

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 7/2020**

Precautionary Measure No. 708-19

Inhabitants of the areas near the Santiago River regarding Mexico¹
February 5, 2020

I. INTRODUCTION

1. On July 18, 2019, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") received a request for precautionary measures in favor of the inhabitants of the areas near Santiago River in the municipalities of Juanacatlán and El Salto, as well as the inhabitants of San Pedro Itzicán, Agua Caliente, Chalpicote and Mezcala in the municipality of Poncitlán, state of Jalisco ("hereinafter "the proposed beneficiaries"), filed by Ms. Raquel Gutierrez Najera ("the applicant"). The request urges the IACHR to request that the State of Mexico ("the State" or "Mexico") take the measures necessary to protect the rights to life, personal integrity and health of the proposed beneficiaries, due to the alleged environmental contamination in the Santiago River and Lake Chapala.

2. In accordance with Article 25 of the Rules of Procedure, the Commission requested information from the State on August 15, 2019. This request was answered on September 6, 2019. The applicant submitted additional information on October 8, 2019

3. After analyzing the factual and legal arguments presented by the applicant, the Commission considers that the information proves *prima facie* the inhabitant in the areas up to 5 kilometers from Santiago River in the municipalities of Juanacatlán and El Salto, along with the inhabitants in the municipality of Poncitlán, state of Jalisco, are in a serious and urgent situation and that their rights to life, personal integrity and health are at risk of irreparable harm. Consequently, pursuant to Article 25 of its Rules of Procedure, the Commission requests that Mexico: a) adopt the necessary measures to preserve the life, personal integrity and health of the inhabitants of the areas up to 5 kilometers from the Santiago River in the municipalities of Juanacatlán and El Salto, as well as those of the inhabitants of San Pedro Itzicán, Agua Caliente, Chalpicote and Mezcala in the municipality of Poncitlán, State of Jalisco, mentioned in the request. In particular, that the State adopt pertinent measure to offer a specialized medical diagnosis for the beneficiaries, taking into account the alleged contamination and providing adequate medical attention in conditions of availability, accessibility and quality, pursuant to applicable international standards; b) agree upon the measures to be taken with the beneficiaries and their representatives; c) report on the measures adopted to reduce the sources of alleged risk.

II. SUMMARY OF ALLEGED FACTS AND ARGUMENTS

1. Information provided by the applicant

4. The applicant stated that the persons proposed as beneficiaries are currently exposed to a "serious and urgent situation which affects the exercise of their rights to a healthy well-being, life, integrity and environment and which can cause irreparable harm." The Santiago River which is connected to the Chapala River is reportedly Mexico's most contaminated body of surface water: [d]uring the last 20 years, the levels of contamination in the Santiago River channel have reached alarming rates of toxicity" which disproportionately affects the populations near the River and the

¹ Pursuant to article 17.2 of the IACHR Rules of Procedure, the commissioner Joel Hernández García, a Mexican national, did not participate in the debate or the discussion of this matter.

Lake. As an example, the applicant referred to the case of the child Miguel Ángel Rocha, who accidentally fell into the River in 2009 and died due to the presence of arsenic in the water².

5. The alleged contamination is mainly received through the daily exposure to the pollutants which flow through the river, be it through physical contact with the water used by the population for agricultural means, or by breathing the pollutants which volatilize in the air, principally in the El Salto waterfall. Drinking water reportedly does not come from the Santiago River. However, part of the affected populations uses the Lake Chapala for fishing and leisure.

