

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 85/2020**

Precautionary Measure No. 807-18
Yaku Pérez Guartambel regarding Ecuador
November 4, 2020
Original: Spanish

I. BACKGROUND

1. On August 27th, 2018, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) granted precautionary measures in favor of Yaku Pérez Guartambel, in Ecuador (hereinafter “Ecuador” or “the State”). In the request for precautionary measures, it was alleged that the beneficiary was facing a situation of risk due to his work as a defender of the rights of indigenous peoples and the environment. After analyzing the factual and legal allegations made by the parties, the Commission considered that Yaku Pérez Guartambel was in a serious and urgent situation, given that his rights to life and personal integrity were at risk of irreparable harm.

2. Consequently, based on Article 25 of the Rules of Procedure, the Commission requested that Ecuador: a) adopt the necessary measures to guarantee the rights to life and personal integrity of Yaku Pérez Guartambel; b) adopt the necessary and culturally appropriate measures to guarantee that Yaku Pérez Guartambel can continue to carry out his duties as a human rights defender without being subject to threats, harassment or acts of violence in the exercise thereof; c) agree on the measures to be implemented with the beneficiary and his representatives; and d) report on the actions taken to investigate the alleged events that gave rise to the adoption of this resolution, and thereby avoid their repetition.¹

II. INFORMATION PROVIDED DURING THE TIME THE PRECAUTIONARY MEASURE WAS IN FORCE

3. During the time the precautionary measures were in force, the Commission monitored the situation by making requests for information to the parties. The State has requested the lifting of these measures since 2018. The latest written communications from the State and the beneficiary’s representatives date back to 2019.

4. In September 2018, the State informed that the beneficiary was enrolled in the “System for Protection and Assistance to Victims, Witnesses and Other Participants in the Criminal Process” (SPAVIT), “with an intercultural approach.” However, the beneficiary reportedly did not agree to be enrolled in the System, due to his disagreement regarding part of the rules imposed on those involved, which allegedly include, *inter alia*, “not to leave the country without the SPAVIT’s authorization, refrain from giving declarations through any media outlet, and refrain from posting on social networks.” Despite the above, the State reported that it maintains a dialogue with the beneficiary to arrange the necessary protection measures and has initiated proceedings to meet with him and his representatives.

5. In March 2019, the beneficiary indicated that the precautionary measure “had benefited him very much.” Mr. Pérez Guartambel further noted that, due to his position as a leader, he had not been able to

¹ IACHR, Resolution 67/18, PM 807/18, Yaku Pérez Guartambel, Ecuador, August 27, 2018. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/67-18MC807-18-EC.pdf>

adopt the SPAVIT rules, therefore he did not agree to participate in the system. Moreover, the beneficiary reported that, in March 2019, some people had broken a window of his car, but they had not stolen various devices from the car. Lastly, he expressed satisfaction regarding the frequent visits by the national police to his home.

6. On July 15th, 2019, the State reported that the beneficiary had been elected, in April 2019, to the position of first authority of the executive branch of the Decentralized Autonomous Government of the province of Azuay. In this regard, the beneficiary had allegedly become an authority of the State, and the Operational Subdirectorate for Security and Protection (*Subdirección Operativa de Seguridad y Protección*) of the National Police was in charge of his security. On June 6th, 2019, that body allegedly informed that a risk assessment had been prepared for the beneficiary, and that a police officer had been assigned to him as immediate security. However, the beneficiary allegedly stated that “for now, he did not need security by the National Police, nor the activation of the security button (*botón de seguridad*) [...] and that later, if he required police security, he would request it according to the circumstances [...]”

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

7. 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 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 an irreparable harm to persons.

8. 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, precautionary and protective. As regards the 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 being considered by the IACHR. Regarding the process of decision making and, according to Article 25(2) of the Rules of Procedure, the Commission considers that:

- a) “serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American System;
- b) “urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c) “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

9. With regard to the abovementioned, Article 25.7 of the Commission’s Rules of Procedure establishes that “the decisions of granting, extending, modifying or lifting precautionary measures, should be adopted through reasoned resolutions.” Article 25.9 establishes that “the Commission shall evaluate periodically, on its own initiative or upon request from one of the parties, whether to maintain, modify or lift precautionary measures in force.” In this regard, the Commission must evaluate if the serious and urgent situation and the possible generation of irreparable harm, that caused the adoption of the precautionary measures, persist. Moreover, the Commission must consider if new situations that might meet the requirements set forth in Article 25 of the Rules of Procedure have subsequently arisen.

