

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 66/2020**

Precautionary Measures No. 917-20

**José Ángel Peñaloza Hernández *et al.* regarding Mexico<sup>1</sup>**  
October 9, 2020

**I. INTRODUCTION**

1. On September 24, 2020, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission”, or “the IACHR”) received a request for precautionary measures submitted by an applicant (“the applicant”), whose identity shall be kept confidential at the request of the party, urging the Commission to require that the State of Mexico (“the State” or “Mexico”) protect the rights of Franco Peñaloza Hernández, Yazmín Yareli Sánchez, José Ángel Peñaloza Hernández and Paulina Lemus Hernández (“the proposed beneficiaries”)<sup>2</sup>, who have been missing ever since they were put into a police vehicle at a security checkpoint in the town of Copetiro, Michoacán on September 2, 2020. A few days later, they were allegedly seen in the town of Los Reyes, Michoacán and their whereabouts or location have been unknown since.

2. Under the terms of Article 25.5 of its Rules of Procedure and Article XIV of the Inter-American Convention on Forced Disappearance of Persons, the IACHR requested information from the State on September 25, 2020. In this regard, the State provided the requested information on September 29.

3. After analyzing the submissions of fact and law, the Commission considers, from the applicable *prima facie* standard, that Franco Peñaloza Hernández, Yazmín Yareli Sánchez, José Ángel Peñaloza Hernández and Paulina Lemus Hernández find themselves in a situation of seriousness and urgency, given that their rights to life and personal integrity are at risk of irreparable harm. Therefore, Mexico is hereby requested to: a) adopt the necessary measures to determine the whereabouts or fate of Franco Peñaloza Hernández, Yazmín Yareli Sánchez, José Ángel Peñaloza Hernández and Paulina Lemus Hernández, in order to protect their rights to life and personal integrity. In this sense, the Commission urges the State to guarantee effective search measures through its specialized mechanisms created for such purposes; b) agree upon the measures to be adopted with the representative of the beneficiaries; and, c) report on the actions taken in order to investigate the alleged facts that led to the adoption of this resolution with the aim of avoiding their repetition.

**II. SUMMARY OF FACTS AND ARGUMENTS**

**1. Information provided by the applicants**

4. According to the request, on September 2, 2020, Franco Peñaloza Hernández, Yazmín Yareli Sánchez, José Ángel Peñaloza Hernández and Paulina Lemus Hernández left Apatzingan, Michoacán on a public transportation bus bound for the city of Periban, Michoacán.

5. When they passed through the town of Copetiro, where a public security checkpoint with police officers was located, the bus was reportedly stopped so that the officers could board along with armed civilians. According to witnesses, the agents approached the passengers and asked them to take out their

<sup>1</sup> In accordance with Article 17.2.a of the Rules of Procedure of the Inter-American Commission on Human Rights, President Joel Hernández García, a Mexican national, did not participate in the debate or deliberation of this matter.

<sup>2</sup> José Ángel Peñaloza Hernández and Paulina Lemus Hernández are minors.

belongings and hand over their cell phones to be searched. One of the armed agents on board the bus reportedly mentioned that they were looking for members of the Jalisco Cartel *Nueva Generación*.

6. The request indicated that, once the cell phones were examined, they were returned to the passengers, and the officers ordered the bus driver to leave. According to witnesses, one of the proposed beneficiaries told the driver that his cell phone was missing, prompting the driver to inform the police officers, who were reportedly displeased by this. The officers then boarded the bus again and made the four proposed beneficiaries get off. One of the officers ordered the driver to continue on his way, while the four individuals remained under the custody of the police officers, who tied their hands and made them board a public security vehicle.

7. According to the testimonies of persons from the town of Los Reyes, the proposed beneficiaries were taken there and they were admitted to a social rehabilitation center known as “La Higuera”. The request noted that Los Reyes is purportedly the main base of the armed group “Los Comunitarios”. According to witnesses in Los Reyes, a few days later Franco Peñaloza Hernández and José Ángel Peñaloza Hernández were put into one vehicle, while Yazmín Yareli Sánchez and Paulina Lemus Hernández were put into another. The request indicated that, from this moment on, their whereabouts have been unknown.