6. According to the request, in 2016, a study carried out by *GreenPeace*³ noted the presence of “various toxic pollutants related to industrial activities and which impact human life as they can be cancerous, cause skin corrosion, are harmful to human reproduction, etc.” Among the pollutants that were found, there was reportedly *di-n-butyl phthalate esters*, *triaryl phosphates*, *1,4-dichlobenzenechloroform*⁴, *chloroform*⁵, *bisphenol A*⁶, *tributylamine*⁷, *nonylphenol*, *nonylphenol*, *octifinal*, *dichlorobenzene*, *chlorocresol*, *aliphatic hydrocarbons*, *alkylbenzenes*, *perfucoctaniocoic acid*, as well as other substances related to industrial activities. This study was reportedly carried out after an inadequate wastewater treatment plan was installed as, despite it being used with water intended for domestic uses, it is allegedly not capable of removing the toxic substances in the industrial discharges. Furthermore, the applicant claimed that the majority of the substances found are not subject to any regulation under Mexican norms. Therefore, even if the water of the Santiago River meets the imposed parameters, it could still contain high levels of toxicity.

7. In 2016, the United Nations’ Working Group on Business and Human Rights visited the state of Jalisco and learned about the Santiago River case. They noted that “[t]he river receives discharges from over 300 industries in the Ocotlán-El Salto industrial corridor [...], they also declared that “[i]t was a great impact to see the river covered in foam and the odor of strong gasses which are released from the water that falls from the El Salto waterfall. Local medics quoted an increase in the incidence of different illnesses including leukemia, spontaneous abortions and congenital birth defects, among others.” The report of the visit adds:

In regards to the demands of the communities, the authorities carried out only corrective measures which did not solve the public health problems or the industrial contamination. The only solution which was applied was the creation of the two wastewater treatment plants for residual waters which only treat the discharge of domestic residual waters of the southern part of the metropolitan area of Guadalajara and not the residual waters of the industries.

8. The request also stated that the indicators of the statistics of the state water quality regulating body (CONAGUA), the only public body, are not designed to measure specific pollutants but rather they assess the quality of the water under “minimum criteria”. However, the area of the Santiago River which goes through the municipalities of El Salta and Juanacatlán were reportedly “contaminated” in the pertinent indicators of the measurement in 2017 which is, to date, the most recent.

9. Taking into consideration the indicated contamination, the applicant claims that this led to the increase of “gastrointestinal diseases, cancer, respiratory diseases and kidney failure”. The applicant provided various technical assessments in which the beneficiary population was taken as sample and

² “According to a medical analysis, the approximate the arsenic concentration in the child’s urine was 51 mcgr/lit. Said amount surpasses the tolerable amount even in an adult”. See: *Proceso, Río de injusticia, enfermedad y muerte*, February 15, 2014. Available at: <https://www.proceso.com.mx/364997/rio-de-injusticia-enfermedad-y-muerte>

³ Greenpeace, *Stop the Ecological Catastrophe in the Santiago River*, 2016. Available at: <https://www.greenpeace.org/archive-mexico/es/Footer/Descargas/reports/Toxicos/Alto-a-la-catastrofe-ecologica-del-rio-Santiago/>.

⁴ Toxic substance for the liver and the kidneys, considered cancerous.

⁵ Substance considered cancerous.

⁶ It allegedly affects the endocrinal system and human reproduction.

⁷ Corrosive product when in contact with skin.

which support the conclusion. For example, in a study carried out in 2017⁸, which was performed on boys and girls of the Agua Caliente community, it was shown that said populations have albuminuria prevalence three to five times greater than the values known in scientific theory. The study explains that this substance is one of the first signs of kidney damage. The referenced study was reportedly carried out due to the “the perception of the population” that chronic kidney diseases had increased in recent years. A study in 2019 carried out in the community of San Pedro Itzicán showed an albuminuria presence of 75% in the sample of tested boys and girls. In this community, since 2003, reportedly 28 people died due to chronic kidney diseases⁹, including a 23-year-old woman in mid-2019,

10. A 2019 study¹⁰, also carried out with the boys and girls of the Agua Caliente population, showed substantial exposure to pesticides¹¹, which allegedly affects their cognitive development. The applicant attached a copy of a second recent study which identified similar results, once again in the Agua Caliente community, which detected the presence of 7 pesticides in the urine of boys and girls.

