
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 14/2024**

Precautionary Measure No. 277-13

Members of the Otomí-Mexica Indigenous Community of San Francisco Xochicuatla
regarding Mexico¹

March 25, 2024

Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of Members of the Otomi-Mexica Indigenous Community of San Francisco Xochicuatla, in Mexico. At the time of making its decision, the Commission assessed the actions taken by the State during implementation, as well as the lack of information from the representation despite requests issued by the IACHR. Upon not identifying compliance with the procedural requirements, the IACHR has decided to lift these measures.

II. BACKGROUND INFORMATION

2. On May 11, 2016, the IACHR granted precautionary measures in favor of the 595 members of the Otomí-Mexica indigenous community of San Francisco Xochicuatla, in Mexico. The request stated that, as part of the Toluca-Naucalpan highway construction project, which included a section that reportedly crossed the ancestral territory of the Otomí-Mexica indigenous community of San Francisco Xochicuatla, in August 2013, a group of heavily armed riot police allegedly entered the community's territory in a violent manner to establish a "security perimeter" and several members of the community were detained. Upon analyzing the allegations of fact and law offered by the parties, the Commission considered that the information presented showed, *prima facie*, that the identified members of the community are in a situation of imminent risk of irreparable harm. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, the Commission required that the State of Mexico:

- a. adopt the necessary measures to preserve the life and personal integrity of the identified members of the Otomí-Mexica indigenous community of San Francisco Xochicuatla;
- b. consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and
- c. report on the actions taken to investigate the alleged facts that gave rise to the adoption of this precautionary measure, so as to prevent them from reoccurring.²

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

a. Procedure throughout the time the measures were in force

3. During the time the precautionary measures were in force, the Commission has followed up on the subject matter of these precautionary measures by requesting information from the parties. In this regard, communications have been received from the parties and from the IACHR on the following dates:

¹ In accordance with Article 17(2)(a) of the IACHR Rules of Procedure, Commissioner José Luis Caballero Ochoa, a Mexican national, did not participate in the debate and deliberation of this matter.

² IACHR. [Members of the Otomí-Mexica Indigenous Community of San Francisco Xochicuatla regarding Mexico \(PM-277-13\)](#). Resolution 32/2016 of May 11, 2016.

	State	Representation	IACHR
2016	October 11	August 18, November 25	April 5
2017	June 7	No communications	June 27
2018	No communications	No communications	No communications
2019	No communications	September 13	No communications
2020	September 9	April 6 (extension), May 12, October 21 (extension)	June 2
2021	No communications	May 28, June 21	May 21
2022	No communications	No communications	December 30
2023	March 15 (request to lift)	No communications	April 12, August 4 and December 14

4. The State requested that these precautionary measures be lifted in its report of March 15, 2023, which was forwarded to the representation on April 12, 2023. The Commission requested information from the representation on December 30, 2022 and April 12, 2023. These requests were reiterated on August 4 and December 14, 2023, indicating the purpose of evaluating keeping these precautionary measures in force. The representation did not send any information subsequent to its communication of June 21, 2021, and did not respond to subsequent requests.

5. The representation was initially exercised by “Defensa para el Cambio”, “Frente de los Pueblos Indígenas en Defensa de la Madre Tierra” and “Sakbe Comunicación”. On November 25, 2016, the Mexican Commission for the Defense and Promotion of Human Rights A. C. (*Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*, CMDPDH) was named as the representation and appointed representatives on behalf of the organization by communication dated September 13, 2019. On May 28, 2021, the CMDPDH reported that it would not continue with the representation and provided means of contact with the community. On June 21, 2021, a communication was received from the “Comunidad indígena Otomí de San Francisco Xochicuautla” from one of the e-mails provided by the CMDPDH (which did not include the sender’s name), which designated an e-mail address for communications and requested the cancellation of the previous e-mail addresses.

b. Information provided by the State

6. On October 11, 2016, the State indicated that the highway project that was being carried out affected the forest, but allegedly did not destroy it since an ecological restoration was reportedly being carried out. It was added that consultations were held with the indigenous communities involved. These were reportedly carried out under the protection of state authorities, in calm and safe conditions. It was reported that this was the reason for the police presence in the communities. The State mentioned that the communities received donations of various goods and services. The State provided the executive orders issued on the construction of the highway and a list of indemnifications made, with community, date, amount and concept. A total of \$171,653,256.34 Mexican pesos were awarded in indemnifications. It was also clarified that the suspension in the appeal for the protection of constitutional rights (*amparo*) trial was not for the purpose of suspending the construction, since the challenged act referred to an agrarian conflict and the Collegiate Court dismissed the acts attributed to various authorities regarding the highway. Regarding the persons who were arrested, it was stated that this was due to an investigation file for the crime of opposition to the execution of public works or works and, given that it is not a serious crime, the release of all persons was ordered on November 5, 2015. The precautionary measure to appear before the Public Prosecutor’s Office was complied with.

