that the beneficiary was out of the country, and undertook that, upon his returning, they would request the resumption of protection measures. However, as of that date, the personalized security had not been reactivated due to the lack of information on her return, or current location. Thus, the State requested that these measures be lifted.

#### **B. Information provided by the representation**

10. On December 12, 2012, and January 22, 2013, the representation alleged not being satisfied with the measures implemented by the State, since the protection details had not been improved. Particularly, it manifests its refusal to the possible rotation of security personnel, since the assigned agents have done a good job and have adapted to the dynamics of the family. In addition, the representation referred to the distrust it feels towards the Police personnel, due to their alleged involvement in the mining company. On January 31 and February 4, 2013, it was reported on the meetings held on December 14 and 19, 2012 with COPREDEH, the Ministry of the Interior and the National Civil Police, to analyze the situation around the enforcement of these measures. On that occasion, the willingness of the State to comply with the protection measures was recorded. The representation stressed that the State considered that this type of rotation is healthy to avoid information leaks or the generation of conditions that neglect security protocols. As indicated on November 27, 2013, the beneficiaries had 2 National Civil Police officers. The representation considered that the perimeter security implemented was not efficient, without providing details. It was also reported that the corresponding risk analysis was performed.

11. In April 2014, the representation stated that it is not the beneficiary's intention that the measure at hand be prolonged and classified as a perpetual measure. On this point, the representation indicated that the events placing the beneficiary at risk continued and added that there has been no progress in the investigation. Furthermore, the representation considered that the situation placing the beneficiary at risk is not limited to a municipality or territorial district. Therefore, the agents must accompany her when she carries out her activities of peaceful resistance.

12. It was reported that the beneficiary and her family had 4 agents (2 per shift). However, the need for two more officers per shift was alleged. In the case of perimeter security, the representation pointed out that this measure has not been implemented. For their part, they referred to an alleged act of vehicle persecution that occurred on January 14, 2014, to the detriment of the beneficiary, which took place as

she left the court in the company of her escort and children. Subsequently, a risk analysis of the beneficiary was carried out with a “high” risk result. At the time, the beneficiary requested that two more security agents be assigned per shift. However, this request was denied. On May 23, 2014, the representatives expressed their concern over the legal status of the beneficiary, particularly in the framework of her work as a defender of rights of the land and environment. On May 29, 2014, it was reported that the charges for the crimes of illegal detention, coercion and threats against the beneficiary were dismissed.

13. On March 18, 2016, the representatives indicated that the beneficiary was living in Guatemala City, and on March 9, 2016, she allegedly received a threat note: “We have you under surveillance. Your days are numbered (...)”. They also referred to other acts against her.<sup>4</sup> On December 19, 2016, the representation reported on a consultation meeting with COPREDEH, held on June 22, 2016. During the meeting, the beneficiary stated that the acts of intimidation continued. They also urged COPREDEH to strengthen the mechanisms to verify the performance of the DPPS agents. Regarding the criminal investigations, the representation referred to the proceedings carried out by the Public Ministry regarding the various complaints filed by the beneficiary.

14. Via a communication dated May 4, 2017, the representation indicated that the beneficiary and her family continued with the corresponding protection details. Regarding the results of the investigations by the Public Ministry, it was pointed out that it has not been possible to identify any potential perpetrators of the criminal acts. Additionally, they informed that on April 13, 2017, the beneficiary received a death threat by telephone which was reported to the Police. Finally, the representatives referred to the need of security agents with the required professionalism, capacity and responsibility to be in charge of the beneficiary’s security.

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

15. 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 irreparable harm to persons.

16. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary. Regarding their protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are under consideration by the IACHR. Regarding the process of decision making and according to Article 25(2) of the Rules of Procedure, the Commission considers that:

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<sup>4</sup> Regarding the alleged acts of harassment, the beneficiary’s nephew reported the presence of a parked vehicle near the beneficiary’s house. Similarly, on February 11, 2016, an unknown person was reported taking photos of the beneficiary while she was in a restaurant. Then, on March 15, 2016, the beneficiary stated that she had been followed by an unknown person in a vehicle. Regarding the threats, they indicated that on March 1, 2016, the beneficiary received a call from a man who told her that he was going to take her and her children’s heads.

- 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.

17. 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 periodically evaluate, at its own initiative or at the request of either party, whether to keep, modify or lift the precautionary measures in force.” In this regard, the Commission should assess whether the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures persist. Furthermore, it shall consider whether there are new situations that may comply with the requirements set forth in Article 25 of the Rules of Procedure.

18. In this matter, the Commission observes that the State has requested the lifting of these precautionary measures since 2018. In that sense, the request to lift such measures was forwarded to the representation in 2019 under the terms of Article 25(9) and no observations were received. Additionally, the Commission recalls that when a State requests the lifting of a precautionary measure, it must present sufficient evidence and arguments to support its request.<sup>5</sup> In the same manner, the representatives of the beneficiaries that want the measures to continue must present evidence of any reasons to do so.<sup>6</sup> While the assessment of the procedural requirements for the adoption of precautionary measures is carried out from a *prima facie* standard, keeping such measures in force requires a more rigorous evaluation.<sup>7</sup> In this sense, the burden of proof and argument increases as time goes by and there is no imminent risk.<sup>8</sup> Similarly, according to Article 25, subparagraph 11, the Commission may lift or review a precautionary measure when the beneficiaries or their representatives unjustifiably fail to provide the Commission with a satisfactory response to the requests made by the State for its implementation.

