INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLUTION TO LIFT PRECAUTIONARY MEASURES 91/2021

Precautionary Measure No. 1016-04
Armando Díaz López et al. regarding Mexico
November 17, 2021
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of Armando Díaz López and the members of his family –Micaela Torres Gutiérrez, María Consuelo Díaz Torres, Magdalena Díaz Torres, and José Armando Díaz Torres–, as well as in favor of Reynaldo Gómez Martínez, Mario Torres, Ricardo Martínez Martínez, Mariano Sánchez Montejo, and Gilberto Jiménez López, members of the Kichán Kichañob organization from the state of Chiapas. At the time of making the decision, the Commission evaluated the actions taken by the State during implementation as well as the observations of the beneficiaries’ representation. Following the request to lift filed by the State, the IACHR repeatedly requested observations from the representation, who responded for the last time in 2017, without responding to the requests for information made in 2020 and 2021. Upon not identifying compliance with the procedural requirements, the IACHR decided to lift these measures.

II. BACKGROUND INFORMATION

2. On October 29, 2004, the IACHR granted precautionary measures in favor of the witness Armando Díaz López and the members of his family –Micaela Torres Gutiérrez, María Consuelo Díaz Torres, Magdalena Díaz Torres, and José Armando Díaz Torres– as well as in favor of Reynaldo Gómez Martínez, Mario Torres, Ricardo Martínez Martínez, Mariano Sánchez Montejo, and Gilberto Jiménez López, members of the Kichán Kichañob organization from the state of Chiapas. It was alleged that the identified persons were subjected to constant threats and acts of harassment because of their complaints against the activities of the paramilitary group “Paz y Justicia” (“Peace and Justice”) in the municipality of Tila, Chiapas. The Commission requested that the Mexican State adopt the necessary measures to protect the life and physical integrity of the aforementioned persons and their families and investigate the threats against them. These precautionary measures are related to Case 12.901 in the merits stage.

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

3. Throughout the time the precautionary measures have been in force, the Commission has followed-up on the situation that is the subject matter of these measures through the request of information from the parties. On October 31, 2011, the State requested the lifting of this matter. On November 29, 2011, June 20, 2013, and July 8, 2013, the Commission requested information from the representation within 30 days to provide updated information on the situation presenting a risk. On July 19, 2013, the representation requested a timeline extension which was granted on July 22, 2013. On

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

August 21, 2013, the representation provided information which was forwarded to the State on September 5, 2013. On October 1, 2013, the State provided its observations and once again requested the lifting. On October 17, 2013, the Commission requested information from the representation. The Commission granted a timeline extension on December 9, 2013, and the representation sent additional information on January 3, 2014.

4. On January 14, 2014, the Commission forwarded the information to the State. On February 21, 2014, the Commission requested information from the representation, who was granted a time extension on May 14, 2014. On June 8, 2014, the representation provided additional information. On October 21, 2014, the Commission requested information from the State, who responded on December 9, 2014, reiterating its request to lift the precautionary measures. On December 15, 2014, and October 7, 2015, the Commission requested additional information from the representation. After being granted a timeline extension, on November 20, 2015, the representation provided additional information.

5. On April 5, 2017, the Commission requested information from the State, who responded on June 14, 2017, reiterating its request to lift the measures. On August 24, 2017, the Commission requested information from the representation, who responded on October 5, 2017. On May 11, 2018, the Commission requested information from the State, who responded on July 23, 2018, reiterating its request to lift the measures. On July 27, 2021, the Commission asked the representation for information.