11. In addition, the applicant attached studies carried out in 2010 and 2016 which found mercury contamination. The first one, performed in 2010¹², noted that 27% of the studied population (women of fertile age of the communities near Lake Chapala) had high levels of mercury in their hair. The second one¹³, performed by the National Autonomous University of Mexico in 2016, noted that the level of mercury surpasses the norm in 479 cases of 832 measurements and added that “these values are very hazardous to the health and life of the fauna of the stream.”

12. The same study concluded that the historic medium of sulfurs surpasses the norm in 798 of the 832 measurements, and that it is “extremely high” in all points of measurement. The cadmium also presents a particularly high historic value; in the same way, the fecal coliforms remain much higher than the norm for all the stations. In relation to the aforementioned data, the applicant observed that, according to the World Health Organization¹⁴, cadmium affects the kidneys, the bone and respiratory systems, and is classified as cancerous. It adds that mercury is a toxic substance for human health, particularly in the development of a pregnancy and in children’s first years.

13. The applicant stated that the alleged health conditions are worsened by the existence of “rudimentary health centers that lack the medicines and the infrastructure to treat those with kidney diseases, and therefore must be relocated to Guadalajara for medical assistance”. According to the request, children, pregnant women and the elderly are those who are particularly vulnerable to the damaging effects of the contamination.

14. The request added that in 2003, the situation of the Santiago River was reported before the Commission of Environmental Cooperation of North America, which published a report in 2013 “from a technical-environmental standpoint”. In 2007, various complaints were filed before the Jalisco State Human Rights Commission (CEDHJ) which decided to grant pertinent precautionary measures in

⁸ Felipe Lozano-Kasten, Erick Sierra-Díaz, Alfredo de Jesus Celis-de la Rosa, María Margarita Soto Gutiérrez, Alejandro Aarón Peregrina Lucano and Research Group on Social and Environmental Determinants in Childhood, International Journal of Environmental Research and Public Health, Prevalence of Albuminuria in Children Living in a Rural Agricultural and Fishing Subsistence Community in Lake Chapala, Mexico, December 14th, 2017.

⁹ Cases not connected with the diabetic population.

¹⁰ Erick Sierra-Díaz, Alfredo de Jesus Celis-de la Rosa, Felipe Lozano-Kasten, Leonardo Trasande, Alejandro Aarón Peregrina-Lucano, Elena Sandoval-Pinto and Humberto Gonzalez-Chavez, International Journal of Environmental Research and Public Health, Urinary Pesticide Levels in Children and Adolescents Residing in Two Agricultural Communities in Mexico, February 15th, 2019.

¹¹ 84% of the children were exposed to acetochlor; a medium of 95.7% to methionion, methoxuron, dimethoate, and enylconazole; 73% to glyphosate.

¹² Enrique Cifuentes, Felipe Lozano Kasten, Leonardo Trasande, and Rose H. Goldman, International Journal of Environmental Research and Public Health, Resetting our priorities in environmental health: An example from the south–north partnership in Lake Chapala, Mexico, 2011.

¹³ SEMARNAT, SEMADET, UNAM, Programa de Manejo Integral de la Cuenca del Río Santiago – Guadalajara, noviembre de 2016.

¹⁴ WHO “Ten chemicals of major public health concern” in International Programme on Chemical Safety (2019). Available at: https://www.who.int/ipcs/assessment/public_health/chemicals_phc/en/

January, 2009. In addition, “by processing these complaints, the CEDHJ issued the ‘special report on the contamination of the Santiago River on its course through the municipalities of El Salta and Juanacatlán, [...]’. This report concluded that no adequate response had been given by the authorities to solve the contamination problem in the area, and that it did not guarantee the right to health [...]”

15. In addition, the request questioned the suitability of the actions the State had implemented, as it alleged that there are 19 Wastewater Treatment Plants (PTAR for its acronym in Spanish) in the sub-basin of Lake Chapala. However, reportedly only two are working and their capacity is limited to treat organic matter, not industrial waters, which doesn’t include treatments of heavy metals and pesticides, “[...] therefore, the PTAR measure is completely insufficient and inefficient for the serious contamination of the Lake”. In relation to the municipalities of Juanacatlán and El Salto, there are only 3 PTAR and they work with an eighth of the capacity of the PTAR in Lake Chapala.