7. The State added that no intimidation or threats were made against the inhabitants of the community and that the National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*, CNDH) carried out the dialogue between authorities and members of the community. In addition, they adopted precautionary measures to ensure that the work on the highway project refrains from causing acts that could

affect the life or integrity of members of the community or its defenders. In addition, the Ministry of the Interior (SEGOB) reportedly participated in seven working meetings between April 13, 15, 18, and 27 and May 9 and 24, 2016. Regarding the incident of the house, which was alleged to be a cultural center of the community, belonging to Mr. A. G. S. collapsing on April 11, 2016, it was reportedly due to a property expropriated by executive order. In addition, police removed people due to the resistance presented to the enforcement of the executive order. Following these events, at a meeting held on April 13, 2016, it was agreed to suspend construction work and establish technical tables to seek alternatives to construction. In addition, it was to address the damages against A. G. S. given the events of April 11, repair the damaged community water pipeline, and withdraw State Police from the site. Regarding the alleged burning of forests, it was reported that the competent authority has registered five fires in the community since the beginning of the fire season, and that they intervened in a timely manner. Damage to the hoses that supply drinking water to the community was reportedly repaired on April 14. On June 25, 2015, 21 members of the beneficiary community were incorporated into the Mechanism for the Protection of Human Rights Defenders and Journalists (Protection Mechanism). This Mechanism allegedly conducted a collective assessment of the community, and concluded at an extraordinary risk level. On September 29, 2015, the delivery of ten panic buttons to its members was approved. Lastly, in 2015, they also reportedly coordinated with authorities to attend to the community.

8. In its report of June 7, 2017, the State indicated that, following the expropriation and eviction of Mr. A. G. S.'s property, the State of Mexico made a payment for reparation of property damage in the amount of \$8,500,000 Mexican pesos in his favor. Furthermore, in relation to psychological effects on the community, it was added that the Executive Commission for Victim Assistance (*Comisión Ejecutiva de Atención a Víctimas*, CEAV) has implemented the following actions: i) on October 5, 2016 they held a meeting with the beneficiaries and their representatives in order to provide legal advice in the complaint file before the CNDH; ii) on October 7, 2016 they requested information from the CNDH about the human rights violations that they were investigating and, specifically, about Mr. A. G. S. as the main victim; iii) on November 17, 2016, they communicated with the representation with the purpose of incorporating Mr. A. G. S. to the National Registry of Victims (RENAVI), as well as providing the list of persons who required immediate attention; iv) on November 29, 2016, a request was made to provide medical and psychological care to 79 victims who required urgent attention, for which the department responsible submitted a proposal for psychosocial intervention for the Otomí-Mexica indigenous community of San Francisco de Xochicuaautla; v) the CEAV undertook to meet with the representation to identify or determine the persons to be registered in the RENAVI.

9. It was indicated that, on February 27, 2017, the SEGOB met with the representation. The following measures were implemented: i) SEGOB conducted a tour of the community, observed the existing highway paths, and located where the beneficiaries consider that the placement of security cameras is required; ii) the security company was requested to make the corresponding visit to issue a technical report on the feasibility of the referred video cameras; iii) on May 3, 2017, four digital base and mobile radio equipment and five digital portable radios were delivered and the analysis on the technical feasibility of the installation of the cameras was carried out.

10. The State provided the list of the 21 persons who were incorporated into the Protection Mechanism on June 25, 2015. They reportedly received 10 telephone lines and cell phone equipment with location application for immediate reaction system (panic button) and scheduled patrols at least once a week. In June 2016, a risk reassessment was carried out and approved the following measures for 12 months: i) 21 panic buttons for the 21 people incorporated into the mechanism; ii) infrastructure measures in the home of J. L. F. consisting of locks, mesh, and concertina; iii) request to the security company for a technical visit to the home of three beneficiaries to determine infrastructure measures; iv) alarm system in the home of J. L. F.; v) emergency number of the Federal Police for the collective; vi) patrols by the Federal Police.

