
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 62/2022**

Precautionary Measure No. 114-06
Mayan Community-Sitio “El Rosario-Naranjo” regarding Guatemala¹
November 14, 2022
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) has decided to lift these precautionary measures in favor of the Sitio “El Rosario-Naranjo” in Guatemala Mayan Community. At the time of making the decision, the Commission assessed the responses issued by the State and the observations submitted by the representatives. Following the request to lift reiterated by the State over time, and the response submitted by the representatives, the IACHR has decided to lift these precautionary measures.

II. BACKGROUND INFORMATION

2. On July 14, 2006, the IACHR granted precautionary measures in favor of the Mayan Community-Sitio “El Rosario-Naranjo” identified as an archaeological area and monument, as well as a sacred location for those who practice Mayan spirituality in Guatemala. The information available indicated that Government Agreement No. 1.210 protects areas identified as archaeological sites. It was indicated that the “El Rosario-Naranjo” area has been owned by third parties who initiated actions to build a housing project on the protected land and, furthermore, commissioned a study that reduces the sacred area from six to three mounds (Mounds I, II, and III). In 2005, at the request of the company named LEXUS, the Directorate General of Cultural and Natural Heritage (*Dirección General de Patrimonio Cultural y Natural*), authorized construction in the areas adjacent to Mounds I, II, and III. However, the Supreme Court of Justice of Guatemala declared that the construction in “El Rosario-Naranjo” prevents the practice of religious and social celebrations of the Maya peoples which violates the Constitution of Guatemala, and therefore ordered the construction work on the site to be suspended. Despite that decision, construction has reportedly continued, on the grounds that the decision had not been notified. In response to a request for information issued by the IACHR prior to the adoption of the precautionary measures, the State indicated that, until a final and binding judgment was reached within the appeal for legal protection (*amparo*), it did not find any obstacles in adopting the precautionary measures. In view of the above, the Commission requested that the State of Guatemala adopt the necessary measures for the protection of the “El Rosario - Naranjo” Archaeological Center.²

3. In this matter, the Indigenous Legal Defense and the Center for Justice and International Law (*Centro por la Justicia y el Derecho Internacional*, CEJIL) act as representatives.

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

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 debate or deliberation of this matter.

² IACHR. Precautionary Measures 2006. Available at <http://www.cidh.org/medidas/2006.eng.htm>

4. During the time the precautionary measures were in force, the Commission followed-up on the subject matter of these precautionary measures by requesting information from the parties. On November 23, 2012, the State submitted a report and requested that the precautionary measures be lifted. On December 20, 2012, the Commission forwarded the State's response to the representatives. On January 22, 2013, the representatives requested an extension, which was granted on February 11, 2013. On February 23, 2013, the representatives presented a report. On April 9, 2013, the Commission forwarded the representatives' response, which was reiterated on June 13, 2013. On June 18, 2013, the State submitted a report reiterating its request to lift the precautionary measures. On August 14, 2013, the Commission forwarded the State's response to the representatives. On September 17, 2013, the representatives submitted an additional report. On November 27, 2013, the Commission forwarded the representatives' response to the State. On December 17, 2013, the State reiterated its request to lift the precautionary measures. On January 21, 2014, the Commission forwarded the State's response to the representatives. On February 28, 2014, the representatives requested a time extension, which was granted. On April 23, 2014, the representatives presented another report. On November 10, 2014, the Commission forwarded the representatives' response to the State in order to present "the observations it deems appropriate." The State did not provide any additional information.

5. On December 2, 2021, the Commission requested that the representatives present updated information "in order for the IACHR to examine the relevance of keeping the precautionary measures in force." On January 26, 2022, the representatives stated that they could not present updated information since they were reportedly unable to contact the beneficiaries, despite efforts to establish communication.

A. Information provided by the State

6. On November 23, 2012, the State reported that: (i) on August 27, 2008, the Archaeology Section carried out an inspection visit of the mounds of the Tulam Tzu or "El Rosario-Naranjo" archaeological site. From the inspection, it was verified that manual gardening works were carried out on Mound I, while no other work was carried out on the other two mounds, it was therefore verified that the limits of the Protection Agreement had been complied with; and (ii) on July 31, 2006, the summary trial process of the New and Dangerous Works Interdiction (*Interdicto de Obra Nueva y Peligrosa*), Number 259-2006, began. During this process, the Commercial Companies Lexus S.A. and Construtierra were sued, with the purpose of ordering the definitive suspension of the housing project. Lastly, it requests that the precautionary measures be lifted as it considers that the objective of the measure has been fulfilled, seeing as it complied with the order to guarantee the protection and predation of Mounds I, II, and III of the Mayan Community-Sitio "El Rosario-Naranjo"; and in that sense, the requirements of seriousness and urgency are not met.