16. In addition, the applicant claimed that the State is not adequately carrying out its regulation work of the industrial activities and its water quality inspection. The applicant indicates that there are only 2 or 3 inspectors for the whole Lerma-Santiago-Pacific hydraulic region.

17. Lastly, the request stated that the aforementioned situation of risk could worsen “due to the imminent Presidential Decree that will enter in force, which would lift a prohibition concerning the Santiago River basin”. This would reportedly allow for new licenses to be granted on the use of the water. The applicant allegedly set into motion an appeal against said lift, but she has received no answer to the date the information was provided.

2. Response from the State

18. The State claimed that sanitary measures have been carried out in Lake Chapala and in the municipalities of El Salto and Juanacatlán. In this regard, it stated that there are 19 Wastewater Treatment Plants (PTAR) in the sub-basin of the Lake Chapala; these have the capacity to handle 400 liters per second (lps) and are currently handling 363 lps. Additionally, in the municipalities of El Salto and Juanacatlán, 3 PTAR with the capacity of 52 lps are reportedly operational. Additionally, the State noted that both municipalities are located in the Guadalajara Metropolitan Area “where 2 mega wastewater treatment plants, ‘El Ahogado’ and ‘Agua Prieta’, are currently operational and contributing to the sanitizing of this area.”

19. Furthermore, the State reports that it fulfils its regulation obligations via CONAGUA which has a national Network of Water Quality Monitoring (*Red de Monitoreo de Calidad del Agua*) in all the bodies of water of the country. This network allegedly takes samples from the water at a scheduled frequency, and has 15 monitoring stations in the Santiago River and its branches. From 2014 to 2018, the CONAGUA reportedly performed 21 inspection visits to users located in the municipalities of Juanacatlán and El Salto which discharge wastewater to the River. Allegedly, 6 administrative processes were initiated as legal violations were found; and from 2016 to 2018, they reportedly conducted “67 inspections visits in regards to the discharge of wastewater for which the Santiago River is the recipient.”

20. In addition, specialized bodies allegedly planned the “[c]reation of a sole state register of discharge and pollutant contributions in all sectors” and the “[s]trengthening of inspections and monitoring”. According to the State, these means “will strengthen the inspecting, monitoring, regulating and training to avoid the use of prohibited agrochemicals. A productive reconversion will be carried out in the basin (which will increase profitability and diversification of the products) while prioritizing environmental health.”

21. To the above, the State added that from the monitoring of the water in the basin of the Santiago River in the period 2012-2017, it concluded that it “presented a recovery in the majority of the

stations”, and that it showed “acceptable” concentration in some indicators, even though “it continues to have indications of contamination”:

On the other hand, in relation to the nutrients Nitrogen (N), Phosphorus (p) and Fecal Coliforms, they present high concentrations throughout the flow due to municipal discharges and to the contribution of diffuse pollution from agricultural areas.

As for the heavy metals, Arsenic (As), Cadmium (Cd), Cyanide (Cn), Chromium (Cr), Mercury (Hg), Nickel (Ni) and Lead (Pb) are mostly below the permissible limits for the different uses of the Santiago River; however, in regards to Cadmium and Mercury, concentrations above the limits have been presented in some stations and in different evaluations.

22. The State also reported that a budget has been agreed upon for the State Water Commission of Jalisco (*Comisión Estatal del Agua de Jalisco*), “for the rehabilitation and reconstruction of new Wastewater Treatment Plants in the Santiago River basin,” in addition to having requested a “Programming of Priority Actions for the clean-up of the Santiago River for the year 2019.” Likewise, in 2019, the State published a “Plan for Governance and Development of the State of Jalisco” which had the specific aim of the “Complete Recovery of the Santiago River”, and included the “[d]ecrease of contamination in the Santiago River and its basin” and “[m]ore conditions and services for health care of the inhabitants of the basin” as expected results.