11. It was stated that, on December 9, 2016, the CNDH issued a recommendation in relation to the "violation of the right to collective property, in relation to the obligation to guarantee the right to prior consultation of the indigenous communities affected with the construction of the Toluca-Naucalpan highway." Therefore, working meetings were held between community representatives, authorities of the State of Mexico,

the State of Mexico Highway System and the project company, with the participation of the CNDH, UN, and SEGOB, in order to build a road that is friendly to the environment and the Otomí-Mexica culture.

12. On September 9, 2020, it was stated that two agreements were signed between authorities and the beneficiary community, with the CNDH, SEGOB, and the organization “SERAPAZ” acting as witnesses. The first agreement, dated April 27, 2018, referred to the advancement of sections of the Toluca-Naucalpan highway, while social works were allegedly carried out in favor of the community in certain timeframes. This was subject to the final resolution of six *amparo* lawsuits in which the suspension of construction works had been granted. The second agreement, signed on June 4, 2018, included a “Development Plan for the Indigenous Community in Resistance of San Francisco Xochicuautila” and working tables between authorities and the community for the fulfillment of the agreements, providing for actions to increase agricultural productivity, infrastructure for the community, restore deforested areas, and favor promotion of self-employment. In addition, this second agreement established that the planned actions should be consulted with the community and the Indigenous Supreme Council of San Francisco Xochicuautila, specifying 14 specific actions that have been derived from the agreement.³ The agreement was also subject to the final resolution of the ongoing *amparo* lawsuits.

13. The State indicated that it has sought a peaceful solution to the internal conflict and added that there is division within the community, as there are fractions that have different visions. In addition, it was reported that the representation has submitted as evidence photographic copies of police presence, which is allegedly related to administrative orders from a ministry, in compliance with court rulings. It pointed out that Mr. I.G.V. was arrested on March 31, 2020 for damage to machinery and was placed at the disposal of the Public Prosecutor’s Office. At the same time, it was indicated that security measures have been implemented for the protection of the community. This includes constant patrols, reserve personnel at vulnerable points of highway construction, security operations at the homes of the beneficiaries, and provision of contact numbers.

14. The State added that the disputes raised by the representation have been duly analyzed by the courts of the judicial branch, including under knowledge of the Supreme Court of Justice of Mexico (SCJN), which attracted an *amparo* in review (748/2019). They are allegedly currently under study and will resolve on the constitutionality of the construction of the Toluca-Naucalpan highway. In two other *amparo* trials, it was mentioned that a suspension was granted not to stop the construction, but rather to respect the ceremonial and religious centers of the indigenous communities. Furthermore, in another *amparo* trial, it was considered that the construction of the highway could be considered as an essential activity during the pandemic, given that it was in the social interest.

15. By report dated March 15, 2023, the State summarized the information previously provided. It was noted that since the precautionary measures were granted, no complaints or claims have been received regarding risks to the physical integrity of members of the beneficiary community and, from that same time, police officers were allegedly made available to the community for their protection. There has been reported constant dialogue with the representation of the community. It was added that federal authorities and residents have visited the community during the construction of the highway to exchange ideas for the improvement of the community. Weekly community meetings with authorities of the State of Mexico have also continued, indicating that the human rights of the beneficiary indigenous community have not been affected. The two agreements signed were recalled and it was emphasized that they were approved by the majority of the community members. The State indicated that the members of the Community of San Francisco Xochicuautila have been incorporated into the Protection Mechanism since June 25, 2015, with a protection plan in force approved on November 29, 2021, which consists of: leasing of cell phone lines and equipment with assistance

³ i. Acquisition of 45,000 m² for the construction of theater, sports unit, nurseries, culture house, and other works; ii. Construction of the streets “Cauhtémoc” and “Pinos”; iii. Construction of the street “Prolongación 5 de mayo”; iv. Construction of the street “Xochicuautila”; v. Construction of “De La Cruz” street; vi. Construction of the “P’odo” street; vii. Construction of a multipurpose theater; viii. Construction of a multipurpose auditorium; ix. Housing support; x. Delivery of computer equipment; xi. Conditioning with electrical installations and accessories; xii. Solar water heaters; xiii. Construction of sports unit; xiv. Generation of nurseries, tourist transport cooperative, stables with livestock, among others to generate self-employment.

button for 13 specific persons; continuity of infrastructure measures in favor of J. L. F. F.; A. M. R. V.; D. J. V.; J. D. E., as well as A. G. S.; an emergency contact number and random logged rounds of the Federal Police, establishing contact with the Municipal Delegate or the Supreme Council of the community; a contact number of the state police, as well as a permanent patrol in sections One and Four of the community. Lastly, the State requested to lift the precautionary measures.

