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**INTERAMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 8/2020**

Precautionary Measure No. 1008-19

Alfonso and Alberto Alejandro Díaz regarding Mexico<sup>1</sup>

February 5, 2020

**I. INTRODUCTION**

1. On October 2019, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures from applicants who asked that their identity be kept confidential, urging the IACHR to request that the State of Mexico (“the State” or “Mexico”) adopt the necessary measures to guarantee the rights of the brothers Alfonso Alejandro Díaz and Alberto Alejandro Díaz (“the proposed beneficiaries”). According to the request, the proposed beneficiaries have been missing since March 22<sup>nd</sup>, 2019.

2. The Commission requested information from the State, in accordance with Article 25 of its Rules of Procedure, on January 13<sup>th</sup>, 2020, which responded on January 22<sup>nd</sup>, 2020. On another note, the applicants continued providing additional information, the most recent one dated January 19<sup>th</sup>, 2020.

3. After analyzing the factual and legal allegations from the parties, the Commission considers that the information provided shows *prima facie* that the beneficiaries are in a serious and urgent situation, since their rights to life and personal integrity are at risk. Consequently, in accordance with Article 25 of the Rules of Procedure, the Commission requests that Mexico: a) adopt the necessary measures to determine the whereabouts or fate of Mr. Alfonso Alejandro Díaz and Mr. Alberto Alejandro Díaz, in order to protect their rights to life and personal integrity; b) consult upon the measures to be adopted with the representatives of the beneficiaries; and c) provide information regarding the actions taken to investigate the alleged acts that caused the adoption of the present precautionary measure and, in this way, avoid their repetition.

**II. SUMMARY OF THE ALLEGED FACTS**

**1. Information alleged by the applicants**

4. The applicants alleged that on March 20<sup>th</sup>, 2019, a group between 12 and 15 armed “delinquents accompanied by municipal police officers” reportedly came to the house of the proposed beneficiaries’ mother, in Yurecuaro, Michoacán, questioning the people who were there. Allegedly, after not obtaining the desired answers, the group started shooting inside the house. At that time, the proposed beneficiaries allegedly arrived to support their family, at the same time that two police patrols appeared, with between 8 and 10 officers, allegedly acting in complicity with the aggressors.

5. According to the request, after realizing that there were still alive persons in the house, the group shot again, going into the house. Some “soldiers” then arrived on the scene, causing the armed group to retreat, “only the police were left”. In this context, the applicants alleged that “the army took Alfonso Alejandro Díaz and Alberto Alejandro Díaz to the PGR [the former Office of the Attorney General] located in the city of La Piedad, Michoacán,” allegedly for “carrying firearms” in violation of the law.

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<sup>1</sup> In accordance with Article 17.2.a of the Commission’s Rules of Procedure, the First Vice-President Hernández García, of Mexican nationality, did not take part in the debate or in the deliberation regarding this matter.

6. The family of the proposed beneficiaries was reportedly able to visit them during their detention, when they were informed by state authorities that they were going to be released in 48 hours, that is, on March 23<sup>th</sup>, 2019, at 5.00 a.m. During the visit, the proposed beneficiaries reportedly said that “those policemen there want to cause us trouble.” However, when they went to pick them up, they were informed that both had reportedly been released the day before, at 11.20 p.m., allegedly without explaining the reasons. The applicants added that, after the alleged release of the proposed beneficiaries, the latter did not call or sought out their family or acquaintances, and their whereabouts have not been known since then.

