
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 77/2021**

Precautionary Measure No. 974-04
Ana Luz Chuga Tathuite *et al.* regarding Guatemala¹
September 26, 2021
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decided to lift the precautionary measures in favor of Ana Luz Chuga Tathuite, Magda Elena Chuga Tahuite and their next of kin in Guatemala. When making this decision, the Commission assessed the actions taken by the State in the framework of the implementation of these measures. Moreover, it emphasizes that the beneficiaries' representation has not provided a response to the IACHR in approximately 10 years, despite the various requests for information made and after being informed that the IACHR would analyze whether to keep these precautionary measures in force.

II. BACKGROUND INFORMATION

2. On September 17, 2004, the IACHR granted precautionary measures in favor of Ana Luz Chuga Tathuite, Magda Elena Chuga Tahuite, and their next of kin. The available information indicated that the beneficiaries were the target of death threats after filing a complaint for injuries caused to Ms. Chuga Tahuite, who was attacked by three men on June 19, 2004. It was reported that no measures were adopted to define the legal situation of the individuals allegedly responsible for the attack, despite the testimony of the person affected and that she and her family were in danger after filing the corresponding complaint. Upon analyzing the information presented, the Commission asked the State to adopt the necessary measures to protect the life and personal integrity of Ana Luz Chuga Tathuite, Magda Elena Chuga Tahuite, and their next of kin and to report on the actions taken to investigate the threats made against them.²

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 this situation by requesting information from both parties. Most recently, on December 15, 2011, the IACHR requested information from the parties with a view to determining whether these precautionary measures should remain in force. The beneficiaries' representation did not respond. On January 17, 2012, the State requested an extension, which was granted by the IACHR on February 1, 2012. On April 17, 2012, the State sent a response to the IACHR. On April 20, 2012, the IACHR asked the representation to provide observations on the State's response. The representation did not provide a response. On June 27, 2012, the State forwarded information. On July 13, 2012, the IACHR requested observations from the representation, no response was received. On August 3, 2012, the State submitted additional information. On April 19, 2013, and June 27, 2013, the IACHR requested information from the representatives in order to decide whether to keep the precautionary measures in force. The representation did not respond to

¹ 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.

² Available [in Spanish] at <http://www.cidh.org/medidas/2004.sp.htm>.

either request for information. On August 3, 2021, the request for information was reiterated to the representation, once again informing them that the IACHR would analyze whether the precautionary measures would remain in force. The representation did not provide a response.

A. Information provided by the State

4. The State indicated that since 2004 personal security has been provided to Ms. Chuga. In 2007, she decided to leave the country, and gave up her security measures. Although she was outside the country, the State reported that it coordinated perimeter security at her residence in order to protect her other family members. At the time, the precautionary measures fulfilled their objective of protecting Ms. Chuga and her family. By 2012, the State indicated that the criminal process for the events denounced by the beneficiary was ongoing. Lastly, the State requested that the precautionary measures be lifted.

5. In 2012, the State indicated that it is in constant communication with Ms. Chuga in order to accompany and monitor her security measures. The State reported that on April 15, 2012, it monitored the security measures of the beneficiaries at their home in Palín, Ecuintla municipality. On April 17, 2012, the State carried out a risk study of the beneficiaries, which found that risk conditions persisted. On June 1, 2012, another meeting was held to exchange information about their security status.

6. While the precautionary measures were in effect, the State sent its response and reported on the actions it took in favor of the beneficiaries. The most recent information indicates that for August 2012, the State considered its duty to continue providing the necessary guarantees in favor of Ms. Chuga Tahuite in order to protect her rights. The State reported that information was requested from the Public Prosecutor of the Office of Women, who was in charge of the investigation process. Given that the arrest warrant for the aggressor of Ms. Chuga Tahuite did not take effect, the State looked for national and international institutional alternatives to guarantee the rights of Ms. Chuga and her daughters. In this regard, the State referred to consultations with the National Registry of Persons to find out if there was any change in the legal status of the alleged aggressor; A meeting was held with the Presidential Commissioner for the Femicide Issue of the Private Secretariat of the Presidency on July 12, 2012, who expressed the need to adopt certain procedures; among others.

7. The State indicated that on July 13 and 14, 2012, Ms. Chuga was subjected to an act of harassment, when unknown persons with the "handle of a game weapon" knocked on the window of her bathroom. That same day, immediate coordination was carried out with the security forces of the National Civil Police (PNC), who showed up and provided immediate support and security. On July 16, 2012, an analyst from the COPREDEH went to the PNC facilities to have the complaint filed corrected, given that incorrect data had been allegedly registered. On July 18, 2012, another meeting was held and the possibility of providing the beneficiary with temporary shelter was evaluated. In a meeting with the beneficiary, the Presidential Commission against Femicide mentioned "the request to seek humanitarian asylum for the victims and their daughters." The State indicated that the Department of Support to the Victim of the Public Criminal Defense was requested to provide psychological support to Ms. Chuga and her daughters, thus offering professional support.

