I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of Amílcar Méndez and his family unit in Guatemala. At the time of making the decision, the Commission observes that no facts or events that represent a risk to the life and personal integrity of the beneficiaries have been reported for approximately 12 years. The Commission takes into account the actions taken by the State to implement these measures. After the State’s request to lift the measures, and upon requesting observations from the beneficiaries’ representation, the Commission has decided to lift the precautionary measures.

II. BACKGROUND INFORMATION

2. On October 3, 2003, the IACHR requested the adoption of precautionary measures for Amílcar Méndez and his family unit in Guatemala. According to the request, Mr. Méndez was a human rights defender and legal representative of the Council of Ethnic Communities “Runujel Junam” (CERJ). From the information provided, it was found that on September 27, 2003, one of the members of CERJ, Mr. Eusebio Macario Chicoj, who was working on issues related to compensation for victims of the internal armed conflict in the community of Chulumal in Chichicastenango, was murdered. As a result, on September 30, 2003, Mr. Méndez reportedly received a threatening phone call. In view of the alleged situation of risk and the context of danger for human rights defenders in Guatemala, the IACHR requested the State to adopt the necessary measures to protect the rights to life and personal integrity of Amílcar Méndez.

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

3. During the time the precautionary measures have been in force, the Commission has followed up on the subject matter of these precautionary measures by requesting information from the parties. The Commission has provided the required information and requested information from the parties on May 20, 2011; June 7 and 29, 2011; August 1, 2011; May 6, 2013; June 17, 2013; August 1, 2013; March 27, 2014; January 19 and December 6, 2021; and August 14, 2023.

4. The State submitted observations on the following dates:

<table>
<thead>
<tr>
<th>Year</th>
<th>Date</th>
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<tbody>
<tr>
<td>2010</td>
<td>June 25</td>
</tr>
<tr>
<td>2011</td>
<td>June 16; July 14</td>
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<tr>
<td>2013</td>
<td>June 11; August 19</td>
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<tr>
<td>2022</td>
<td>March 4</td>
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5. The representation has submitted information on the following dates:

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1 In accordance with Article 17(2)(a) of the IACHR Rules of Procedure, Commissioner Edgar Stuardo Ralón Orellana, a Guatemalan national, did not participate in the debate or deliberation of this matter.


6. On August 19, 2013, the State requested that the precautionary measures be lifted. On January 19, 2021, the IACHR requested updated information from the representation pursuant to Article 25(9) of the Rules of Procedure. The representation provided information on January 30, 2021, and the State provided information on March 4, 2022. Subsequently, the IACHR requested updated information from the representation on August 14, 2023, in order to evaluate keeping these precautionary measures in force. However, no response has been received to date, and the granted deadline has since expired.

A. Information provided by the State

7. On June 25, 2010, the State reported on the need to conduct a risk analysis and define whether the security detail adopted in favor of the beneficiary is adequate to prevent any harm. However, the State indicated that the beneficiary has not cooperated in carrying out this analysis, and that he alleged that he experienced “harassment” from the agents who have tried to interview him. In addition, the State indicated that, on occasions, both the beneficiary and members of his family reportedly leave their security detail without informing anyone where they are going, in addition to treating agents poorly. Therefore, the State considered that these aspects, along with the lack of accessibility to provide interviews, defeat the purpose of the precautionary measure. In addition, the State indicated that the beneficiary filed only one complaint on March 5, 2008, regarding alleged threats.

8. Regarding the investigation into the homicide of José Méndez Dardon, the beneficiary’s son, [the beneficiary] became a complementary plaintiff in the criminal proceeding. The beneficiary reportedly participated in meetings with the Public Prosecutor’s Office to discuss the case. It was noted that he allegedly submitted requests for searches, inspections, and safety checks of several airport and civil aeronautics facilities, which were duly complied with. Similarly, the State listed a series of steps taken as part of the investigation process, between 2008 and 2009. The beneficiary allegedly collaborated with these instructions. In addition, the State reported that two people were tried in the Ninth Court of Narcoactivity and Crimes against the Environment (Décima Primera Sala de la Corte de Narkotráfico y Delitos contra el Ambiente) for the crimes of homicide and concealment of a body, one person was sentenced to 20 years in prison, and another person is pending arrest.