7. The applicants reportedly filed complaints about the alleged disappearance before State bodies and human rights organs, such as the Public Prosecutor’s Office, the Human Rights Commission in Zamora, Michoacán, and the National Human Rights Commission in Mexico City, allegedly without any proper investigation having been conducted. According to the application, the state proceedings never took into account “the possible violation of the proposed beneficiaries’ human rights” in relation to the manner in which they were reportedly granted their alleged freedom. The investigations are directed at questioning “whether they are aware of the location of [the proposed beneficiaries], but have never conducted an investigation to establish the actual release of [them] or whether they have been subject to improper disposition of their liberty, body integrity or life, and have been forcibly disappeared.” In addition, they alleged that a reliable source from the Office of the Attorney General of Michoacán State shared with them that “[...] they received orders not to carry out any further investigations but were never told by whom and were not shown any documents proving such demonstration (sic.)” In this regard, the video-recordings of the security cameras of the PGR (now the Office of the Attorney General) reportedly did not “record the release of the [proposed beneficiaries].”

8. Additionally, the applicants indicated that, while protection was reportedly offered (without detailing) to the family of the proposed beneficiaries, they left Yurecuaro, Michoacán, for fear that what happened to their siblings would happen to them, particularly after being advised not to return “if they want to stay alive”. The family allegedly also knew that the house where their mother lived had been taken over by the “delinquents.”

## **2. Response from the State**

9. The State alleged that, in view of the disappearance of Alfonso Alejandro Díaz and Alberto Alejandro Díaz, an investigative file had been opened, which reportedly continues to be processed. In the framework of those investigations, it has been reportedly requested that “different hospitals of La Piedad, Michoacán, the Coordinator of the Center of Command, Communication, Computer, Control, Coordination and Intelligence, the Director of Municipal Public Safety, the Director of the Center of Social Reintegration of La Piedad, the Office of Planning and Statistics (*Enlace de Planeación y Estadística*) and the Director of Expert Services, report whether they had information or record of the two missing victims.” The family of the proposed beneficiaries has also been reportedly interviewed, and genetic samples have been collected from their mother.

10. Additionally, the National Human Rights Commission reportedly requested from the Office of the Attorney General (FGM) of Michoacán a “detailed report on the facts of the detention of Mr. Alfonso and Mr. Alberto Alejandro Díaz, as well as the circumstances of time, manner and place in which the events happened and their respective documentation, statements and actions.” Regarding the above, the FGM allegedly reported that there is no record of any action or proceeding “leading to the execution of acts of human rights violations against the alleged victims.” In addition, the FGM indicated that only copies of the investigation file submitted at the time by the then PGR were included in the relevant record.

11. In view of the foregoing, the State stated that the Inter-American Commission must decline the present request for precautionary measures, invoking the complementarity principle, “since the

Mexican State is already diligently addressing the situation at the internal level. Thus, the State emphasized that “[...] due to the situation of the proposed beneficiaries, the respective investigation files were opened in a timely manner, within the framework of which the relevant steps have been taken to clarify the fate and whereabouts of the two missing persons.

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

12. Precautionary measures are one of the mechanisms of the Commission for the exercise of its function of overseeing compliance with human rights obligations, as established 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 Statute of the IACHR. The precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm to persons.

13. 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.

14. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists<sup>2</sup>.

15. Regarding the requirement of seriousness, in alleged cases of disappearance the Commission has taken into account the indications of possible participation and knowledge by the State authorities in the events<sup>3</sup>, since, without prejudice to the fact that the rights to life and personal integrity may also

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<sup>2</sup> In that regard, for instance, in relation to the provisional measures, the Inter-American Court has considered that this standard requires a minimum of details and information that allow for the *prima facie* assessment of the situation of risk and urgency. I/A Court H.R., *Matter of the children and adolescents deprived of their liberty in the “Complexo do Tatuapé” of the Fundação CASA*. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23. Available at: [http://www.corteidh.or.cr/docs/medidas/febem\\_se\\_03.pdf](http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf)

<sup>3</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 failure to provide information or a refusal to acknowledge the deprivation

be at risk in the event of an abduction<sup>4</sup> or other cause of disappearance<sup>5</sup>, these aspects impact on the specific assessment made at the time of evaluating the seriousness. In accordance with existing precedents, examples of possible linking to State agents are the presence of members of the army in the area where the disappearance occurred<sup>6</sup>, the deprivation of liberty by paramilitary or armed groups operating jointly with State authorities<sup>7</sup>, or testimonies claiming to have seen them for the last time boarding a vehicle by the orders of police officers<sup>8</sup>, among others demonstrating the link of this event with the State through the participation of a State agent.