C. Information provided by the representation

16. On August 8, 2016, the representation alleged non-compliance with the precautionary measures and reported that the defender A. G. and his family were living as if they were on the streets, after having been subjected to a “brutal dispossession and destruction of their home three months ago.” They reported aftereffects on children in the community, due to the presence of police officers.

17. On April 6, 2020, the Mexican Commission for the Defense and Promotion of Human Rights (*Comision Mexicana de Defensa y Promocion de los Derechos Humanos, CMPDDH*) sent a communication where it recalled the reasons for the granting and that the measures refer to 595 people of the community, as well as the incidents involving Mr. A. G. on April 11 and 12, 2016, which generated resistance from the community and forced the initiation of dialogue tables with the construction company and state institutions. It was specified that there the community was divided, on the one hand, those who agreed to negotiate and, on the other hand, a group that initiated legal proceedings to cancel the construction of the highway. It was reported that the company required the withdrawal of all *amparo* proceedings to continue negotiations, so seven people⁴ were reportedly pressured by community members and public officials, but refused to withdraw. They questioned court rulings revoking the proceedings regarding the *amparo* that had been granted, which allowed the highway project to move forward for periods of time. It references the agreements that had been signed and indicated that the common representation in the *amparo* proceedings signed by the seven people who did not agree. It was also pointed out that they included a clause that submits the projects to the final resolution of the *amparo* proceedings.

18. The representation pointed out that, in view of the refusal to drop the legal proceedings, the suspensive clause of one of the agreements was modified to allow the construction of the highway to continue. It was alleged that the persons involved in the negotiation process received monetary compensation to allow the construction of the highway and it was questioned that the parties involved in the process requested that the *amparos* be denied and that they be given judicial authorization to continue with the work. In addition, they indicated that some trials were decided against them and had to be challenged.

19. It was added that, since September 2018, construction work resumed. The resistance actions of members of the Otomí indigenous community (it is not clarified whether this refers to all beneficiaries) also resumed, reporting that on May 13, 2019, these efforts included about 100 people. It was indicated that they identified the presence of “agitators” or “beaters” and that, on May 14, 2019 they were at a toll when this group of “beaters” arrived with pipes, chains, and sticks. When they were about 300 meters away from the protesters, one was heard saying “we are going to kill everyone”. It was noted that a similar event occurred on May 25, 2019, when 30 people carried out resistance actions at another toll and the group of “beaters” appeared. They were allegedly consuming drugs and intimidating the population. For their part, they denounced that there has been state police presence at the community’s agrarian assemblies and that community members have reported that they have been prevented from accessing them. It was reported that on April 3, 2019, the Government of the State of Mexico announced the “end of the conflict” in a press conference, which generated internal questioning. In addition, a group even continued with the legal defense. They indicated that the internal division caused two different groups to claim to be the Supreme Indigenous Council, one in favor and the other against the highway project, causing tension among the community.

⁴ They referred to (i) A. M. A., (ii) J. V. G., (iii) V. F. R. M.; (iv) F. F. G.; (v) J. E. A.; (vi) F. G. P.; and (vii) A. A. A. G.

20. The representation reported that, at 12:00 p.m. on May 13, 2019, Ms. L. R. M. was at home with her son when she observed a vehicle and noticed that three people dressed in black, wearing sunglasses, and balaclavas got out of this vehicle. Two moved towards the back and attempted to open a window, while the third tried to open the front door, but none of them were able to enter the house. The following day, Ms. L. R. M., along with an aunt, found a note on the front door of her house that read “beware of the consequences baby” (see photograph). The facts were reported to the municipal delegates on May 14, 2019. On May 16, 2019, Ms. L.R.M. decided to go before the municipality of Lerma, State of Mexico, to file a complaint with the Prosecutor’s Office. However, she realized that she did not have her official identification with her, so she returned to her home. When she arrived at her house, she saw two unknown subjects: one of them was pointing a gun at her and shot at her while the other one took pictures of her. Ms. L.R. went to the Prosecutor’s Office to file the complaint but, when reporting the matter, officials refused to receive it “because it was related to the conflict on the Toluca-Naucaupan highway.”

21. It was noted that on May 14, 2019, Ms. S. F. was at her private residence when she received a call from a man telling her to “start calming down or it will be against your daughters.” The caller ID only showed “unknown caller.” It was indicated that Ms. L. R. M. and Ms. S. F. had recently become involved in forest defense actions.