8. Finally, the State indicated that continuous accompaniment is being provided to Ms. Chuga, and perimeter security has been arranged at her residence. In order to comply with the latter, agents reportedly sign a notebook kept at her home.

B. Information provided by the beneficiaries' representation

9. Despite the various and repeated requests for information, the IACHR has not received a response or information from the representation.

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

10. 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 this Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid irreparable harm to persons.

11. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that the precautionary and provisional measures have a double nature, both precautionary and protective. 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. In the process of reaching a decision, 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" is determined by the information provided and 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.

12. 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 keep, modify or lift the precautionary measures in force." In this regard, the Commission assesses whether the situation of seriousness, urgency, and possible 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.

13. In analyzing the standing of the present case, the Commission recalls that while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard of review, keeping such measures in force requires a more rigorous evaluation³. In this respect,

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

when no imminent risk is identified, the burden of proof and argument increases over time⁴. The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, added to the lack of imminent risk, may lead to the lifting of international protection measures⁵.

14. In the present matter, the Commission recalls that the precautionary measures were granted with the purpose of protecting Ms. Chuga and her next of kin, after the attack she received in 2004 from three men and after having filed a complaint for that fact before the competent authorities in the country. Since then, the Commission has monitored the risk situation identified in the terms of Article 25 of the Rules of Procedure. When analyzing the implementation of the precautionary measures, the Commission takes into account that the State: (i) held consultation meetings with the beneficiary; (ii) implemented security measures in favor of the beneficiary; (iii) continued to implement security measures even during the period that the beneficiary was outside the country; (iv) carried out a series of steps to promote the internal criminal process; (v) offered psychological services to the beneficiary; (vi) reacted to the events that occurred in 2012 and adapted the security measures accordingly; and (vii) encouraged to keep the beneficiary informed about the actions implemented.

15. Thus, for the Commission, it is undisputed that the State implemented actions in favor of the beneficiary and her family within the framework of these precautionary measures. The Commission, in this sense, lacks elements of review that would allow it to question the actions taken by the State, since the beneficiaries' representation has not responded to the requests for information made. Although the Commission requested information on December 15, 2011, April 20, 2012, July 13, 2012, April 19, 2013, June 27, 2013, and August 3, 2021, it has not received any kind of response. Since then, approximately 10 years have passed without information from the representation.

16. The Commission deems it appropriate to recall that procedural activity by the representation in the framework of this proceeding is necessary in order to analyze the pertinent observations in a timely manner. In general, the representation must provide specific and detailed information to allow the IACHR to evaluate whether the precautionary measures should remain in force⁶. Otherwise, this Commission does not have sufficient elements to analyze whether the precautionary measures should be kept in force. As the I/A Court H.R. has indicated, if the representatives of the beneficiaries wish to maintain the measures in effect, they must present proof of reasons to this end⁷. The foregoing is even more relevant when the State requests the lifting of precautionary measures.

17. In view of the above, considering the temporary and exceptional nature⁸ of the mechanism of precautionary measures, the Commission considers that it is appropriate to lift the present measures as the lack of information for approximately 10 years does not allow the procedural requirements to be considered fulfilled. Although the representation was advised that the present precautionary measures would be analyzed to determine whether they should remain in force, the representation did not provide a response to the Commission.

⁴Ibid.

⁵Ibid.

⁶I/A Court H.R. Case of Coc Max et al. (Massacre of Xamán) v. Guatemala. Provisional Measures. Order of the Inter-American Court of Human Rights of February 6, 2019. Considerandum 12. Available [in Spanish] at http://www.corteidh.or.cr/docs/medidas/coc_se_02.pdf

⁷I/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 3. Available [in Spanish] at http://www.corteidh.or.cr/docs/medidas/rios_se_10.pdf

⁸I/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

V. DECISION

18. The Commission decides to lift the precautionary measures granted in favor of Ana Luz Chuga Tathuite, Magda Elena Chuga Tathuite, and their next of kin in Guatemala.

19. 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 the beneficiaries.

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

21. The Commission orders the Executive Secretariat of the IACHR to notify the State of Guatemala and the representation of this resolution.

22. Approved on September 26, 2021 by: Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay; Esmeralda Arosemena de Troitiño; and, Joel Hernández García, members of the IACHR.

Marisol Blanchard
Assistant Executive Secretary