16. In the present matter, the Commission considers that the seriousness requirement is met in view of the fact that the fate or whereabouts of the proposed beneficiaries is reportedly unknown since March 22<sup>nd</sup>, 2019. According to the information available, the last time their family knew of their location, the proposed beneficiaries were reportedly in the custody of the PGR, being allegedly released on the same day in circumstances that, according to them, had 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, highlighting as a possible indication the prior participation of certain police officers in the attack perpetrated on March 20<sup>th</sup>, 2019, as stated by the applicants, and warns that the State did not distort or offer a different narrative to these facts, especially considering that the disappearance occurred shortly after the proposed beneficiaries were in the custody of the State.

17. The Commission takes note of the information provided by the State and recalls that, although it is not appropriate on this occasion, by the very nature of the precautionary procedure, to make a determination on the merits of the case about the due proceedings employed by the authorities, it notes that, from the perspective of risk analysis, more than 10 months have already passed since the fate or whereabouts of the proposed beneficiaries is unknown. In this regard, when evaluating the seriousness of the situation, the Commission notes with concern that, according to the applicants' allegations: i) the investigative line conducted by the State reportedly does not include "to prove the actual release of [them] or whether they have been subject to improper disposition of their freedom, body integrity, or life, and have been forcibly disappeared"; ii) the alleged existence of orders for the purpose of obstructing the investigation itself; iii) the fact that it was allegedly not possible to verify by the PGR's security cameras (vid. *supra* para. 7) the time of their release. Considering the above, the Commission recalls that the Inter-American Court has already emphasized that the States have a special duty of due proceedings when State agents are or may be involved<sup>9</sup>.

18. In view of the above, the Commission concludes that since the *prima facie* standard, the rights to life and personal integrity of Alfonso Alejandro Díaz and Alberto Alejandro Díaz are at serious risk.

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of liberty or to account for the person's whereabouts, thereby preventing the exercise of the relevant legal remedies and procedural guarantees. See: Inter-American Convention on Forced Disappearance of Persons, adopted in Belém do Pará, Brazil on 9 June 1994, at the twenty-fourth regular session of the OAS General Assembly. Available at: <https://www.oas.org/juridico/spanish/tratados/a-60.html> (in Spanish)

<sup>4</sup> See: IACHR, *Javier Ortega Reyes, Paúl Rivas Bravo and Efraín Segarra Abril regarding Colombia* (MC-309-18 and MC-310-18), Resolution 25/2018 of April 12<sup>th</sup>. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/25-18MC209-18-CO-210-18-EC.pdf> (in Spanish)

<sup>5</sup> See: IACHR, *Náthaly Sara Salazar Ayala regarding Perú* (MC-81-18), Resolution 24/2018 of April 8<sup>th</sup>. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/24-18MC81-18-PE.pdf> (in Spanish)

<sup>6</sup> See: IACHR, *Dubán Celiano Díaz Cristancho regarding Colombia* (MC-455-14), Resolution 37/2014 of December 24<sup>th</sup>. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2014/MC455-14-ES.pdf> (in Spanish)

<sup>7</sup> See: IACHR, *Buenaventura Hoyos Hernández regarding Colombia* (MC-301-13), Resolution 4/2013 of October 4<sup>th</sup>. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/MC301-13Resolucion%204-13esp.pdf> (in Spanish)

<sup>8</sup> See: IACHR, *Margarita Marín Yan and others regarding México* (MC-29-16), Resolution 24/2016 of April 15<sup>th</sup>. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC29-16-Es.pdf> (in Spanish)

<sup>9</sup> See, for instance: I/A Court H.R., *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008, para. 144. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_186\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_186_esp.pdf) (in Spanish) and I/A Court H.R., *Case of Munárriz Escobar et al. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 20, 2018, para. 98. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_355\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_355_esp.pdf). (Only in Spanish)

19. As regards the requirement of urgency, the Commission considers that it has been met, given that the passage of time is likely to have a greater impact on the rights to life and personal integrity of the proposed beneficiaries, especially since more than 10 months have passed since the alleged disappearance and the alleged involvement of State agents.