22. On May 18, 2019, a lawyer from the CMDPDH was contacted by a lawyer from the company working the highway to discuss the matter, to which she replied that this was not a function of the CMDPDH. The following day, another company lawyer visited the home of three of the complainants in the *amparo* lawsuits, saying that they had spoken with the CMDPDH and had agreed to talk. On June 26, 2019, two lawyers from the company went to the home of another of the complainants in *amparo* proceedings to request a meeting with the affected parties. The persons involved in the lawsuits decided not to meet with the lawyers.

23. In July 2019, people from the community requested an audience with the President of Mexico in Mexico City. They met with representatives of the National Commission for the Dialogue of Indigenous Peoples (*Comisión Nacional para el Diálogo de los Pueblos Indígenas*, CNDPI) on July 10 and the National Institute of Indigenous Peoples (*Instituto Nacional de los Pueblos Indígenas*, INPI) and SEGOB on July 12. They indicated that the INPI undertook to take steps with the State of Mexico to cease the work and remove machinery, state police, and police officers; to take actions to implement the precautionary measures and enforce the *amparo* suspensions; and to hold another meeting on July 21, 2019 in the State of Mexico to conduct a tour of the three affected towns.⁵ On July 16, 2019, the head of the CNDPI requested the Secretary General of the State of Mexico to address the issue and investigate whether agents of the state police are guarding the construction company.

24. On July 21, 2019, the members of the three communities arrived to meet the authorities as agreed, but when no one arrived after an hour, they decided to start the tour. When they went up to the construction zone, people with construction vests threw stones at them; then they continued heading up and heard a gunshot. They then encountered people dressed as civilians and four men in civilian clothes who intimidated the population. There was a state police presence at the site and, minutes later, another state police van arrived with grenadier corps that formed a fence to prevent the villagers from passing, while the civilians continued to threaten and attempt to beat the villagers. After more than an hour of struggle, the villagers were forced to retreat.

25. It was noted that between July and September 2019, the three communities formed a common front in defense of the forest and against the highway. During this time, workers, civilians, and police from the State of Mexico have intimidated the beneficiary community in the following ways: they parked in front of their homes, roamed the community consuming narcotics, and threatened physical harm to those who requested the suspension of the project. It was added that an area of the forest was fenced off, preventing the villagers from

⁵ Communities San Francisco Xochicuautla (beneficiary), and its annex La Concepción, Santa Cruz Ayotuxco and San Lorenzo Huitzililapan.

using their communal trails to collect medicinal herbs and fruits. They indicated that this was corroborated by means of a judicial inspection ordered within the framework of one of the *amparo* trials. The representation added that on September 9, 2019, they called for a tour with the participation of the communities in the area and, upon attempting to enter a public building in the community, they encountered beaters who pushed people from the community. These incidents resulted in injuries. State police and the Ministry of National Defense (SEDENA) allegedly witnessed the events, but did not intervene to protect the beneficiaries. It was noted that construction has continued in late 2019 and early 2020 and a state police presence has been observed.

26. It was reported that on March 31, 2020, in the context of protest activities against the construction, state police arrested I. G. V. He later reported that he was held for nine hours before he was presented before the Public Prosecutor's Office, and he received blows in the face, reportedly by the State Police agents. He was reported for the crime of "obstruction of investment", but was released the next day.

27. The representation alleged that the construction of the highway should have been suspended both by court orders and by measures to combat COVID-19. It was argued that there were risks to the safety, integrity, and freedom of the indigenous people who protest, as well as of the people who receive threats, such as L. R. M. and S. F.. They also add that people who have filed *amparo* lawsuits are also reportedly at risk. There is also a risk of beaters and from the presence of police forces that have previously detained members of the community. It was requested that the "members of the Otomi resistance of San Francisco Xochicuautla" be considered as beneficiaries, given that they are identifiable as part of the community that opposes the construction of the highway. In addition, they request as protection measures: 1) the suspension of the construction of the Toluca-Naucaupan highway; 2) the protection of the integrity, safety, and freedom of the beneficiaries through culturally sensitive measures, such as emergency buttons on public roads and publication of emergency numbers; 3) the presence or easy access of a human rights public official; and, 4) the protection of the indigenous territory, given that the project was not consulted in accordance with international standards and is being contested before national courts.

28. On May 12, 2020, they stressed that the State has failed to comply with its obligation to protect the beneficiaries, as it has only adopted measures for those who agreed to participate in the negotiations.