9. On June 16 and July 14, 2011, the State reported that on May 25, 2011, the beneficiary underwent a risk analysis by the Division of Protection of Persons and Security (División de Protección a Personas y Seguridad, DPPS). As for the security detail, perimeter security was allegedly provided to the beneficiary’s home and he had personalized security with two agents, who work rotations of eight days on duty and eight days off. Similarly, personalized security was provided to the beneficiary’s daughter-in-law, as she had two agents working in the same schedule as the one provided to the beneficiary. In addition, they indicated that the beneficiary had a patrol car that reportedly picks him up daily at his residence to protect him at his workplace and at his home. Furthermore, the beneficiaries were allegedly provided with the telephone number of the police station in charge of perimeter security for contact in case of an emergency. The authorities indicated that the aforementioned security detail is reportedly adequate taking into account the current risk situation of the beneficiary and his daughter-in-law.

10. On June 11, 2013, the State reported that personal security services were provided to the beneficiary and his family since January 23, 2006, through the Protection of Persons and Security Division (División de Protección a Personas y Seguridad) of the National Civil Police. According to the corresponding authorities, and in accordance with the evaluation carried out, the beneficiary’s risk is reportedly low. During the time he has received protection measures, there has been no information of incidents that place the beneficiaries at risk. In this sense, the State requested that these precautionary measures be lifted. In particular,
the State alleged that the authorities have investigated all the complaints filed by Mr. Amílcar Méndez, including the last complaint of January 2011. On September 26, 2011, they summoned the beneficiary to inform him of the investigation that had been carried out. However, the beneficiary did not appear before the corresponding authority. It was indicated that the Public Prosecutor’s Office informed the beneficiary that it would proceed to dismiss the criminal proceeding. For its part, it emphasized that the representation has not provided specific information on possible acts that would threaten the beneficiary’s life, nor has it been accredited in an accurate manner or by any evidentiary means regarding situations that could allegedly violate the integrity of the beneficiary. It also takes into account that it only refers to situations that are not related to the facts that gave rise to the granting of the precautionary measure.

11. On August 19, 2013, the State reported that on July 7, 2013, it proceeded to modify the security detail of the perimeter security in favor of the beneficiaries, in accordance with the corresponding internal administrative procedure, which was personalized, and carried out by studies by trained personnel, and considering that their level of risk were reported as low as no recent threats to the integrity and life of the beneficiary and his family had been identified. It also pointed out that the temporary nature of the current measure, together with the effective compliance by security agents, has changed the situation of this measure. Therefore, it was concluded that perimeter security is the most appropriate to provide protection in favor of the beneficiaries. Due to the foregoing, the State considered that the urgency has been resolved as the threatening events once experienced by the beneficiary at the time no longer exist, nor have there been any reports of attempts against his life and integrity, and therefore reiterated its request to lift these measures.

12. On March 4, 2022, the State submitted updated information regarding the precautionary measures. For the protection of the beneficiary, the State reported that it has provided perimeter security since October 15, 2003, and reiterated that it has provided personal security to the beneficiary and his family since January 23, 2006. In this regard, it pointed out that, after the granting of the precautionary measures, there were no incidents that put the beneficiary’s life or personal integrity at risk. According to the State, this is evidence of the effectiveness of the measures adopted by the Protection of Persons and Security Division of the National Civil Police. The State reported that on May 19, 2013, a risk analysis was performed on the beneficiary. It allegedly determined his risk level to be low, and therefore recommended the modification of the personal security detail and the return to the perimeter security detail.

13. In addition, the State alleged that more than 18 years have passed since the precautionary measures were granted and, considering the non-existence of the elements of urgency, seriousness, and irreparable harm, since the beneficiary only referred to circumstantial situations, there is no need to maintain the precautionary measures in force. In this regard, the State argued that to date no act of threat or aggression against the beneficiary or any family member has been reported, and the seriousness of the situation therefore no longer exists since 2013. Since the modification of the security detail in 2013, there is no record of incidents against the beneficiaries, and there are no requests from the beneficiary to implement a new security detail. In this sense, the State argued that it has implemented a security detail in accordance with the level of risk of the beneficiary and his family. Moreover, they added that several years have already elapsed with no record of threats or intimidation against the beneficiary and his family, which would allow it to conclude the effectiveness of the measures adopted. Therefore, the State reiterated its request to lift this precautionary measure.