8. In light of the situation, the family members of the proposed beneficiaries filed a complaint with the Michoacán State Attorney General’s Office on September 5, 2020. However, according to the request, the Attorney General’s Office has not yet taken any action to investigate the facts and locate the proposed beneficiaries.

## **2. Information provided by the State**

9. The State reported that, with the aim of determining the whereabouts of the proposed beneficiaries, on September 5, 2020, the Attorney General’s Office of the State of Michoacán initiated investigation file 10012020032632, against “anyone who is proven responsible for the crime of disappearance committed by a third party”.

10. On September 6, the Investigative Police was ordered to “carry out investigative actions aimed at achieving the search and location of the disappeared persons” and to take genetic samples from the families of the proposed beneficiaries.

11. The State informed that, among the investigation measures taken, on September 7, the Attorney General’s Office of Los Reyes de Salgado, Michoacán, was requested to carry out investigative actions. In addition, information was requested from the Red Cross, rehabilitation centers, hospitals, the bus station, the forensic medical center, and the Secretariat of Public Security in order to collect videotapes and personal records from September 2, 2020. Similarly, the State instructed that “the search notice for the four disappeared persons be disseminated and placed in visible locations”, and that the “Alba” alert be activated in the case of Paulina Lemus Hernández and José Ángel Peñaloza Hernández, as they are adolescents. In the event that no information is obtained regarding the whereabouts of the proposed beneficiaries, “gaps, unpaved roads and other locations will be searched”, in accordance with the Official Protocol of Investigation for the Crimes of Forced Disappearance and Disappearance Committed by Private Individuals.

12. Moreover, the State reported that the Attorney General’s Office of Uruapan, Michoacán issued instructions regarding the necessary actions to guarantee the security of the relatives of José Ángel Peñaloza Hernández. In the same sense, on September 26, the Attorney General’s Office of Los Reyes de

Salgado, Michoacán issued protective measures in favor of some relatives of the proposed beneficiaries, with “the objective of safeguarding their personal integrity and so they may freely participate in the investigation of the facts of the present case”. These include surveillance of their homes and police protection consisting of “immediate assistance by members of police institutions at the residence where the victim is located or is found at the time of request”.

13. In light of the foregoing, the State argued that “the granting of precautionary measures in the instant case would be contrary to the principle of complementarity that governs international human rights law, inasmuch as the Mexican State is already diligently addressing the situation internally”.

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

14. The precautionary measures mechanism is part of the Commission’s functions of overseeing compliance with human rights obligations established in Article 106 of the Charter of the Organization of the American States. These general oversight functions are set forth in Article 18 (b) of the Statute of the IACHR and the precautionary measures mechanism is enshrined in Article 25 of the Commission’s Rules of Procedure. In compliance with that Article, the IACHR grants precautionary measures in serious and urgent situations, where such measures are necessary to prevent an irreparable harm.

15. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that precautionary and provisional measures have a dual nature, one being precautionary and the other being protective. As regards the protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are being considered by the IACHR. Their precautionary nature aims to safeguard the rights at risk until the request under consideration in 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 allow the State concerned to comply with the final decision and, if necessary, implement the ordered reparations. Regarding the process of decision making and, according to Article 25(2) of the Rules of Procedure, the Commission considers that:

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

16. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures do not need to be fully proven. Rather, the assessment of the information provided as to whether the requirements of seriousness and urgency are met must be determined under a *prima facie* standard of review.<sup>3</sup> Moreover, the Commission wishes to reiterate that, by its own

<sup>3</sup> See in this regard: I/A Court HR [Inhabitants of the Communities of the Miskitu Indigenous People of the Northern Caribbean Coast Region regarding Nicaragua](#). Extension of Provisional Measures. Resolution of the Inter-American Court of Human Rights of August 23, 2018. Considerandum 13; I/A Court HR. [Children and adolescents deprived of their liberty in the “Complejo do Tatuapé”](#)

mandate, it is not called upon to find any criminal liabilities through the present mechanism, nor alleged violations of due process in the investigations and domestic processes, since this would constitute a review of the merits of a potential petition or case. The analysis of the information submitted herein is exclusively based on Article 25 of its Rules of Procedure.