29. On October 21, 2020, they reported that the governor of the State of Mexico, along with municipal presidents, held a ceremony where they announced the imminent completion of the highway project. They then thanked the support of the Undersecretary of Human Rights of the SEGOB to reach an agreement with the non-conforming communities and make the completion of the project possible. The representation alleged that all this is in contempt of the suspensions issued by the judiciary, which increased during the SARS-CoV-2 pandemic context. They consider that, under these circumstances, if the highway is completed and becomes operational, the damages will become irreversible, in the context of a decision of the Second Chamber of the Supreme Court of Justice of the Nation of April 22, 2020 to hear the case. Consequently, they reiterated their request for an extension to suspend construction and protect the indigenous territory.

30. On May 28, 2021, the CMDPDH notified that it would cease its representation in this matter. On June 21, 2021, community members confirmed the change in representation. They reported that on October 21, 2020, the highway was inaugurated and its operations began, noting that some construction defects can cause an accident in the community. It was added that the agreements were made behind the community's back and the IACHR was invited to visit the community and ask its members who was in favor of the project. They alleged that only five families accepted the project because they sold or agreed to sell something that does not belong to them, given that they have sold a hill that is sacred to the community's cosmovision.

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

31. 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.

32. 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.⁶ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.⁷ 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.⁸ 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 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 injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

33. In this sense, Article 25(7) of the Commission's Rules of Procedure establishes that decisions "granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions." Article 25(9) sets forth 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. Furthermore, it shall consider whether there are new situations that may comply with the requirements outlined in Article 25 of its Rules of Procedure.

⁶ 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.

⁷ 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.

⁸ 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; 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.

34. Similarly, 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 evaluation.⁹ In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.¹⁰ The Inter-American Court has indicated that the passage of a reasonable time without any threats or intimidation, in addition to the lack of imminent risk, may lead to lifting international protection measures.¹¹

35. Entering into the analysis of keeping these precautionary measures in force, the Commission notes that it is pertinent to formulate two preliminary questions:

- Firstly, it is noted that the representation requested by letters dated May 31 and October 21, 2020, both the suspension of the construction of the highway, as well as the protection of the communal territory, alleging the lack of prior consultation in accordance with international standards. In addition, on several occasions, both parties have referred to court rulings and injunctions and made arguments on their scope and compliance. In this regard, since the granting of these precautionary measures, the IACHR had already noted the presence of “arguments related to the protection of the ancestral territory of the members of the Otomí-Mexica indigenous community of San Francisco Xochicuatla, as well as the defense of their rights over it, in particular regarding prior consultation, compliance with court decisions in general, among other issues.” On that occasion, the Commission understood that “these aspects may require a more in-depth analysis of the merits of the case, should a petition be presented within the framework of the Petitions and Cases System.”¹² The Commission reiterates that these issues go beyond the mechanism of precautionary measures.
- Secondly, in its brief of May 31, 2020, the representation requested that the “members of the Otomi resistance of San Francisco Xochicuatla” be considered as beneficiaries. Initially, a list of specific people was not received and the risks to which they would be subjected were not specified, highlighting that it is not clear whether they belong to the San Francisco de Xochicuatla community, since it has been indicated that the “resistance front” was formed by three affected communities. In any case, the Commission recalls that, as long as they are members of the Otomi-Mexica Indigenous Community of San Francisco Xochicuatla, they have been considered beneficiaries of the precautionary measures, as these covered the then 595 members of the collective.

36. Having specified the foregoing, the Commission proceeds to carry out the analysis of keeping these precautionary measures in force. The Commission observes that the State requested that these precautionary measures be lifted in its communication of March 15, 2023. In accordance with Article 25 of its Rules of Procedure, this letter was forwarded to the representation for its observations on April 12, 2023, a request reiterated on August 4 and December 14, 2023. The Commission has not received a response from the representation and all the deadlines have expired.

37. The Commission recalls that the precautionary measures were granted for the protection of the life and integrity of the members of the Otomi-Mexica Indigenous Community of San Francisco Xochicuatla, due to acts of violence reported in the context of the Toluca-Naucalpan highway construction project, which included a section that reportedly crosses the ancestral territory. In this regard, the Commission takes careful note of the measures implemented by the State, consisting of:

⁹ I/A Court H.R. [Matter of Fernandez Ortega et al.](#) Provisional measures regarding Mexico. Order of February 7, 2017, paras. 16 and 17.

¹⁰ I/A Court H.R. [Matter of Fernandez Ortega et al.](#) Provisional measures regarding Mexico. Order of February 7, 2017, paras. 16 and 17.

¹¹ I/A Court H.R. [Matter of Fernandez Ortega et al.](#) Provisional measures regarding Mexico. Order of February 7, 2017, paras. 16 and 17.

¹² IACHR. Order 32/2016. Precautionary Measure No. 277-13. Members of the Otomí-Mexica Indigenous Community of San Francisco Xochicuatla regarding Mexico. May 11, 2016, para. 17.