19. In light of the foregoing, the Commission recalls that these precautionary measures were granted in 2012 with a view for the State to adopting the necessary measures to guarantee the life and physical integrity of Ms. Telma Yolanda Oqueli and her nuclear family in Guatemala.

20. Upon granting the precautionary measures, and during the Commission’s follow-up, the State sent reports in which it specified the consultation measures implemented in favor of the beneficiary and her nuclear family. Among them, the Commission observes that a protection detail was implemented, conducting periodic risk assessments to define the security officers to be added; consultation meetings were held with state entities; and information was presented on the status of the open investigations, as well as the proceedings undertaken (see *supra* paras. 4-9). For its part, the representation confirmed the implementation of protection details, furnishing observations on the inclusion of some officers in the detail at some point in time; challenged some modifications to the protection details; considered that there has been no progress in the corresponding investigations; and stated that risk events continued to exist (see *supra* paras. 10-14). Nevertheless, and even though information was requested from the

<sup>5</sup> 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](http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf)

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

representation in 2019, the Commission has not received a response since 2017. It has been over 3 years since then.

21. After the follow-up, the Commission notes that, according to the State, the beneficiary traveled outside the national territory at the beginning of 2018, stating that she would not return to the country. In February 2018, according to the State, the representation confirmed her departure from the country and requested that the protection measures resume when she returns. Following such allegations, the corresponding file of the precautionary measures mechanism and the Commission has not received any other observation from the representation for a period of approximately 20 months since the last request for information, and the timelines granted have expired. Notwithstanding this, the Commission notes that in the framework of Case 14.316 related to this matter, in a communication dated July 21, 2020, the representation reported that the beneficiary “permanently left for Spain with her nuclear family in order to subsequently initiate an asylum application for her and her family in view of the unsustainable situation for them in Guatemala.”

22. In this regard, the Commission observes that it is not a matter of dispute that the beneficiary and her nuclear family have permanently left the country since 2018. In any case, the available information indicates that, if the beneficiary eventually decides to return to Guatemala, she may request that the corresponding protection measures be resumed, as noted in the meeting held between the State and the representation in 2018. When analyzing the situation of persons who have left the territory of a State that was requested to implement international protection measures, the Commission recalls what the Inter-American Court indicated, within the framework of provisional measures:

“Regarding the foregoing, it should be noted that the *effet utile* of the provisional measures depends on the real possibility that they could be implemented. Regarding the indicated beneficiaries, there is a material impossibility for the State to comply with the provisional measures over territories where it lacks sovereignty, without, on the other hand, the representatives having expressed the intention of the beneficiaries to return to the country. Additionally, there is no record of any new serious events that put their life and personal integrity at risk. For these reasons, the Court considers that it is appropriate to lift the provisional measures regarding these persons.”<sup>9</sup>

23. Considering the analysis carried out, and in response to the State’s request to lift the measures, the Commission understands that the factual circumstances that motivated the granting of these precautionary measures in favor of the beneficiary and her family have significantly changed with their “definitive” departure from the country. Thus, the Commission considers that, according to the information available, there is no situation whatsoever that sustains compliance with the requirements of Article 25 of the Rules of Procedure at this time, with over 3 years having elapsed since their “definitive” departure from the national territory. Thus, taking the exceptional and temporary nature of precautionary measures into account,<sup>10</sup> the Commission deems it appropriate to lift these precautionary measures.

24. Finally, the Commission emphasizes that the allegations regarding the development of the investigations correspond, at this time, to an analysis within the framework of the Case related to this

<sup>9</sup> I/A Court H.R. Matter of Luisiana Ríos *et al.* regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of August 22, 2018. Considerandum 4. Available [in Spanish] at: [https://www.corteidh.or.cr/docs/medidas/rios\\_se\\_10.pdf](https://www.corteidh.or.cr/docs/medidas/rios_se_10.pdf)

<sup>10</sup> 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 of Galdámez Álvarez *et al.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24

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matter. Given the substantive analysis required, the Commission will perform any corresponding analysis if the regulatory prerequisites exist.

## **V. DECISION**

25. The Commission decides to lift the precautionary measures granted in favor of Telma Yolanda Oqueli Veliz and her nuclear family in Guatemala.

26. The Commission emphasizes 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 Guatemala to respect and guarantee the rights recognized therein, including the life and personal integrity of Ms. Telma Yolanda Oqueli Veliz.

27. The Commission recalls that the lifting of these measures does not prevent the representation from filing a new request for precautionary measures should they consider that there is a situation that meets the requirements established in Article 25 of the Rules of Procedure.

28. The Commission instructs its Executive Secretariat to notify this resolution to the State of Guatemala and the representation.

29. Approved on June 2, 2021, by: Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay; Esmeralda Arosemena de Troitiño; and Joel Hernández; members of the Commission.

Tania Reneaum Panszi  
Executive Secretary