10. Furthermore, the Commission recalls that when a State requests that precautionary measures be lifted, it must present sufficient evidence and arguments to sustain the request². In the same way, the beneficiaries' representatives that request the measures continue must present evidence of the reasons for it³. While the assessment of the requirements of the Rules of Procedure when adopting precautionary measures is carried out from a *prima facie* standard, the maintenance of such measures requires a more rigorous assessment.⁴ In this sense, the burden of proof and argument increases as time goes by and there is no imminent risk.⁵

11. In view of the foregoing, the Commission notes that these precautionary measures were granted in August 2018 for the purpose of adopting measures to protect the life and personal integrity of the Mr. Yaku Pérez Guartambel. At that time, the beneficiary was, among others, President of the Confederation of Kichwa Peoples of Ecuador (ECUARUNARI) and General Coordinator of the Andean Coordination of Indigenous Organizations (CAOI). As part of his work, it was reported that the beneficiary was the target of threats in the context of a judicial process that questioned a mining project in Ecuador.

12. During the monitoring of these precautionary measures, the Commission received information from both the representatives and the State on actions taken to protect him. In particular, the Commission notes that the State reported that it had sought to agree on the protection of the beneficiary, having offered him enrollment in the System for Protection and Assistance to Victims, Witnesses, and Other Participants in the Criminal Process (SPAVIT). However, it is noted that the beneficiary decided not to be enrolled in the system. In this regard, the State reportedly implemented frequent visits by the national police to the beneficiary's home, with respect to which Mr. Pérez expressed his "satisfaction."

13. Although the beneficiary indicated that in March 2019 unknown persons purportedly broke the windows of his car, the Commission did not receive any additional elements that would indicate that this fact could be related to his human rights defense work. In any case, the representatives did not provide any further information or details, and approximately two years have passed without any information on acts of risk that could be analyzed as "imminent" in accordance with Article 25 of the IACHR Rules of Procedure.

14. Subsequently, and as indicated by the State, the beneficiary has been elected to a public office, as a result of which a risk assessment has been reportedly carried out and new protective measures have been purportedly assigned, offered and implemented taking into consideration the will of the beneficiary. According to public information, the beneficiary has become the president of the Prefecture of the Province of Azuay in Ecuador.⁶ Subsequently, information from October 2020 indicates that the beneficiary is candidate of the Pachakutik movement for the position of president of Ecuador for the 2021 elections⁷ having resigned from his position in the Prefecture of Azuay.⁸

15. Consequently, considering the State's request to lift in 2018, the Commission notes that the circumstances that allegedly led to granting these present injunctions have changed significantly.

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

³Ibid.

⁴Ibid.

⁵Ibid.

⁶ECUAVISA, *Ritual para posesionar a Yaku Pérez como prefecto de Azuay*. Available at: <https://www.youtube.com/watch?v=mGeVoFSVcQU>

⁷EL COMERCIO, *Yaku Pérez, presidenciable de Pachakutik, inscribió su candidatura con un llamado a la reconciliación*, October 6, 2020. Available at <https://www.elcomercio.com/actualidad/yaku-perez-inscripcion-candidatura-pachakutik.html>

⁸EL COMERCIO, *Yaku Pérez renunció la mañana de este 5 de octubre a la Prefectura de Azuay*, October 5, 2020. Available at <https://www.elcomercio.com/actualidad/yaku-perez-renuncia-prefectura-azuay.html>

Furthermore, the IACHR notes that the State has sought to agree on these precautionary measures and has offered different protective actions depending on the circumstances in which the beneficiary has been over time -whether he holds a public office or not-, while the implementation depends on the beneficiary's will. Moreover, it is noted that approximately 2 years have passed without the occurrence of events of risk that could be described as "imminent" to the detriment of the beneficiary. In this sense, in light of the analysis carried out, and in view of the request of the State to lift since 2018, the Commission does not have elements sufficient to indicate that a risk continues to exist pursuant to Article 25 of the Rules of Procedure. In view of the temporary and exceptional nature of the precautionary measures,⁹ the Commission deems it appropriate to lift them.

16. The Commission recalls that the work of human rights defenders is critical to build a solid and lasting democratic society, and that defenders play a leading role in the process to fully implement the rule of law and to strengthen democracy. Their monitoring, reporting, dissemination and education activities are an essential contribution to the compliance with human rights.

IV. DECISION

17. The Commission decides to lift the precautionary measures granted in favor of Yaku Pérez Guartambel.

18. 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 Ecuador to respect and guarantee the rights recognized therein, including the life and personal integrity of Mr. Yaku Pérez Guartambel.

19. The Commission recalls that the lift of these measures does not prevent the representatives from submitting a new request for precautionary measures if they consider that they are in a situation of risk that meets the requirements established in Article 25 of the Rules of Procedure.

20. The Commission instructs the Executive Secretariat of the IACHR to notify the State of Ecuador and the representatives of this resolution.

21. Approved on November 4, 2020 by: Joel Hernández García, President; Antonia Urrejola Noguera, First-Vice President; Esmeralda Arosemena de Troitiño; and, Julissa Mantilla Falcón, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary

⁹ 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