23. In relation to public policy, the State alleged that actions have been carried out for the construction of drinking water, sewage, and sanitation systems in the municipalities of the state of Jalisco. In addition, basin commissions were created, such as the Santiago River Basin Council, which would seek to promote “the efficient use of water in agriculture and large cities, soil and water conservation, wastewater sanitation and its reuse, and the promotion of a greater culture of water and forests, which together would make it possible to conserve and preserve environmental goods and services in existing areas and those that have already been degraded.”

24. Specifically regarding medical assistance, the State indicated that “the Secretariat of Health guarantees quality medical assistance and, in particular, early detection of illnesses”. In addition, it “will monitor the use and handling of the pesticides, fertilization and toxic substances. If these contribute to aggravating the illnesses, their use shall be prohibited.”

25. Considering the aforementioned, the State claimed that the alleged situation presented by the applicant is being handled by various state authorities and specifically indicated that “the State has been diligent in handling the present matter, both in health and sanitary aspects as well as the environmental aspect. It has established programs and taken concrete action in the three government levels which has resulted in a progressive improvement of the Santiago River.” Lastly, it concluded that the requirements of article 25 of the Rules of Procedures of the IACHR for the granting of a precautionary measure are not met, as “the State of Mexico is already diligently handling the situation internally and, therefore, lacks the principal function of avoiding an imminent violation of human rights or possible irreparable harm against the proposed beneficiary.”

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

26. The precautionary measures mechanism is part of the Commission’s functions of overseeing Member State compliance with human rights obligations established in Article 106 of the Charter of the Organization of the American States (“OAS”). These general functions are set forth in Article 41 (b) of the American Convention on Human Rights, also mentioned in article 18 (b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is enshrined in Article 25 of the Rules of Procedure, by which the Commission grants precautionary measures in serious and urgent situations, where such measures are necessary to prevent an irreparable harm.

27. The Inter-American Commission and the Inter-American Court on Human Rights (hereinafter “the Inter-American Court” or “IAHR Court”) have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary. Regarding the protective nature, these measures seek to avoid irreparable harm and to protect the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations while the bodies of the Inter-American System analyze a petition or case. Their objective 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 *effet utile* of the final decision. In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, implement the ordered reparations. For such purposes, 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.

28. In the analysis of the mentioned requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. The information provided, to the effects of identifying a serious and urgent situation, should be met to allow a *prima facie* standard¹⁵.

29. Prior to the analysis of the requirements, the Commission wishes to clarify that it is outside the scope of the precautionary measures mechanism to determine in this procedure whether there is environmental contamination, its scope, or its causal link with the alleged illnesses as that would require a technical or scientific evaluation which surpasses this mechanism. The Commission will only analyze, in accordance with the information provided by the parties, if the right to health, life and personal integrity of the persons proposed as beneficiaries fall under the seriousness requirement pursuant to article 25 of the Rules of Procedure.

30. In conformity with the aforementioned, with the understanding that it is not up to the parties in a procedure of this nature to prove beyond doubt the alleged contamination and its toxic effects to the health of the persons proposed as beneficiaries, in precedents, the Commission has had information which indicated the health situation of the beneficiaries which has allowed, from a preliminary assessment, to determine a reasonable cause and effect relation between the alleged illnesses and the reported sources of contamination. For example, in the matter *Marcelino Díaz Sanchez and others regarding México*¹⁶, the IACHR had specific information on the health of the beneficiaries, as well as the individualized indication of various persons who had died due to cancer or who suffered from illnesses derived from an alleged contamination related to an open dumping and a landfill.

31. On another hand, in a different antecedent, in the matter of *Locals who consume water from the Mezapa River*¹⁷, according to the applicant, the beneficiaries had developed various illnesses as a

¹⁵ In this regard, for example, referring to the provisional measures, the Inter-American Court has indicated that a minimum of detail and information is required to assess *prima facie* a situation of extreme seriousness and urgency. I / A Court HR, Matter of children and adolescents deprived of liberty in the “Complexo do Tatuapé” of the CASA Foundation. Request for extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

¹⁶ CIDH, *Marcelino Díaz Sánchez and others regarding Mexico* (PM 1498-18), Resolution 24/2019, April 23, 2019. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/24-19MC1498-18-MX.pdf>.