- a. Protection measures: On June 25, 2015, 21 people joined the Protection Mechanism. Upon carrying out a collective evaluation that resulted in an extraordinary risk, ten panic buttons were provided on September 29, 2015. The risk was re-evaluated in June 2016 and the measures were increased to 21 panic buttons, infrastructure in the home of J.L.F. with locks, mesh, and concertina and alarm system, as well as emergency number and scheduled patrols in favor of the collective by the Federal Police. On November 29, 2021, the current protection plan was approved, consisting of cell phone lines and equipment with assistance button for 13 specific persons; infrastructure measures in favor of J. L. F. F.; A. M. R. V.; D. J. V.; and J. D. E., as well as A. G.; emergency number of the Federal Police and contact number of the State Police; random logged rounds of the Federal Police; as well as permanent patrols in sections One and Four of the community.

The SEGOB made a direct trip to the community in 2017 and delivered four base and digital mobile radio devices, five portable radios, and made a request for an analysis for camera installation. In addition, standby personnel have been indicated at vulnerable points of highway construction, security operations at beneficiaries' homes, and contact numbers have been provided.

- b. Agreement and dialogue: In 2016, the SEGOB held seven meetings with the representation of the beneficiaries which, although the representation alleged that they were a consequence of the events against the home of Mr. A.G., these were effective for the suspension of the works and to address the damages, which included property reparations to Mr. A.G. In addition, the meetings, which included the participation of the CNDH, United Nations, and SERAPAZ, allowed the parties to reach two agreements with members of the community and achieved the inclusion of multiple projects of benefit to the community, which were initially subject to the outcome of the *amparo* trials.

In 2015, the CNDH interceded with precautionary measures to ensure that work on the highway project refrains from causing acts that could affect the life or integrity of community members or their defenders. Furthermore, in 2016, the CNDH issued a recommendation for violation of the right to collective property and working meetings were held between the community representation, state authorities, and companies involved, as well as with the participation of the UN and the SEGOB.

In 2017, CEAV provided legal advice, RENAVI registrations, medical and psychological care to 79 people and proposed psychosocial intervention to the entire Otomí-Mexica indigenous community of San Francisco Xochicuaula. In turn, in 2019 there were meetings with the INPI, SEGOB, and CNDPI, indicating that the CNDPI requested the State of Mexico to pay attention to the issues reported.

- c. Judicial decisions. Without going into the background of the legal proceedings, the IACHR warns that, although it is not clear on their effects on the continuity of the highway project, it was indicated that in *amparo* proceedings it was ordered that the ceremonial and religious centers of the indigenous communities be respected within the framework of the works.

38. In this regard, the Commission recognizes the protection measures implemented by the various state institutions within the framework of their competencies, which have contributed to the safety of the beneficiaries. In addition, the Commission acknowledges that the search for dialogue and reaching agreements is essential. The Commission particularly highlights the update of the risk assessment carried out by the State, which in this case resulted in the increase in the measures implemented on two occasions, the last of them in 2021.

39. The Commission also takes note of the information provided by the representation regarding the existence of a separation in the community between those who agreed to negotiate and those who advanced legal proceedings for the cancellation of the highway. It even reported that two groups hold the Supreme

Indigenous Council, which causes tension in the community. In this regard, the Inter-American Court has emphasized that, “within the framework of their right to self-determination, indigenous peoples and communities have the power to make decisions regarding the defense of their rights, through their own forms of organization and decision-making, in accordance with their cultural patterns,” highlighting that “there may be different entities or leaderships within a community, as well as different interests.”¹³ The Commission observes that, in the matter at hand, there have indeed been groups with different visions or interests regarding decisions about the community. In this context, while there were people who valued the continuity of the highway project and the signing of agreements, a second group of people considered that the best option for the defense of their ancestral territory was the use of legal resources, as well as their legitimate right to protest.

40. In this sense, it is noted that, during the time these precautionary measures have been in force, the continuity of different risk events against the persons accompanying this second group has been reported. The most relevant information is highlighted, and it is possible to distinguish between information addressed to specific individuals and information related to the collective in demonstrations or protests:

- Threats were issued against Ms. L.R.M. and Ms. S.F. Regarding Ms. L.R.M., on May 13, 2019, an attempt to enter her home was warned, the next day they left a message that said, “beware of the consequences baby”. Subsequently, on May 16, she found two people inside her home, one of whom pointed at her with a gun and shot at her while the other took photographs of her. It was reported that they refused to take the complaint to the Prosecutor’s Office because it was related to the conflict of the highway project. Regarding Ms. S. F., on May 14, 2019, she received a call from a man telling her to “calm down or it will be against your daughters”.
- In addition, it was reported that the community was receiving aggressions by people identified as “agitators” or “hitters” on May 14 and 25, 2019; on July 21, 2019, a common protest front of three affected communities went to the construction site and received aggressions; on September 9, 2019, they were again assaulted when trying to enter a building in the community. On all three occasions, they referred to the presence of state forces that reportedly did not act to protect them.