A. Information provided by the State

6. The State considered that it had complied with the recommendations of the Commission. In 2011, the State stated that: (i) on January 30, 2003, a preliminary inquiry, number UESP/017/2003-01, began regarding the disappearances of persons and homicides attributed to members of the armed group called “Paz y Justicia”; (ii) on April 28, 2004, an investigation was carried out in which criminal action was brought against 30 persons as probable perpetrators of the crimes of qualified homicide and organized crime. At that date, within the process, there were 3 people awaiting judgement and one person sentenced to 5 years in prison; (iii) the preliminary investigation PGR/SIEDO/UEITA/050/2004, initiated on November 4, 2004, was initiated for facts that could constitute the crimes of homicides and threats by virtue of the complaint filed by the beneficiary Armed Díaz López. This investigation was joined with UESP/017/2003-01, and as a consequence criminal action was brought against persons presumed responsible for the crimes of qualified homicide and organized crime. Of this criminal case, 5 people were sentenced to 31 years and 3 months in prison; (iv) the file of certain criminal investigations included in inquiry UESP/017/2003-01 was reported; and (v) the administrative act AA/41/SJI/313/2004 was initiated against that or those who are responsible (members of the paramilitary group “Paz y Justicia”) for the possible commission of criminal acts committed against the beneficiaries of the precautionary measure. The State considered that the investigations that were initiated as a result of the events denounced by Armando Díaz López are exhausted with the respective criminal action and the reservation of the last triplicate of the preliminary investigation number UESP/017/2003-01.

7. In 2013, the State recalled that on December 1, 2004, a consultation meeting was held with the national authorities, the state authorities, and the beneficiaries. In addition, the State recalled that 3 working meetings were held in 2007 to discuss the implementation of the precautionary measures and the State mentions that as a result of the complaints made by the beneficiaries, a criminal investigation has been carried out that ended with the conviction of those responsible. The State reported that on October 10, 2012, a meeting was held with the beneficiary Armando Díaz López in which he reported that
he was satisfied with the actions taken to comply with the precautionary measures, and that in 2009 he
had decided to return to the Chiapas municipality because he allegedly had not been threatened again.
According to the State, the beneficiary reported his desire to terminate the process before the
Commission. Regarding other beneficiaries, the State emphasized that the representation did not report
in this regard.

8. In 2014, the State reported that, in the first days of October 2012, public servants of the Office of
the Attorney General (Procuraduría) contacted the beneficiary Armado Díaz López –since the
representation reported that they had lost contact with him and did not know his whereabouts–. The State
reiterated that the representation has not reported threatening events and that the last concrete
information was in December 2004 when it was reported that Mr. Armando Díaz had been allegedly
approached by a member of the organization “Desarrollo, Paz y Justicia” (“Development, Peace, and
Justice”) questioning him about his address and his current occupation. The State stated that the
threatening events to which the beneficiary Gilberto Jiménez had been reportedly subjected were not
reported to the authorities and therefore the State was not aware of them. Regarding the release of
members of the Paz y Justicia group, it was indicated that some have been released, but their processes
were not related to those in which the beneficiaries were witnesses. In 2017, the State reiterated that
there is no situation placing the beneficiaries at risk.

9. Finally, in 2018, the State recalled that the actions aimed at implementing the precautionary
measures were taken in coordination and with the prior agreement of the beneficiaries. It also indicated
that investigations were carried out regarding the crimes reported in the request for precautionary
measures and the group “Development, Peace and Justice” or “Peace and Justice.” Similarly, the following
actions were carried out: the transfer of some beneficiaries out of the state of Chiapas, police patrols, the
granting of cell phones and financial aid. The State recalled that a conviction was issued against some
members of the Paz y Justicia group. The State reiterated the will of the beneficiary Armando Díaz to stop
being a beneficiary of the precautionary measures. Regarding the other beneficiaries, the State recalled
that the information provided by the representation does not reflect a situation of risk in the terms of