17. With regard to the requirement of seriousness, in cases of disappearance, the Commission has taken into consideration any indication of the potential involvement in and knowledge of the incidents by State authorities,<sup>4</sup> since, without prejudice to the fact that the rights to life and personal integrity may also be at risk in the event of an abduction<sup>5</sup> or another cause of disappearance,<sup>6</sup> these aspects have an impact on the specific assessment made when determining the seriousness of the situation. In accordance with existing precedents, examples of potential links with State agents include the presence of members of the army in the area where the disappearance occurred,<sup>7</sup> the deprivation of liberty by paramilitary or armed groups operating in conjunction with State authorities,<sup>8</sup> or by testimonies that claim to have seen individuals last boarding a vehicle under the instruction of police officers,<sup>9</sup> among others, that suggest an alleged connection with the State through the involvement of its agents.

18. The Commission considers that the requirement of seriousness has been met in the present situation, given that the fate or whereabouts of the proposed beneficiaries are unknown since September 2, 2020. According to the available information, the last time their family members knew of their location, the proposed beneficiaries were in the custody of police officers, who allegedly made them board a police vehicle under circumstances that, according to the available information, have not been clarified to date. In this regard, the Commission notes the seriousness of the allegations that some State agents were involved or could at least have knowledge of the disappearance. Furthermore, the IACHR observes that the State has neither challenged nor offered a different narrative regarding these events, particularly considering that the disappearance occurred shortly after the proposed beneficiaries were in the custody of the State.

19. The Commission takes into consideration the information provided by the State regarding the investigative actions undertaken to determine the whereabouts of the proposed beneficiaries. In particular, the Commission observes that the State referred to actions taken within the framework of the investigation initiated by the Michoacán State Attorney General's Office, as well as requests for information made to various entities, the dissemination and posting in visible locations of the search notices for the proposed beneficiaries, and the activation of the "Alba" alert. Similarly, the Commission notes that the Attorney General's Office of Los Reyes de Salgado issued protective measures in favor of some family members of the proposed beneficiaries.

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[of the Fundação CASA](#). Request for extension of provisional measures. Provisional Measures in respect of Brazil. Resolution of the Inter-American Court of Human Rights of 4 July 2006. Considerandum 23.

<sup>4</sup> In accordance with Article II of the Inter-American Convention on Forced Disappearance of Persons, forced disappearance is the deprivation of liberty of one or more persons, in whatever form, committed by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by a lack of information or a refusal to acknowledge the deprivation of liberty or to provide information on the whereabouts of the person, thereby preventing their recourse to the applicable legal remedies and procedural guarantees. See: [Inter-American Convention on Forced Disappearance of Persons](#). Adopted in Belém do Pará, Brazil on June 9, 1994, during the twenty-fourth regular session of the OAS General Assembly.

<sup>5</sup> See: IACHR. [Resolution 25/2018. Precautionary Measures Nos. 309-18 and 310-18. Javier Ortega Reyes, Paúl Rivas Bravo and Efraín Segarra Abril regarding Colombia](#). April 12, 2018.

<sup>6</sup> See: IACHR. [Resolution 24/2018. Precautionary Measure No. 81-18. Náthaly Sara Salazar Ayala regarding Perú](#). April 8, 2018.

<sup>7</sup> See: IACHR. [Resolution 37/2014. Precautionary Measure No. 455-14. Dubán Celiano Díaz Cristancho regarding Colombia](#). December 24, 2014.

<sup>8</sup> See: IACHR. [Resolution 4/2013. Precautionary Measure No. 301-13. Buenaventura Hoyos Hernández regarding Colombia](#). October 4, 2013.

<sup>9</sup> See: IACHR. [Resolution 24/2016. Precautionary Measure No. 29-16. Margarita Marín Yan et al. regarding México](#). April 15, 2016.

20. However, the Commission further notes that, despite the implementation of the actions reported by the State, the whereabouts of the proposed beneficiaries have yet to be determined. In the case of Paulina Lemus Hernández and José Ángel Peñaloza Hernández, both adolescents, the Commission recalls that, as indicated by the Inter-American Court, the State has a reinforced obligation to determine their whereabouts or fate as soon as possible.<sup>10</sup> Moreover, although the information provided by the applicants points to the alleged involvement of some State agents or at least their knowledge of the disappearance, the State has not informed the Commission of any actions taken to investigate the potential involvement of these State agents.