20. Regarding the requirement of irreparable harm, the Commission considers that it has been met, since the possible impact on the rights to life and personal integrity as a whole constitutes the maximum situation of irreparable harm.

21. Lastly, regarding the complementarity principle, the Commission recalls that this principle reports transversally to the Inter-American System and that international jurisdiction is an "adjuvant" to national jurisdictions, without replacing them<sup>10</sup>. The Commission considers, however, that the invocation of the complementarity principle as an argument of irrelevance for the adoption of precautionary measures implies that the State concerned must meet the burden of proving that the beneficiaries are not in the scenario established in Article 25 of the Rules of Procedure, 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 perhaps it would not allow an assessment of a situation that meet the requirement of seriousness and urgency that precisely require international intervention to prevent irreparable harm<sup>11</sup>.

22. In that regard, in the present matter, the Commission has found that the situation arising under Article 25 of the Rules of Procedure meets the regulatory requirements and that it is, therefore, appropriate to adopt precautionary measures to safeguard their rights.

#### **IV. BENEFICIARIES**

23. The IACHR considers Alfonso Alejandro Díaz and Alberto Alejandro Díaz, who are duly identified in this resolution, the beneficiaries of the present precautionary measure.

#### **V. DECISION**

24. In view of the aforementioned background information, the IACHR considers that the present matter meets, *prima facie*, the requirements of seriousness, urgency, and irreparable harm established in Article 25 of the Rules of Procedure. Consequently, the Commission requests that Mexico:

- a. adopt the necessary measures to determine the whereabouts or fate of Mr. Alfonso Alejandro Díaz and Mr. Alberto Alejandro Díaz, in order to protect their rights to life and personal integrity;
- b. consult upon the measures to be adopted with the representatives of the beneficiaries; and
- c. provide information regarding the actions taken to investigate the alleged acts that caused the adoption of the present precautionary measure and, in this way, avoid their repetition.

25. The Commission requests that the Government of Mexico kindly inform the Commission, within a period of 15 days, as from the date of notification of the present resolution, regarding the

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<sup>10</sup> See *inter alia*: IACHR, Francisco Javier Barraza Gómez regarding Mexico (MC-209-14), Resolution of August 15, 2017, para. 22. Available at: <http://www.oas.org/es/cidh/decisiones/cautelares.asp> (in Spanish); IACHR, Paulina Mateo Chic regarding Guatemala (MC 782-17), Resolution of December 1, 2017, para. 34; Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf> (in Spanish); and IACHR, Santiago Maldonado regarding Argentina (MC 564-2017), Resolution of August 22, 2017, para. 16. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/32-17MC564-17-AR.pdf> (in Spanish)

<sup>11</sup> *Ibid.*

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adoption of the precautionary measures that have been consulted upon and to periodically update this information.

26. The Commission highlights that, pursuant to Article 25(8) of the Commission's Rules of Procedure, the granting of precautionary measures and their adoption by the State do not constitute a prejudgment regarding the possible violation of the rights protected in the American Convention and other applicable instruments.

27. The Commission requests that the Secretariat of the IACHR notify the State of Mexico and the applicants of the present Resolution.

28. Approved on February 5, 2020 by: Esmeralda Arosemena Troitino, President; Antonia Urrejola Noguera, Second Vice-President; Margarette Macaulay; Flávia Piovesan; y Julissa Mantilla.

Paulo Abrão  
Executive Secretary