¹⁷ IACHR, *Locals who consume water from the Mezapa River regarding Honduras* (PM-772-17), Resolution 12/2018 of February 24. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/12-18MC772-17-HO.pdf>

result of the water contamination and they reportedly had no access to adequate medical assistance. The Commission highlights that the State has not provided an alternative account questioning the mentioned illnesses and has not provided information on the measures to guarantee that the water can be consumed. Based on the previous elements, and given the nature of the precautionary measures mechanism, the Commission did not require more technical or detailed information to prove a causal link between the alleged illnesses and the alleged contamination¹⁸.

32. When considering the analysis of the requirement of seriousness, the Commission considers it pertinent to also analyze the situation of risk alleged by the applicant, taking special notice of the available information regarding the measures that the State is reportedly taking, from a medical assistance and sanitary standpoint, insomuch as to relieve or cure the effects that the contamination could have on the beneficiaries' health or in order to eliminate or reduce the sources of risk in their origin.

33. Firstly, the Commission highlights that the applicant provided extensive information indicating the existence of significant environmental contamination in the Santiago River and Lake Chapala, which has been recognized over the years by both domestic bodies, including the Jalisco State Human Rights Commission (CEDHJ) in 2009 (*supra* para. 14), and international bodies, such as the United Nations' Working Group on Business and Human Rights in 2016 (*supra* para. 7). In fact, the State recognized that the Santiago River basin "has indicators of contamination" and that substances harmful to human health, such as mercury and cadmium, "have presented levels that exceed the limits in certain seasons and in different evaluations" (*supra* para. 21), despite the fact that this diverges from the existence or continuity of a situation of serious risk of irreparable harm. The Commission notes that not only do high levels of exposure to toxic or dangerous substances in themselves represent a threat to the rights to life, personal integrity and health, but also that the chronic and permanent exposure to low levels of these substances¹⁹ could also have the same result. As is stated in the report, according to the technical tests that were performed²⁰, with the passing of the last 20 years the levels of contamination of the Santiago River basin, has reached alarming levels of toxicity.

34. Secondly, the Commission is concerned about the studies provided by the applicant, especially those recently concluded by sampling groups of the affected populations, which reportedly show the continuity of a contamination situation. Such studies show high percentages of indications of kidney diseases, allegedly derived from exposure to contaminants present in the Santiago River and its surroundings, in addition to the detection of pesticides in children's urine (*supra* paras. 9 and 10). It was also indicated that 28 persons had died of chronic kidney diseases since 2003, including one person in mid-2019. In addition, according to the applicant, the situation of risk of the populations concerned may indeed be aggravated by the existence, of "rudimentary health centers that lack the medicines and the infrastructure to treat those with kidney diseases, and therefore must be relocated to Guadalajara for medical assistance."

35. The Commission acknowledges the response provided by the State, including the measures which have reportedly been taken in order to reduce the alleged situation of risk. However, it must be noted that the information does not, on this occasion, undermine the continuity of the mentioned factors. In relation to the measures regarding health, the report provided by the State simply affirmed that "the Secretariat of Health guarantees quality medical assistance and, in particular, early detection

¹⁸ See more: IACHR. Community of San Mateo de Huanchor regarding Peru (PM-608-03); La Oroya regarding Perú (PM-271-05); Puerto Nuevo regarding Perú (PM-199-09); Mina Marlin I regarding Guatemala (PM-260-07); all available in the corresponding annual reports: <http://www.oas.org/es/cidh/informes/anuales.asp>. More recently, see: IACHR, Native Community "Tres Islas" de Madre de Dios regarding Peru (PM-113-16), Resolution 38/2017 of September 8, available at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/38-17MC113-16-PE.pdf>; IACHR, Inhabitants of the Community of Cuninico regarding Perú (PM-120-16), Resolution 52/2017 of December 2, available at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/38-17MC113-16-PE.pdf>.

¹⁹ Special Report on the implications of human rights of the ecologically rational managing and elimination of dangerous waste and substances. UN Doc. A/HRC/36/41, July 20, 2017, para 14.

²⁰ See, for example, footnotes 8, 10 y 12.

of illnesses” and that it “will monitor the use and handling of the pesticides, fertilization and toxic substances[...],” with no explanation on how the mentioned health service will be designed in order to manage the specific demands of the proposed beneficiaries, or in which way the proposed monitoring will be effective in this context. In addition, it was not clear if said services are currently available or if they are part of the measures which have yet to be implemented.

36. In addition, regarding the measures implemented to neutralize or mitigate the alleged environmental pollution, the Commission notes that it would be advisable to progressively implement comprehensive measures to resolve the root of the problem. In this regard, the Commission acknowledges the information provided by the State that the river “has recovered in most of the seasons” (*supra* para. 21) and that it mentions the development of public policies with a view to the recovery of the river, sanitation, and sustainable water management. Nevertheless, the Commission takes note that the main decontamination measure implemented by the State refers to the Wastewater Treatment Plants (PTAR). Without prejudice to their relevance for the treatment of domestic wastewater, it is noted that, according to information provided by the applicant and not undermined by the State, these are not suitable measures for pollution produced as a result of industrial waste. In addition to the above, the Commission takes into account the information provided by the applicant which states that the pollution indicators used by the State to evaluate the quality of the water are allegedly not being designed to measure important pollutants, which would hinder the implementation of adequate decontamination measures by the State.

37. In this regard, the Commission recalls that the Inter-American Court of Human Rights has already stressed that States have an obligation to adequately regulate and control activities under their jurisdiction that may cause significant damage to the environment, for which they must implement appropriate and independent oversight and accountability mechanisms, including both preventive measures and measures of sanction and reparation.²¹ States also have an obligation to mitigate significant environmental damage, including where it has occurred despite preventive action by the State or where the source of the pollution is unknown, using the best available technology and science.²²

38. In view of the aforementioned, the Commission considers that, from the applicable *prima facie* standard of the precautionary measures mechanism, the rights to health, life and personal integrity of the inhabitants near the Santiago River in the municipalities of Juanacatlán and El Salto, as well as the inhabitants of San Pedro Itzcán, Agua Caliente, Chalpicote and Mezcala in the municipality of Poncitlán, State of Jalisco are in a situation of serious risk.

39. As it pertains to the requirement of urgency, the Commission notes that it is met due to the continuous environmental contamination situation, taking into account the available information regarding health issues and deaths over the years, along with the lack of measures regarding adequate medical assistance. In these circumstances, the Commission considers that precautionary measures are urgently required to guarantee the beneficiaries’ access to adequate medical assistance in conformity with the applicable international standards and, in case the relation between these cases and the alleged contamination is proven, the necessary measures to prevent the impact on their right to life, personal integrity and health.

²¹ The IACHR recalls that States must also prevent third parties from undermining access to water by adopting internal measures to prevent non-state actors from violating or denying its contents, for example, by contaminating water resources, wells, and other water distribution systems. In order to protect human rights under threat in such circumstances, states have, among other obligations, the duty to generate, collect, evaluate, and update adequate information, to communicate it effectively, particularly to the population at risk, to facilitate the right of participation of rights holders in decision-making in such contexts, and to implement actions so that if industrial or business activities are involved in risk analysis, they incorporate human rights due diligence. (IACHR. Annual Report 2015, chapter VI.A. Access to Water in the Americas, para. 20; IACHR. Press Release. IACHR REDESCA urges prioritizing actions aimed at the realization of the rights to water and sanitation in the hemisphere, March 23, 2018; IACHR, Marcelino Díaz Sánchez et al. with respect to Mexico (MC 1498-18), Resolution 24/2019, April 23, 2019. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/24-19MC1498-18-MX.pdf>).

²² I/A Court H.R., Advisory Opinion OC-23/17 of 15 November 2017. Series A No. 23, para. 174. See also: IACHR, “Empresas y Derechos Humanos: Estándares Interamericanos”, OEA/Ser.L/V/II, CIDH/REDESCA/INF.1/19, November 1, 2019 (available in Spanish).

40. As it pertains to the requirement of irreparable harm, the Commission considers that it is met as the possible impact on the rights to life, personal integrity and health constitute, by their own nature, the maximum situation of irreparable harm.

41. Lastly, the Commission recalls that, under the principle of complementarity, the State, through its domestic authorities, is primarily responsible for protecting the human rights of the persons under its jurisdiction; in this sense, the nature of international jurisdiction is "auxiliary" or "complementary," without replacing it.²³ However, the Commission considers that the invocation of the principle of complementarity as an argument of irrelevance for the adoption of precautionary measures presupposes that the concerned State satisfies the burden of proving that the beneficiaries are not in the situation set out in Article 25 of the Rules of Regulation, in view of the fact that the measures adopted by the State itself have had a substantive impact on reducing or mitigating the situation of risk, in such a way that it does not make it possible to assess a situation that meets the requirement of seriousness and urgency which precisely requires international intervention to prevent irreparable harm²⁴.

42. In this sense, in the present matter, the Commission has proved that the situation outlined in view of article 25 of the Rules of Procedure comply with the regulatory requirements, therefore, allowing the corresponding adoption of precautionary measures to protect their rights.

IV. BENEFICIARIES

43. The Commission declares that the beneficiaries of this precautionary measures are the inhabitants of the areas up to 5 kilometers from the Santiago River²⁵ in the municipalities of Juanacatlán and El Salto, as well as the inhabitants of San Pedro Itzicán, Agua Caliente, Chalpicote and Mezcala in the municipality of Poncitlán, State of Jalisco, who are determined inasmuch for their geographic locations as for their health situation, pursuant to article 25.3 of the Rules of Regulation.

V. DECISION

44. In view of the mentioned antecedents, the Inter-American Commission on Human Rights considers that the present case meets *prima facie* the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests that the State of Mexico:

- a) adopt the necessary measures to preserve the life, personal integrity and health of the inhabitants of the areas up to 5 kilometers from the Santiago River in the municipalities of Juanacatlán and El Salto, as well as those of the inhabitants of San Pedro Itzicán, Agua Caliente, Chalpicote and Mezcala in the municipality of Poncitlán, State of Jalisco, mentioned in the request. In particular, that the State adopt pertinent measure to offer a specialized medical diagnosis for the beneficiaries, taking into account the alleged contamination and providing adequate medical attention in conditions of availability, accessibility and quality, pursuant to applicable international standards;
- b) agree upon the measures to be taken with the beneficiaries and their representatives;

²³ See *inter alia*: IACHR, Francisco Javier Barraza Gómez regarding Mexico (PM-209-14), Resolution from August 15, 2017, para. 22. Available at: <http://www.oas.org/es/cidh/decisiones/cautelares.asp> ; IACHR, Paulina Mateo Chic regarding Guatemala (PM 782-17), Resolution from December 1, 2017, para. 34; Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf> ; and IACHR, Santiago Maldonado regarding Argentina (PM 564-2017), Resolution from August 22, 2017, para 16. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/32-17MC564-17-AR.pdf>

²⁴ *Ibidem*

²⁵ Allegedly a zone of important contamination risk.

c) report on the measures adopted to reduce the sources of alleged risk.

45. The Commission requests that the Government of Your Excellence report, within 15 days from the date of this resolution, on the adoption of the precautionary measures requested and to update this information periodically.

46. The Commission emphasizes that, in accordance with Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment on any violation of the rights protected in the American Convention and other applicable instruments.

47. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the State of Mexico and to the representatives

48. Approved on February 5, 2020 by: Esmeralda Arosemena Troitino, President; Antonia Urrejola Noguera, Second Vice-President; Margarette Macaulay; Flávia Piovesan; and Julissa Mantilla, members of the IACHR.

Paulo Abrão
Executive Secretary