21. In light of these circumstances, and in keeping with the principle of complementarity duly established with regard to precautionary measures,<sup>11</sup> the Commission observes that the proposed beneficiaries are still missing to this day and, therefore, under the *prima facie* standard of review, a situation of serious risk to the rights to life and personal integrity of Franco Peñaloza Hernández, Yazmín Yareli Sánchez, José Ángel Peñaloza Hernández, and Paulina Lemus Hernández is sufficiently established.

22. As regards the requirement of urgency, the Commission considers that it has been met, insofar as the passing of time without determining the whereabouts of the proposed beneficiaries is likely to generate greater impact on their rights to life and personal integrity. In this regard, one month after the disappearance and the launch of the respective investigation, the Commission notes that no substantial information is available at this time concerning their fate or whereabouts.

23. Regarding the requirement of irreparable harm, the Commission considers it has been fulfilled, to the extent that the possible violation of the right to life and personal integrity constitutes the maximum situation of irreparability.

24. In this respect, the Commission deems it appropriate to adopt precautionary measures, as the procedural requirements have been met, in view of the lack of determination of the whereabouts of Franco Peñaloza Hernández, Yazmín Yareli Sánchez, José Ángel Peñaloza Hernández, and Paulina Lemus Hernández, and the circumstances in which their disappearance continues to unfold. The Commission further reiterates that the State has the obligation to determine the whereabouts of Franco Peñaloza Hernández, Yazmín Yareli Sánchez, José Ángel Peñaloza Hernández, and Paulina Lemus Hernández, as well as to clarify the causes of their alleged disappearance, and to prosecute and punish all persons responsible.

#### **IV. BENEFICIARIES**

25. The Commission hereby declares that the beneficiaries of this precautionary measure are Franco Peñaloza Hernández, Yazmín Yareli Sánchez, José Ángel Peñaloza Hernández and Paulina Lemus Hernández, who are duly accredited in this procedure.

#### **V. DECISION**

<sup>10</sup> I/A Court HR. [Case Contreras et al. Vs. El Salvador. Merits, Reparations and Costs](#). Judgement of August 31, 2011. Series C No. 232. Para. 145.

<sup>11</sup> The Commission has noted that the adoption of precautionary measures is not suitable when, in application of the principle of complementarity, it is determined that the actions taken by the State have had a substantive impact on reducing the level of risk, to such an extent that the situation cannot be assessed as meeting the requirements of seriousness and urgency, which are specifically required for international intervention to prevent irreparable harm. See in this regard: IACHR. [Resolution 95/2018. Precautionary Measure No. 1375-18. Daniel Ramírez Contreras regarding Mexico](#). December 28, 2018; IACHR. [Resolution 31/2017. Precautionary Measure 209-17. Francisco Javier Barraza Gómez regarding Mexico](#). August 15, 2017.

26. The IACHR considers that this matter meets *prima facie* the requirements of seriousness, urgency and risk of irreparable harm set forth in Article 25 of its Rules of Procedure. Consequently, it is hereby requested that Mexico:

- a) adopt the necessary measures to determine the whereabouts or fate of Franco Peñaloza Hernández, Yazmín Yareli Sánchez, José Ángel Peñaloza Hernández and Paulina Lemus Hernández, in order to protect their rights to life and personal integrity. In this sense, the Commission urges the State to guarantee effective search measures through its specialized mechanisms created for such purposes;
- b) agree upon the measures to be adopted with the representative of the beneficiaries; and,
- c) report on the actions taken in order to investigate the alleged facts that led to the adoption of this resolution with the aim of avoiding their repetition.

27. The Commission requests that the State of Mexico report, within 15 days from the date of this resolution, on the adoption of the precautionary measures requested and update this information periodically.

28. The Commission notes that, in accordance with Article 25(8) of its Rules of Procedure, the decision to grant precautionary measures and the adoption of those measures by the State do not constitute a prejudgment on the possible violation of rights safeguarded in the American Convention and other applicable instruments.

29. The Commission instructs its Executive Secretariat to notify the present resolution to the State of Mexico and the applicants.

30. Approved on October 9, 2020 by: Antonio Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Esmeralda Arosemena de Troitiño; and, Margarete May Macauly; members of the IACHR.

María Claudia Pulido  
Acting Executive Secretary