41. The Commission is concerned about the threats against Ms. L. R. M. and Ms. S. F., as well as the existence of persons who are tasked with attacking people who reportedly continue to protest, and the allegations of inaction by the Prosecutor’s Office to receive complaints and State agents at the time of the attacks against people protesting against the highway project. However, the information refers to 2019, which was about five years ago. After several requests for information to the representation, the Commission has not been informed of new events that may be subject to analysis under the terms of Article 25 of its Rules of Procedure.

42. In addition to the foregoing, the Commission considers it relevant that, as informed by the representation in its last communication, the highway was inaugurated and its operations began on October 21, 2020. The IACHR understands that, initially it was indicated that the risk factors were framed in the context of the highway project, having reported specific risks. However, after the inauguration of the project, the representation stopped reporting specific facts against the beneficiaries. At this time, the Commission is not aware of the recent incidents against them.

43. At the same time, the IACHR recalls the importance of submitting updated information on the situation that places the beneficiaries at risk. In this regard, it is noted that the last report received from the representation is from June 21, 2021. Subsequently, information was requested on December 30, 2022, but no response was received. In addition, in the State’s report of March 15, 2023 the request to lift the precautionary measures was forwarded to the representation on April 12, 2023. The request was repeated on August 4 and December 14, indicating that the Commission would evaluate keeping these precautionary measures in force.

¹³ I/A Court H.R. [Matter of the Mayan Indigenous Community O’eqchi ’Agua Caliente Vs. Guatemala](#). Merits, Reparations and Costs. Judgment of May 16, 2023. Series C No. 488, para. 36.

Under these conditions, there has been no response from the representation since its communication of June 21, 2021, and nearly three years have passed without receiving any information. Under these conditions, it is not possible to know of new risk events or implementation challenges, especially in view of the completion of the highway project in October 2020.

44. In the matter at hand, considering the analysis carried out, the Commission recognizes the measures implemented by the State and does not have information on current situations that place the beneficiaries at risk. This, in addition to the termination of the source of risk and the lack of response from the representation, leads it to understand that it does not currently have elements to support compliance with the requirements of Article 25 of its Rules of Procedure. Given the above, and taking into account the exceptional and temporary nature of precautionary measures,¹⁴ the Commission considers that it is appropriate to lift these measures.

45. In line with what was indicated by the Inter-American Court in various matters,¹⁵ a decision to lift cannot imply that the State is relieved from its general obligations of protection, contained in Article 1.1 of the Convention, within the framework of which the State is especially obliged to guarantee the rights of persons at risk and must promote the necessary investigations to clarify the facts, followed by the consequences that may be established. Furthermore, also based on the assessment of the Inter-American Court, the lifting of the precautionary measures does not imply a possible decision on the merits of the dispute.¹⁶

46. Lastly, 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 to respect and guarantee the rights recognized therein, including the life and personal integrity of the persons identified in the matter at hand.

V. DECISION

47. The Commission decides to lift the precautionary measures granted in favor of the members of the Otomí-Mexica Indigenous Community of San Francisco Xochicuautla, in Mexico.

48. 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 its Rules of Procedure.

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

50. Approved on March 25, 2024, by Roberta Clarke, President; Carlos Bernal Pulido, First Vice-President; Edgar Stuardo Ralón Orellana; Arif Bulkan; Andrea Pochak; and Gloria Monique de Mees, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary

¹⁴ 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; 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.

¹⁵ See: I/A Court H.R. Matter of Velásquez Rodríguez. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988. Recital 3; Matter of Giraldo Cardona and others. Provisional measures regarding Colombia. Order of the Inter-American Court of Human Rights of January 28, 2015. Recital 40; and I/A Court H.R. [Case of Vélez Loor v. Panama. Provisional Measures](#). Order of the Inter-American Court of Human Rights of May 25, 2022. Considerandum 62.

¹⁶ See: I/A Court H.R. Matter of Guerrero Larez. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of August 19, 2013, Considerandum 16, and Matter of Natera Balboa. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of August 19, 2013, considerandum 16.