B. Information provided by the representation

14. On March 2 and May 16, 2011, the representation argued that the quality and level of security was allegedly not consistent with the risk levels of the beneficiary and his family. According to the information provided, there was no security plan or strategy for the family and the security agents did not have the capacity to provide personal security. The applicant also referred to several “incidents,” particularly referring to the theft of the agents’ weapons. They add that they allegedly made calls for help and the agents were not present at the scene. They also reportedly received threatening phone calls, the most recent being on January 29, February 3 and 14, 2011. In view of the above, the representation requested that the State to appoint qualified
and professional personnel with whom they can communicate directly regarding their safety and in the event of an emergency. Subsequently, on May 16, 2011, the representation referred to the murder of the beneficiary’s son in 2007 and of the beneficiary’s nephew in 2010.

15. On June 6, 2011, the representation reiterated the lack of a plan or strategy for their safety. Regarding the need to assess the conditions of seriousness, the representation considered that the murder of the beneficiary’s son in 2007 is a direct threat to the beneficiary himself. Regarding the security detail, the representation emphasized the challenges presented by the security agents such as lack of consistency and training, lack of resources to provide the beneficiaries with an adequate means of communication, as well as lack of capacity and professionalism during the performance of the service. In addition to the above, the representation stated that it considers it crucial that those responsible for the risk events be investigated and prosecuted. According to the representation, the latest threats against the beneficiary were publicly denounced. However, allegedly neither the Public Prosecutor’s Office nor the National Police documented it, nor did they comply with their obligation to investigate and punish those responsible. On the other hand, the representation clarifies that the complaints that were filed did not have any outcome. In addition, a series of negligence was alleged with respect to the investigations into the murder of the beneficiary’s son in 2007, such as the alleged loss of chain of custody of evidence and evidence to clarify the facts.

16. On February 14 and May 19, 2013, the representation referred to the complaints filed on behalf of third parties by the beneficiary against the National Civil Police and the Army. The representatives indicated that the beneficiary is allegedly providing legal advice and accompaniment to victims of human rights violations by members of the security forces. For their part, they expressed concern regarding the request to lift these measures presented by the State, given that the beneficiary and his family are in an alleged state of complete vulnerability that expose their lives and personal integrity, given the context that human rights defenders in Guatemala are experiencing. Furthermore, the beneficiary allegedly also continues in his fight for justice for the criminal investigation of the masterminds of the murder of his son. Therefore, the representation requested that the precautionary measures remain in force.

17. On July 11, 2013, the representation reported on the beneficiary’s notification of “cancellation of the personalized security service” by the state authorities. In this regard, they stated that the beneficiary has been accompanying high-impact cases committed during the internal armed conflict and others related to sensitive issues involving public officials for more than 30 years. In this regard, the representation referred to one of the cases in which the beneficiary allegedly provided accompaniment and legal advice.

18. Lastly, on January 29, 2021, the representation alleged that the risk against the beneficiary and his family persists for various reasons given the political context of the country, but did not provide further details in this regard. They point out that the last governments have been formed by former members of the Army, who have activated their intelligence units to persecute, recriminate, threaten, and attack human rights defenders. In particular, it was indicated that the beneficiary had recently reactivated several transitional justice cases. For his part, the beneficiary alleged that high-ranking military officers were involved in the murder of his son in 2007, and that the murder was not properly investigated by the competent authorities.

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

19. 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.
20. 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.\(^4\) Regarding the protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights.\(^5\) 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.\(^6\) 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 petition 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 reparation. 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 injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

21. 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 “[t]he 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 should assess if the serious and urgent situation and possible 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.

22. 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.\(^7\) In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.\(^8\) The Inter-American Court has indicated that the passage of a reasonable period of time without any

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\(^8\) Ibid.
threats or intimidation, in addition to the lack of imminent risk, may lead to the international protection measures being lifted.\(^9\)

23. 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.\(^10\) By the same token, the representatives of the beneficiaries that want the measures to continue must present evidence of any reasons why.\(^11\) In this sense, the granting and keeping precautionary measures in force are of a precautionary or protective nature, and are therefore subject to compliance with the requirements established in Article 25 of the Rules of Procedure.

24. The Commission recalls that these precautionary measures were granted in 2003, in order for the State to adopt the necessary measures to guarantee the life and physical integrity of the beneficiary Amílcar Méndez and his family in Guatemala. In the matter at hand, the Commission observes that the State has requested to lift the precautionary measures at hand since June 2013 and, most recently, reiterated this request on March 4, 2022. In that sense, the request to lift was forwarded to the representation in the terms of Article 25(9).