7. On June 18, 2013, the State stated that on April 25, 2013, an inspection was carried out at the archaeological site where it was determined that: Mound I is in the vicinity of the only sector of the housing project that has been sold and is therefore in a quality state of preservation. The perimeter of the protection area surrounding Mound II has been used to dispose of waste material; however, the mound is in good conditions. Mound III had weeds and was in good condition. The Department of Cultural and Natural Heritage and the Sacred Places Unit (*Dirección de Patrimonio Cultural y Natural de la Unidad de Lugares Sagrados*) of the Ministry of Culture and Sport has not received a request to use the site. Regarding individuals' prohibition to access the Mounds, it is reported that Executive Order No. 26-97, Act for the Protection of the National Cultural Heritage, as amended by Executive Order No. 81-98, establishes internal mechanisms for the resolution of similar disputes. The Ministry of Culture and Sport has not received any request to access the archaeological site to perform Mayan ceremonies. In that sense, it could not be said that entry to the site had not been authorized if the obligation to submit an application has not been complied with. The State reiterated its request to have the precautionary measures lifted.

8. On December 17, 2013, the State reported that, on this date, a visit was made to the location. The security guards requested identification and the grounds for the visit. Once this requirement was met, access to the site was allowed without further hinderances. The Mounds are in a good state of preservation and no constructions have been carried out in the area delimited as a cultural heritage. The site management has assigned staff to keep the mounds in good conditions and perform the gardening work. In this regard, they consider that there is no serious and urgent risk, and therefore reiterate the request to lift the precautionary measures.

B. Information provided by the representatives

9. On February 23, 2013, the representatives reported that: (i) the Indigenous Legal Defense organization visited the site in January 2013 and was able to verify that unlike Mound I, Mounds II and III are not subject to any gardening work and are in a state of total neglect; (ii) Ministerial Agreement 048-2006, declares that Mounds I, II, and III are cultural heritage, archaeological sites, and sacred location and states that the owners of adjacent properties must facilitate access to the Mounds for the practice of Mayan spirituality; however, it does not establish a mechanism to ensure its effective compliance. Mayan spiritual guides and other individuals have attempted to enter the El Rosario-Naranjo site but have been denied access; (iii) the provisional remedy (*amparo*) granted on March 22, 2006, which ordered the provisional suspension of the Ministerial Agreement 048-2006 and the construction works, was partially revoked by the Constitutional Court on July 18, 2006 and declared inadmissible by the Supreme Court of Justice on April 2, 2008; (iv) regarding the process of Interdiction of New and Dangerous Works, it is reported that the process continues in its initial phase and has not progressed; (v) during recent years, construction work has continued for the streets and elements in the areas adjacent to the Mounds, which has caused them become isolated from each other; and (vi) in 2011, an inspection visit was carried out. During this inspection, it was verified that approximately 100 of the 242 houses provided for in the housing project have been built, some of which are already inhabited. The representatives consider that the precautionary measures should not be lifted.

10. On September 17, 2013, the representatives stated that: (i) the State should provide updated technical reports that allow to assess the actual state of the sacred and archaeological site “El Rosario-Naranjo”; (ii) the report presented by the State concludes that Mound I is in better condition due to the private company and this means that the State has allowed the company to dispose of the land according to its needs, without guaranteeing the integrity of the sacred site in its entirety; (iii) the site administration is exercised by the company Lexus S.A., whose employees have denied entry to the Mayan community spiritual guides; (iv) regarding the mechanisms to resolve the conflicts about access, the representatives report that these are not effective, as various legal measures have been attempted, some of which were declared inadmissible, others continue in the preliminary stage; and (v) they fear that the housing project may continue and occupy the entire sacred site. In view of the above, the representatives consider that the precautionary measures should be kept in force.

11. On April 23, 2014, the representatives reported that: (i) the State does not refer to specific measures it has undertaken to protect the archaeological site, the “improvements” made to the Mounds are the responsibility of the private company that owns the adjacent areas to the site; (ii) on several occasions, the owners of the housing project have denied Mayan spiritual guides access to the archaeological site -no details of time, manner, or place are presented-; and (iii) they request that the precautionary measures be kept in force.

12. On January 26, 2022, the representatives stated that they were unable to provide updated information as they were not able to contact the beneficiaries.

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

13. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general oversight functions are established in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the IACHR Statute. The mechanism of precautionary measures is set forth in Article 25 of the Commission's Rules of Procedure. In accordance with this Article, the IACHR grants precautionary measures in urgent and serious situations in which these measures are necessary to avoid irreparable harm to persons or to the subject matter of a petition or case before the organs of the inter-American system.

14. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter "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.³ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.⁴ To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and the vulnerability to which the persons proposed as beneficiaries would be exposed if the measures are not adopted.⁵ Regarding their precautionary nature, these measures have the purpose of preserving a legal situation while under consideration by the organs of the inter-American system. They aim to safeguard the rights at risk until the request pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations. In the process of reaching a decision, according to Article 25(2) of its 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 a violation of rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

³ See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela, Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#). Provisional Measures, Order of July 6, 2009, considerandum 16 (Available only in Spanish).

⁴ See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela, Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Case of Bámaca Velásquez](#). Provisional measures regarding Guatemala, Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional Measures regarding Mexico, Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 (Available only in Spanish).

⁵ See in this regard: I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 (Available only in Spanish); I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela, Order of the Court of February 8, 2008, considerandum 9; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#). Provisional Measures regarding Brazil, Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6.

15. With respect to the foregoing, Article 25(7) of the Commission's Rules of Procedure establishes that "[t]he 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 shall assess whether the serious and urgent situation and the risk of irreparable harm that caused the adoption of the precautionary measures persist. Moreover, the Commission shall consider if new situations have arisen that might meet the requirements set forth in Article 25 of the Rules of Procedure.

16. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, keeping such measures in force requires a more rigorous evaluation.⁶ In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.⁷ The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, in addition to the lack of imminent risk, may lead to the international protection measures being lifted.⁸

17. The Commission recalls that when a State requests that a precautionary measure be lifted, it must present sufficient evidence and arguments to support its request.⁹ By the same token, the representatives of the beneficiaries that want the measures to be kept in force must present evidence of any reasons in this regard.¹⁰ Similarly, Article 25(11) of the Rules of Procedure sets forth that 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.

18. In this matter, the Commission recalls that the precautionary measures were granted in 2006 in the light of the information available from parties, considering the State's position in this regard. The Commission granted the precautionary measures in favor of the Mayan Community-Sitio El Rosario-Naranjo. It was considered that the construction of a housing project adjacent to an archaeological and sacred area of the Mayan community in Guatemala, and given the spiritual relationship, posed a risk.

19. During the Commission's follow-up, the State submitted reports responding to the Commission's requests. Thus, the Commission notes that the State referred to archaeological site inspection visits were carried out on August 27, 2008; April 25, 2013; and December 17, 2013. During these visits, the state of the Mounds was determined. Furthermore, it referred to the site's possible accessibility for those who request it, which purportedly included the celebration of Mayan ceremonies.

20. Furthermore, the Commission notes that the State requested that these precautionary measures be lifted on three occasions: November 23, 2012; June 18, 2013; and December 17, 2013. In accordance with Article 25(9) of the Rules of Procedure, the request to lift the measures was forwarded to the representatives. On the occasion, the representatives opposed the lifting of the precautionary measures and questioned the measures adopted by the State until 2014, referring mainly to the lack of access to the area and the need for updated technical reports.

⁶ I/A Court H.R., Provisional Measures regarding Mexico, Order of the Court of February 7, 2017, paras. 16 and 17. Available [in Spanish] at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

21. Recently, in their last communication of 2022, the representatives indicated that they did not have updated information as there was no communication with the beneficiaries. The Commission also observes that, in recent years, none of the parties have provided information. The last communications from the parties with relevant information date back to 2013 and 2014. Consequently, following the State's repeated requests for lifting, and considering the representatives' response, the Commission does not have any elements of assessment to find any situation currently presenting a risk in accordance with Article 25 of the Rules of Procedure.

22. In this regard, and in light of the analysis previously carried out, the Commission considers that at this time it is not possible to find any situation that complies with the requirements of Article 25 of the Rules of Procedure. In view of the above, and taking into account the exceptional and temporary nature of precautionary measures,¹¹ the Commission deems it appropriate to lift these measures. Notwithstanding, the Commission recalls the State's obligations to protect indigenous territories, considering the various forms of expression that indigenous peoples have, one of which is the relationship through spiritual or ceremonial ties.¹²

V. DECISION

23. The Commission decides to lift the precautionary measures granted in favor of the Mayan Community-Sitio "El Rosario-Naranjo" in Guatemala.

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

25. Approved on November 14, 2022, by Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice-President; Esmeralda Arosemena de Troitiño; Joel Hernández García; Roberta Clarke; and Carlos Bernal Pulido, members of the IACHR.

Jorge Meza Flores
Assistant Executive Secretary

¹¹ 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

¹² American Declaration on the Rights of Indigenous Peoples. Article XVI. Indigenous spirituality. 1. Indigenous peoples have the right freely to exercise their own spirituality and beliefs and, by virtue of that right, to practice, develop, transmit, and teach their traditions, customs, and ceremonies, and to carry them out in public and in private, whether individually or collectively.