B. Information provided by the representation

10. In general terms, the representation questioned the implementation of the precautionary
measures by the State and considered that the precautionary measures are necessary. In 2013, the
representation indicated that the beneficiary Armando Díaz López had been subjected to threats that
forced him to leave his home together with his family. Later, he was purportedly forced to return to the
state of Chiapas. Additionally, it was reported that the beneficiary Reynaldo Gómez Martínez received
death threats. It was reported that the events committed by the paramilitary group continue to go
unpunished and that the beneficiaries continue to fight for the clarification of the events. The
representation indicated that there are rumors with the following tenor: “If they continue to revive the
case, they will face the consequences.” It was reported that the satellite phones granted to communicate
immediately with the authorities stopped working and had not been allegedly repaired. The
representation referred to a context of murders and disappearances in Chiapas. Additionally, it indicated
that a pamphlet was found in the communal land offices of Nuevo Limar in which it is stated that if
something happened to the members of “Paz y Justicia,” the culprits would be Reynaldo and Francisco,
both beneficiaries of the precautionary measures.
11. In 2014, the representation reported that a meeting was indeed held on October 10, 2012, with the beneficiary Armando Díaz López; however, it was stated that the officers arrived in an untimely manner and without prior notice. The beneficiary reportedly informed them of the rumors of threats and that he was afraid of the paramilitaries and that those who were deprived of their liberty could be released at any time. The representation indicated that no document was signed. The representation considered that the beneficiaries continue to be at risk given that it is promoting the case of their disappeared, executed, and forcibly displaced relatives. They affirmed that it has been heard that: "We are going to kill Gilberto Jiménez, we have him booked, he is already dead, Gilberto creates many problems, 140 thousand pesos have already been paid for them to do it, if you are with him they will beat you too, don’t go around with Gilberto, he’s already dead, the one who’s going to kill him has already been paid." Additionally, they affirmed that within the criminal proceedings opened against the members of the organization “Desarrollo, Paz y Justicia,” there is talk of the release of certain members who allegedly seek revenge against the beneficiaries for having denounced them.

12. In 2015, the representation informed that the beneficiary Gilberto Jiménez López had an arrest warrant against him. He was allegedly attacked on September 16, 2015, which was reported to the competent authorities. However, no investigation was launched. It was claimed that the beneficiary Mariano Sánchez Torres was threatened by a former member of the “Paz y Justicia” group. However, the reason was allegedly personal as the person believed that the beneficiary was falling in love with his wife.

13. Finally, on October 5, 2017, the representation reported that there is a context of impunity and violence in the state of Chiapas and that the beneficiaries continue with their work to defend human rights. The representation indicated that they had no knowledge of the working meeting held with Armando Díaz López on October 10, 2012. The representation affirmed that the beneficiary Armando Díaz had desisted from being a witness in a process that has as alleged perpetrators members of the “Paz y Justicia” group which they considered is due to the measures adopted by the State. The representation stated that it does not oppose the lifting of the precautionary measures regarding Mr. Armando Díaz López.

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

14. The precautionary measures mechanism is part of the Commission’s function of overseeing compliance with the human rights obligations set forth in the Charter of the Organization of American States, and in the case of the Member States that have not yet ratified the American Convention, the Declaration of the Rights and Duties of Man. These general oversight functions are established in Article 18 of the Statute of the IACHR, and the precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with this Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid irreparable harm to persons.

15. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that the precautionary and provisional measures have a double nature, both precautionary and protective. Regarding their 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 under consideration by the IACHR. In the process of reaching a decision, 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 of 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. With respect to the foregoing, Article 25(7) of the Commission’s Rules of Procedure establishes that the decisions granting, extending, modifying, or lifting precautionary measures shall be adopted through reasoned resolutions. Article 25(9) establishes that the Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to keep, modify, or lift the precautionary measures in force. In this regard, the Commission should assess whether the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures still persist. Moreover, the Commission should consider if new situations that might meet the requirements set forth in Article 25 of the Rules of Procedure have subsequently arisen.

17. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a prima facie standard, keeping such measures in force requires a more rigorous evaluation. In this sense, when no imminent risk is identified, the burden of proof and argument increases over time. The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, added to the lack of imminent risk, may lead to the lifting of international protection measures.

18. In the instant matter, the Commission recalls that the precautionary measures were granted in 2004, in light of the available information which indicated that the beneficiaries were subjected to threats and harassment due to their role as witnesses to the events committed by the paramilitary group “Peace and justice.” Upon the granting of the precautionary measures and throughout the follow-up by the Commission, the State sent reports referring in detail to the actions taken to ensure the life and integrity of the beneficiaries, as well as the consultation actions undertaken in favor of them. Among them, the Commission observes that the State carried out: (i) criminal investigations to find those responsible for the events that gave rise to the precautionary measures, which resulted in the conviction of several individuals; (ii) several consultation or work meetings were held, including the meeting of December 1, 2004, in which the actions to be taken to implement the precautionary measures were agreed upon, and the meeting of October 2012; (iii) police patrols; (iv) cell phones were provided for immediate communication with the authorities; and (v) financial aid.

19. The Commission observes that the State has requested the lifting of the precautionary measures since October 31, 2011, and has reiterated the said request on October 1, 2013, on February 21, and on December 9, 2014, on June 14, 2017, and July 23, 2018. In this sense, the lifting requests were forwarded to the representation in the terms of Article 25(9). In its response, the representation referred to the context in the state of Chiapas, but they did not provide information that indicates that concrete facts against the beneficiaries have taken place, or any individualized elements for assessment. Regarding the release of certain persons, the State indicated that such proceedings were not related to these precautionary measures. Although the representation indicated that the risk continues due to the

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4 Ibid.
5 Ibid.
foregoing, it did not detail specific facts against the beneficiaries. The most recent fact available to the Commission dates from 2015; however, the representation itself indicated that it was related to a personal matter, so that, consequently, is beyond the scope of the object of these precautionary measures.

20. Additionally, the Commission recalls that when a State requests the lifting of a precautionary measure, it must present sufficient evidence and arguments to support its request. By the same token, the representatives of the beneficiaries that want the measures to continue must present evidence of any reasons why. Similarly, Article 25, subparagraph 11 of the Rules of Procedure sets forth that the Commission may lift or review a precautionary measure when the beneficiaries or their representatives unjustifiably fail to provide the Commission with a satisfactory response to the requests made by the State for its implementation.

21. In this matter, the Commission notes that the representation has not responded to the requests for information from the IACHR in 2021, and approximately 4 years have elapsed since the last communication from the representation, despite knowing that the State has reiterated its request to lift the measures at least 6 times during the course of the procedure. Similarly, with regard to the situation of Mr. Armando Díaz López, the Commission observes that the parties have agreed to lift these precautionary measures in his favor. As for the remaining beneficiaries, the Commission has not received specific and individualized information since, at least, 2015, while approximately 6 years have elapsed since then.

22. Considering the analysis carried out, and in response to the request to lift the measures from the State, the Commission understands that the factual circumstances that motivated the granting of these precautionary measures have changed significantly due to the investigations that resulted in the conviction of those responsible for the events that motivated the precautionary measures. Thus, the Commission deems that according to the available information, it is not possible to currently identify any situation that fulfills the requirements of Article 25 of the Rules of Procedure, while approximately more than four years have gone by with no information from the representation. In view of the above and taking into account the exceptional and temporary nature of precautionary measures, the Commission deems it appropriate to lift these precautionary measures.

V. DECISION

23. The Commission decides to lift the precautionary measures granted in favor of Armando Díaz López, Micaela Torres Gutiérrez, María Consuelo Díaz Torres, Magdalena Díaz Torres, José Armando Díaz Torres, Reynaldo Gómez Martínez, Mario Torres, Ricardo Martínez Martínez, Mariano Sánchez Montejo, and Gilberto Jiménez López in Mexico.

24. The Commission emphasizes that regardless of the lifting of these measures, in accordance with Article 1(1) of the American Convention, it is the obligation of the State of Mexico to respect and guarantee the rights recognized therein, including the life and personal integrity of the beneficiaries.

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6 Ibid.
7 Ibid.
25. The Commission recalls that the lifting of these measures does not prevent the representation from filing a new request for precautionary measures should they consider that there is a situation that meets the requirements established in Article 25 of the Rules of Procedure.

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

27. Approved on November 17, 2021, by: Antonia Urrejola Noguera, Chair; Julissa Mantilla Falcón, First Vice-Chair; Flávia Piovesan, Second Vice-Chair; Margarete May Macaulay; Esmeralda Arosemena de Troitiño; and Edgar Stuardo Ralón Orellana, members of the IACHR.

Tania Reneaum
Executive Secretary