25. Following the granting of the precautionary measures, and during the Commission’s monitoring, the State submitted reports in which it referred in detail to the protective measures adopted in favor of the beneficiary and his family. Along these lines, perimeter security has been provided to the beneficiary’s residence since October 2003, as well as personal security in favor of the beneficiary and his daughter-in-law since January 2006 (see supra paras. 10 to 12). Moreover, the State indicated that it has investigated threats against the beneficiary in 2011, and indicated a series of diligence carried out in this regard (see supra para. 10). According to the State, the beneficiary’s situation has changed, considering the security plans adopted over the years and the fact that the threats have not persisted after approximately 10 years, since 2013 (see supra para. 12).

26. For its part, the representation confirmed the implementation of protection plans, and in 2011 raised questions about the lack of a security plan in favor of the beneficiary, as well as the lack of training of state agents to provide security (see supra paras. 14 and 15). It also alleged that the murder of the beneficiary’s son in 2007 had not been properly investigated by the competent authorities (see supra para. 18). With regard to the State’s request to have the measures lifted, the representatives stated that the situation that placed the beneficiary at risk continues (see supra paras. 16). However, upon requesting updated information from the representation on the beneficiary’s situation in January 2021, the latter referred only to general and contextual aspects concerning the socio-political situation of the country, as well as the advisory work carried out by the beneficiary in his capacity as a human rights defender (see supra para. 18). In addition, following a request for updated information in May 2023, no updated information has been submitted regarding the situation of the beneficiaries (see above para. 6).

27. However, the Commission notes that there is no sufficiently concrete information on specific threatening events or facts against the beneficiary and his family, despite the fact that updated information has been requested. The Commission recalls that it did not receive a response from the representation after its last request for updated information in 2023. It should be noted that the information provided by the representation since 2013 refers only to the fact that the beneficiary continues his work as a human rights defender, but has not presented information on any situation that would have placed him at risk in the last 10 years. In this regard, the Commission understands that the beneficiary reportedly continues with his work as a human rights defender. However, no specific or detailed information has been presented on events that could be qualified as a risk under the terms of Article 25 of the Rules of Procedure. In this regard, the Commission

\(^9\) Ibid.
\(^10\) Ibid.
\(^11\) Ibid.
observes that, for the analysis of specific situations of risk, it is necessary to have information on a particular situation that justifies compliance with procedural requirements. In relation to the importance of specific information on the situation posing a risk, the Inter-American Court has understood that “the passage of a reasonable period of time without threats or intimidation, coupled with the lack of imminent risk, may lead to the lifting of the provisional measures.”

28. The Commission verifies that the State has adopted protection measures in favor of the beneficiary and his daughter-in-law since 2003. In addition, in 2013 the personalized security detail was modified to a perimeter security detail following an evaluation that determined a low risk and in light of the lack of incidents in recent years. From the information received by the parties, no acts of threats, intimidation, or violence against the beneficiary and his family unit have been identified since January 2011. Despite the request for information issued by the IACHR, the representation did not justify a specific situation placing the beneficiary at risk, or subsequent acts of threats, intimidation, or violence against the beneficiaries. In addition, they did not present specific elements to consider that the protection measures adopted are allegedly insufficient. Therefore, 20 years after the granting of the precautionary measures and 12 years after the last incident reported, in light of the temporary nature of the precautionary measures, the Commission does not have elements of assessment that would allow it to identify, at present, that the measures adopted by the State have not been adequate and that a situation presenting a serious and urgent risk persists.

29. Notwithstanding the foregoing, 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 Mr. Méndez. With regard to the investigations corresponding to the incidents related to the precautionary measures, the Commission recalls the ineludible duty of the State of Guatemala to comply with the corresponding investigations and to act with due diligence in accordance with the terms of the American Convention and applicable international standards.

30. Considering the analysis carried out, and taking into account the State’s request to lift the precautionary measures, the Commission understands that the factual circumstances that led to the granting of these precautionary measures in favor of the beneficiary and his family have changed significantly since 2011, that is, after approximately 12 years have elapsed. In view of the foregoing, the Commission considers that, according to the information available, it is not possible to identify a situation that would support compliance with the requirements of Article 25 of the Rules of Procedure at this time. In view of the above, and taking into account the exceptional and temporary nature of precautionary measures, the Commission deems it appropriate to lift these precautionary measures.

V. DECISION

31. The Commission decides to lift the precautionary measures granted in favor of Amílcar Méndez and his family unit in Guatemala.

32. 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.

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

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34. Approved on November 30, 2023, by Margarette May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Roberta Clarke, Second Vice-President; Julissa Mantilla Falcón; Carlos Bernal Pulido; and José Luis Caballero Ochoa, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary