

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 1/2021**

Precautionary Measure No. 754-20

**Members of the Guajajara and Awá Indigenous Peoples of the Araribóia Indigenous
Land regarding Brazil¹**

January 4, 2020

Original: Spanish

I. INTRODUCTION

1. On August 6, 2020, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission” or “the IACHR”) received a request for precautionary measures filed by the “Comissão de Caciques e Lideranças da Terra Indígena Araribóia” *et al.*,² in favor of the members of the Guajajara and Awá Indigenous Peoples in voluntary isolation, living in the Araribóia Indigenous Land (“the proposed beneficiaries”), urging the IACHR to require that the State of Brazil (“Brazil” or “the State”) adopt the necessary measures to protect their rights to life, personal integrity and health. According to the request, the persons proposed as beneficiaries are at risk in the context of the COVID-19 pandemic, especially considering their situation of particular vulnerability, shortcomings in health care and the presence of unauthorized third parties in their territory.

2. On August 18 and October 15, 2020, the Commission requested information from the State, in accordance with Article 25 of its Rules of Procedure. Upon granting timeline extensions, the State sent reports on September 4, October 30, and November 6, 2020. The applicants provided additional information on August 24 and October 23 and 29, 2020.

3. Upon analyzing the allegations of fact and law provided by the parties, the Commission considers that the information provided shows *prima facie* that the members of the Guajajara and Awá Indigenous Peoples of the Araribóia Indigenous Land are in a serious and urgent situation, given that their rights to life, personal integrity and health are at serious risk. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, it requests that Brazil: a) adopt the necessary measures to protect the rights to health, life, and personal integrity of the members of the Guajajara and Awá Indigenous Peoples of the Araribóia Indigenous Land, implementing, from a culturally appropriate perspective, preventive measures against the spread of COVID-19, as well as providing them with adequate medical care in terms of availability, accessibility, acceptability and quality, in accordance with applicable international standards; b) consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and c) report on the actions taken to investigate the events that led to the adoption of this precautionary measure, so as to prevent such incidents from reoccurring.

II. SUMMARY OF FACTS AND ARGUMENTS

1. Information provided by the applicants

¹ In accordance with Article 17.2.a of the IACHR’s Rules of Procedure, Commissioner Flávia Piovesan, a Brazilian national, did not participate in the debate or deliberation of this matter.

² Articulação dos Povos Indígenas do Brasil, Coordenação das Organizações Indígenas da Amazônia Brasileira, Coordenação das Organizações das Articulações dos Povos Indígenas do Maranhão.

4. The applicants indicated that the Guajajara Indigenous People and the groups in isolation³ of the Awá Indigenous People are made up of about 16,000 persons who are located in the Araribóia Indigenous Land (TI),⁴ in the state of Maranhão. According to the allegations, the proposed beneficiaries are at particular risk in the context of the COVID-19 pandemic due to shortcomings in timely and adequate health care and frequent contact with unauthorized third parties present on the land. Such third parties allegedly carry out illegal logging and are potential vectors of the disease. In addition, the applicants alleged the existence of a historical situation of violence against Guajajara leaders due to conflicts related to resource exploitation in the TI Araribóia.

5. According to the request, in early July 2020 the Special Indigenous Health District (DSEI, by its Portuguese acronym) Maranhão, responsible for health care in the area, was presented as the epicenter of positive cases of COVID-19 among indigenous peoples, with 868 cases confirmed, although in an alleged scenario of under-notification.⁵ In addition, it was emphasized that indigenous peoples have historically had greater vulnerability to respiratory infections, as recognized by the State in the National Contingency Plan for Human Infection by the New Coronavirus in Indigenous Peoples of the Special Secretariat for Indigenous Health. However, the State has not implemented effective and specific concrete measures to face the pandemic.

6. According to a statement by the Federal Public Ministry on the situation of indigenous peoples in Maranhão in June 2020, “it is clear [...] the lack of actions by the Public Authorities to control the entry of non-indigenous persons into indigenous lands, the lack of tests by the indigenous health organs for the diagnosis of COVID-19, the lack of installation of health units intended to receive suspected/confirmed cases of COVID-19, the lack of educational campaigns carried out by the Public Authorities for the prevention of COVID-19, lack of monitoring of the ill, the existence of indigenous persons affected by respiratory diseases, the lack of distribution by public entities of personal protection equipment (PPE) and hygiene products for the natives.⁶ The Federal Public Ministry also made a statement on the “lack of compliance with quarantine by health professionals before going to the Awá Guajá villages, the lack of hygiene materials in the health units of the villages of that people, [...] the lack of hospital materials (oximeter, thermometer, etc.) and medication for these units, the lack of PPE for the health teams and drivers, as well as the inadequacy of the premises for the quarantine of the indigenous persons who had been absent from the villages before their return.⁷ Furthermore, the applicants indicated that the distribution of food packages by the State has been limited, both in quantity and focused on a geographic area, being insufficient for the universe of 16,000 proposed beneficiaries.

7. In the above context, the applicants sustained that they faced difficulties in obtaining specific data on diagnosed cases, suspected cases and deaths in relation to the proposed beneficiaries, given that the “[...] monitoring of suspected/confirmed cases and deaths is not registered to individualize those infected/deceased as indigenous persons, [and] that the Special Secretariat for Indigenous Health does not provide tests to the indigenous persons.”⁸ In relation to the indigenous peoples of the state of Maranhão,

³ “Indigenous peoples in a situation of voluntary isolation are peoples or segments of indigenous peoples who do not maintain sustained contacts with the majority non-indigenous population, and who tend to avoid all types of contact with persons outside their people.” See: IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas*, 2013, para. 14.

⁴ Also known as Tenetehar and Awá-Guaja, respectively.

⁵ According to the applicants, “the process of under-reporting and silencing of data is a reality for indigenous peoples, which corresponds to a great difference between these numbers and the official data.” Moreover, “there are 6 municipalities that border the Araribóia Indigenous Land, however, those that provide data are only [two] [...]. Even in this scenario, the Araribóia Indigenous Land ranks second with the most cases of indigenous persons affected by COVID-19.”

⁶ Federal Public Ministry, request for Public Civil Action, PR-MA-MANIFESTAÇÃO-7454/2020, June 19, 2020.

⁷ Federal Public Ministry, PR-MA-MANIFESTAÇÃO-7454/2020, June 19, 2020.

⁸ Federal Public Ministry, PR-MA-MANIFESTAÇÃO-7454/2020, June 19, 2020.

until October 19, 2020, there are reportedly 1,909 confirmed cases and 69 deaths.⁹ However, the Awá Ethno-environmental Protection Front estimated that contagion has reached 50% of the Guajajara population.¹⁰

8. The applicants alleged that “the measures created outside the organizational complexity of indigenous societies compromise their effectiveness.” In this regard, substantial information was provided¹¹ in relation to reports on the presence of unauthorized third parties in the TI Araribóia, who are purportedly potential vectors of COVID-19, in forced contact with the proposed beneficiaries. The applicants indicated that “the Brazilian State has been omitting the constitutional obligation to supervise and protect indigenous lands.”

9. Similarly, the applicants alleged that in 2019 deforestation of the territories of isolated indigenous peoples increased. In the TI Araribóia this has reportedly increased by 113%, being the most deforested area with isolated peoples in Brazil. The exploration areas are reportedly about 5 kilometers from the camps of the isolated peoples. According to information from the Socio-environmental Institute, between September 2018 and October 2019, 1,248 kilometers of branches were opened for illegal logging in the territory. “The accumulated deforestation until March 2020 has already consumed 29,845.9 hectares of forest [...]. During the COVID-19 pandemic, deforestation did not stop, and in April, 18.2 deforested hectares were detected.” On August 23, 2020, the applicants made a technical visit to TI Araribóia, where the continuity of the invasions was verified. They indicated that “[...] various action plans were built jointly and that, yet, in the executive plan nothing has been done to lead or even support the defense of the Araribóia.”

10. In this regard, the applicants indicated that the contingency plans to face COVID-19 prepared by the State, as well as Decree No. 419/PRES of March 17, 2020, are not effective as they focus on restrictions on the mobility of indigenous people in urban centers and the entry of authorized civilians into indigenous lands. Additionally, in relation to state allegations on operations to fight environmental crimes in 2020, focused on isolated peoples, the applicants emphasized that no specific actions were identified for their protection, while the information on the Ethno-environmental Protection Fronts dates to April 2020, and still without specifying the situation of the TI Araribóia.

11. The applicants added that the situation has been denounced internally. On July 8, 2020, the Supreme Federal Court (STF, by its Portuguese acronym) granted precautionary measures to indigenous peoples in Brazil in the context of the COVID-19 pandemic,¹² determining, *inter alia*, the creation of sanitary barriers to prevent contact of unauthorized third parties with peoples of recent contact or isolated; the elaboration of a “Plan to Confront COVID-19 for the Brazilian Indigenous Peoples,” which should include measures to be adopted to “isolate” the invaders from the indigenous communities; and the extension of indigenous health services to indigenous peoples on lands not yet demarcated.

12. The decision acknowledged “the risk in the delay, since there is an imminent risk of contagion if containment mechanisms regarding the entry to those lands are not created” and that “[...] there is no doubt that the removal [of unauthorized third parties] is imperative and the presence of those groups in indigenous lands constitutes a violation to the right of those peoples to their land and their culture, and threatens their life and health.”¹³ However, the STF decided not to order the removal of those unauthorized

⁹ These data contrast with those of the Special Secretariat for Indigenous Health, which registers, until October 22, 2020, 1,604 positive tests and 27 deaths.

¹⁰ Federal Public Ministry, PR-MA-MANIFESTAÇÃO-7454/2020, June 19, 2020.

¹¹ For instance, a copy of complaints of conflicts with “invaders” was provided, including an alleged assassination attempt, dated January 16, 2020; complaint of invasion by alleged loggers dated April 9, 2020 and another dated July 4, 2020.

¹² STF, ADPF 709 MC/DF.

¹³ STF, ADPF 709 MC/DF, para. 42.

persons, but ordered that a plan to expel those persons from the territory be elaborated.¹⁴ The decision took into consideration the allegation that “the National Contingency Plan for Human Infection by the new Coronavirus among Indigenous Peoples, [...] is not precise, only expresses general guidelines and neither stipulates specific measures or a schedule nor defines responsibilities. It is observed, even, that the Plan did not have the participation of indigenous communities when prepared.”¹⁵ Moreover, on October 21, 2020, the Court rejected the second version of a “General Plan to Face and Control COVID-19 for Indigenous Peoples,” and ordered that it be reformulated, presumably because the Plan suggested by the State lacked scientific foundation. That decision included TI Araribóia specifically with regard to the creation of sanitary barriers.

13. The applicants initially indicated that the proposed beneficiaries themselves have established sanitary barriers¹⁶ “in order to inhibit the entry of strangers into indigenous territories, as well as to make the indigenous persons aware of the risks of contagion and the need for social isolation.” They did not have any type of state support, with the exception of a barrier, located on the outskirts of the TI Araribóia run by the state itself, without involving the indigenous persons.

14. In October 2020, the applicants again affirmed that the State does not comply with the decision of the establishment of sanitary barriers. It was indicated that there are four support points within the TI, but “none of these reflect the reality of a health barrier.” According to the applicants, “[t]he government installed its support points in regions fully occupied by the isolated Awá Guajá indigenous persons, posing a risk of contamination to them, nor did it strive for implementing minimal measures of sanitary control for the equipment or for the indigenous collaborators of the Guajajara ethnic group, who are being used for manual labor.” Furthermore, although the Ethno-environmental Protection Front for the protection of the Awá is purportedly operating, there is allegedly no presence of personnel from the Special Secretariat for Indigenous Health, therefore “health control procedures are reportedly not being carried out.” According to the information available, the National Indigenous Foundation (FUNAI, by its Spanish acronym) itself has recognized that there is a lack of personnel and infrastructure for sanitary barriers.¹⁷

15. The applicants provided allegations about a historical situation of violence and impunity against the proposed beneficiaries, presumably as a result of their efforts to defend their territory. The Guajajara indigenous people has formed a group of leaders, called “Guardians of the Forest,”¹⁸ responsible for monitoring the territory. According to the information provided, by 2000 there were at least 47 murders of Guajajara indigenous persons in Maranhão. Only in relation to TI Araribóia, there have allegedly been 18 murders. The applicants sustain that the above is connected to the fact that TI Araribóia has one of the highest numbers of invasions.

16. In 2016, six indigenous persons¹⁹ in TI Araribóia were murdered, “three of them were guardians.” As indicated, “some indigenous persons were murdered by firearm shots, others beaten, another was thrown from a bridge and another run over by a logger, according to the indigenous persons, intentionally.” The applicants added that “there are various Guajajara leaders threatened with death in Maranhão.” The applicants stressed the following recent murders: Paulo Paulino Guajajara (11/2019), Firmino Prexede Guajajara and Raimundo Benício Guajajara (both in 12/2019) and Zezico Rodrigues Guajajara (03/2020). In the case of Firmino and Raimundo, they were allegedly shot to death after a meeting between indigenous leaders and a company. Two other Guajajara indigenous persons were also reportedly injured. On

¹⁴ STF, ADPF 709 MC/DF, para. 44.

¹⁵ STF, ADPF 709 MC/DF, para. 57.

¹⁶ Established in villages with great circulation such as Aldeia Zutiwa, Aldeia Juçaral, Aldeia Jenipapo dos Ribeiros and Aldeia Ponta D’água.

¹⁷ Federal Public Ministry, PR-MA-MANIFESTAÇÃO-7454/2020, June 19, 2020.

¹⁸ Allegedly recognized by the National Indigenous Foundation (FUNAI) itself.

¹⁹ Aponuyre, Cantídio, Genésio, Isaías, Assis and Alfonso Guajajara.

December 13, 2019, 15-year-old E.G., from TI Araribóia, was allegedly murdered in a cruel manner, having been found dismembered at the headquarters of the municipality of Amarante.

17. In 2020, “Guardians of the Forest” have purportedly already notified the authorities about situations of violence against them. However, “both the leaders who confront attacks in the territories, as well as the leaders who carry out political actions in defense of rights, have repeatedly suffered attacks from the most diverse sources [...]” In this regard, it was added that high state authorities have disseminated false information, creating a climate of animosity against the Guajajara people, with accusations of “crimes of damage to the homeland.”²⁰

2. Response from the State

18. The State provided information related to plans to confront the COVID-19 pandemic aimed at indigenous peoples. The following stand out: “Plan for Coping and Monitoring COVID-19 for Brazilian Indigenous Peoples,” “Plan of Sanitary Barriers for Isolated and Recent Contact Indigenous Peoples seeking to confront COVID-19,” “National Contingency Plan for Human Infection by the New Coronavirus (COVID-19) in Indigenous Peoples,” “Territorial Protection Work Plan,” “Technical note No. 2/2020/COPI/CGMT/DPT-FUNAI: Reservations on the Territorial Protection Work Plan,” Technical Information No. 30, No. 34, No. 47, No. 105; among others. The national plans are of a general nature and indicate, *inter alia*, actions to be developed²¹ and suggestions,²² mentioning actions to be taken by indigenous peoples²³ or by local authorities²⁴ (it was not specified whether such plans are being implemented in favor of the proposed beneficiaries). Specifically related to the proposed beneficiaries, a copy of the “Work Plan: Permanent Monitoring, Record No. 41 – Awá Guajá, Araribóia Indigenous Land” was provided, which states that “the present Work Plan represents the beginning of the structuring of a permanent monitoring policy for the isolated Awá-Gujá that inhabit TI Araribóia.”

19. The State indicated that it had produced documentation since January 2020 to inform indigenous peoples about prevention and proper management of persons with suspected diagnosis, as well as administered seminars and orientations. That material was purportedly distributed through the Special Secretariat for Indigenous Health (SESAI, by its Spanish acronym). Similarly, according to Decree No. 419/PRES, the entry of third parties into indigenous lands has been prohibited since March 17, 2020.²⁵

20. Regarding the measures adopted in favor of the proposed beneficiaries, the State indicated the supply of food, to guarantee food security and prevent the indigenous persons from having to leave the villages to look for provisions. The Regional Coordination of Maranhão referred 9,052 families to receive such food (it was not specified how many are part of the proposed beneficiaries) while the Coordination of the Awá Ethno-environmental Protection Front, 139 families. It further emphasized, as a preventive measure, the vaccination of the indigenous population to reduce the cases of symptoms similar to COVID-19, “[...] and with it, the displacement and exposure of indigenous persons to hospital units in the cities.”

²⁰ “Articulação dos Povos Indígena do Brasil (APIB) is behind the website defundbolsonaro.org, whose objectives are to publish fake news against Brazil; attribute environmental crimes to the President of the Republic; and support international campaigns in favor of a global boycott against Brazilian products. The administration of the organization is of Brazilians, connected to leftist parties. Emergency APIB is chaired by the indigenous Sônia Guajajara, a member of the [Socialism and Freedom Party] and connected to the actor Leonardo Di Caprio, a fierce critic of our country. The APIB website is associated with several others, who also work 24 hours a day to tarnish our image abroad, in a crime of damage to the homeland.” See: https://twitter.com/gen_helena/status/1307038961555079168.

²¹ For instance, Funai’s National Contingency Plan for actions of protection and promotion for the indigenous peoples in the context of the new Coronavirus Pandemic (COVID-19).

²² For instance, Memorandum No. 29/2020/COPIRC/CGIIRC/DPT-FUNAI.

²³ For instance, “respiratory etiquette.”

²⁴ For instance, quarantine measures and inter-institutional flows in case of positive diagnoses.

²⁵ Decree N° 419/PRES.

21. The State also added that it is supporting the construction of sanitary barriers in Guajajara villages; that it has planned to install four “intermittent support points” in favor of the Awá, which is allegedly made up of 8 persons –two State officers, a temporary collaborator and 5 indigenous assistants; that the DSEI-MA has “Indigenous Basic Health Units” (UBSI, by its Spanish acronym) within the villages to take care for non-complex cases; as well as that the DSEI-MA has been guided to prioritize the active search for cases of Influenza Syndrome and Severe Acute Respiratory Syndrome. Additionally, it indicated that “more than 500 tests [for COVID-19] were carried out in villages with a high number of suspected cases.”

22. Regarding the supply of Personal Protection Equipment (PPE), the State indicated that “the DSEI-MA is willing to comply with the prior guidance of the SESAI, to give priority to the distribution to health professionals that make up the Multidisciplinary Teams of Indigenous Health [...], who act daily in the confrontation of COVID-19.” Similarly, it was indicated that “PPE is provided to indigenous users only in situations of presentation with symptoms related to influenza/COVID-19 syndromes, as in suspected and confirmed cases and also when it is necessary to leave the people to go to other health services, outside the indigenous peoples.” “With regard to testing [for COVID-19] in indigenous users and health professionals [...], the DSEI-MA reported that, initially, 20 rapid test kits were distributed to each DSEI-MA Base Pole, totaling 180 kits passed by SESAI, which were prioritized for indigenous health professionals, taking into account the limited number and also with the aim of minimizing biological risks to indigenous peoples and professionals.”

23. Regarding the Awá people in voluntary isolation, the State alleged that they are receiving special attention from the Awá Ethno-environmental Protection Front, which has allegedly prepared a “Contingency Plan for Human Infection by COVID-19 for the indigenous persons of recent contact and isolated from the Awá Guajá People,” and has purportedly adapted the physical structure of the Awá Sul Ethno-environmental Protection Base for FUNAI personnel to carry out quarantine within the indigenous area. Moreover, in a document entitled “NT CGIIRC,” the State details its national policy for indigenous peoples in isolation, concluding that “the most effective device for the protection against epidemics in isolated indigenous peoples consists of preventing the circulation of invaders that may be vectors for disease transmission.”²⁶

24. In several of the above-mentioned plans,²⁷ the State recognized the epidemiological vulnerability of indigenous peoples, indicating that:

“historically, there was a greater biological vulnerability of indigenous peoples to viral diseases, especially respiratory infections. Epidemics and high mortality rates from communicable diseases contributed significantly to the reduction of the number of indigenous persons living in the Brazilian territory. Respiratory tract diseases continue to be the main cause of infant mortality in the indigenous population.”²⁸

25. In this regard, documentation provided by the State indicates that, in July 2020, “the DSEIs Maranhão and Alto Rio Solimões had the highest numbers of confirmed cases for COVID-19 [...]”²⁹ and in September, “the DSEIs corresponding to the highest category of incidence on the map correspond geographically to the municipalities of the states of Acre, Pará, Amapá, Maranhão, Mato Grosso, Tocantins,

²⁶ NT CGIIRC, para. 8.

²⁷ For instance: “COVID-19 Confrontation and Monitoring Plan for Brazilian Indigenous Peoples,” p. 9; “National Contingency Plan for Human Infection by the new Coronavirus among Indigenous Peoples.”

²⁸ National Contingency Plan for Human Infection by the New Coronavirus in Indigenous Peoples, March 2020.

²⁹ Report on the Actions Taken by SESAI to Confront the COVID-19 Pandemic, July 22, 2020.

Rondônia and Amazonas.”³⁰ Until August 2020, the State registered 1,394 cases and 25 deaths within the scope of the DSEI-MA.

26. Furthermore, the State provided information related to the allegations on the presence of unauthorized third parties at TI Araribóia. In that sense, it provided examples of actions to control illegal activities in different indigenous lands, specifically indicating that the “Operation Green Brazil 2” is allegedly having an impact on TI Araribóia. Furthermore, “in the overflight action, several deforestation areas were identified which will be inspected in an operation with a date that will be set by the Command of the Operation Green Brazil 2.” It was added that sanitary barriers, Ethno-environmental Protection Bases and “intermittent points of support” also function as mechanisms of territorial protection.

27. The State also added that there are investigations in process related to the alleged acts of violence against the proposed beneficiaries and provided detailed information on its legislative framework on public security. The file also contains several references to judicial processes (Public Civil Actions), related to indigenous issues and the COVID-19 pandemic in Brazil. In addition, the State alleged, with regard to the applicants, the failure to exhaust domestic remedies before filing the international precautionary measure, further arguing that, in view of the subsidiarity nature of the IACHR’s precautionary measures mechanism, the present request is not appropriate, given that the state has not failed to protect the persons proposed as beneficiaries.

28. Lastly, the State concluded that “[...] public policies and public spending must be implemented in the collective or general interest, based on administrative planning that privileges not only a specific segment, but the whole of society, without privileges or preferences, appearing as imprudent the eventual deliberation of the Inter-American Commission on Human Rights, in order to adopt behaviors that imply a huge displacement of the workforce and the generation of innumerable expenses, without legal or budgetary provision, to the detriment of other services, recipients and regions.” Furthermore, regarding compliance with human rights, “it must be carried out within the reality of what is financially possible.”

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

29. The mechanism of precautionary measures is part of the Commission’s function of overseeing Member States compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general oversight functions are established in Article 41 (b) of the American Convention on Human Rights, and in Article 18 (b) of the Statute of the IACHR. The mechanism of precautionary measures is described in Article 25 of the Rules of Procedure of the Commission. In accordance with this Article, the IACHR grants precautionary measures in urgent and serious situations, and when these measures are necessary to avoid irreparable harm to persons.

30. 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 protective and the other being precautionary. 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. The object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary or provisional measures allow the State concerned to

³⁰ Report on the Actions Taken by SESAI to Confront the COVID-19 Pandemic, September 3, 2020, p. 23.

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.

31. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the information provided should be assessed from a *prima facie* standard.³¹

32. The Commission reiterates that, on this occasion, it is only called upon to determine whether the situation described is framed within the provisions of Article 25 of the Rules of Procedure. This analysis does not imply making determinations on the merits or ruling on the international responsibility of the State, which corresponds to an analysis of a petition or case; the analysis herein pertains exclusively to whether the requirements of seriousness, urgency and irreparable harm are identified, which can be carried out without any decision on the merits. The Commission recalls that Article 25, subsection 8, expressly establishes that “[t]he granting of such measures and their adoption by the State shall not constitute a prejudgment on any violation of any right protected by the American Convention on Human Rights or other applicable instruments.”

33. As a preliminary matter, the IACHR will proceed to analyze the State’s arguments regarding the failure to exhaust domestic remedies. In this regard, the Commission recalls that the analysis of the exhaustion of such remedies, or the applicability of exceptions to that exhaustion, must be carried out within the framework of an eventual petition at the time of ruling on its admissibility. In the present matter, we are not reviewing a petition, so it is recalled that it does not seek to determine the international responsibility of the State for the violation of rights recognized in the American Convention and other applicable instruments. As expressly stated in Article 25, subsection 6.a, of the Rules of Procedure, “[i]n considering [a] request [for precautionary measures], the Commission shall take into account its context and the following elements: a. whether the situation has been brought to the attention of the pertinent authorities or the reasons why it would not have been possible to do so [...]”³²

34. In view of the foregoing, the Commission observes that the State has been made aware of this situation through various remedies, mainly judicial in nature, filed with the competent authorities, who

³¹ In this regard, for instance, referring to provisional measures, the Inter-American Court has considered that such a standard requires a minimum of detail and information that allows for a *prima facie* assessment of the situation of risk and urgency. I/A Court H.R., *Matter of the children and adolescents deprived of liberty in the “Complexo do Tatuapé” of the Fundação CASA*. Request for extension of provisional 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

³² Article 46 of the American Convention, cited by the State, refers to “petition or communication submitted pursuant to Articles 44 or 45 [...]” which refer exclusively to the petition and case system. It is noted that Articles 44 and 45 of the American Convention refer to “claims or complaints of violation” of the Convention. The function of the precautionary measures mechanism is not to establish the existence or not of one or more violations (see Article 25.8 of the Commission’s Rules of Procedure), and the consequent international responsibility of the State; rather, as stated in Article 25 of the Commission’s Rules of Procedure, the precautionary measures “[...] will be related to situations of seriousness and urgency that pose a risk of irreparable harm to persons or to the subject matter of a petition or case pending before the organs of the Inter-American System.”

have also adopted decision ADPF 709 MC/DF in favor of the proposed beneficiaries. The information available also indicates that various complaints have been filed, which has warranted the opening of investigations that are still being processed. Despite such actions, it has been alleged that the situation placing the proposed beneficiaries at risk persists. In this regard, the Commission will proceed to analyze whether the procedural requirements of Article 25 of the Rules of Procedure have been met.

35. At the time of analyzing the requirement of seriousness, the Commission takes into account as a contextual element that the alleged facts are framed in a specific setting characterized not only by the COVID-19 pandemic, but by an alleged historical situation of violence towards members of the Guajajara and Awá indigenous peoples due to activities in defense of their rights. In this regard, the Commission notes that the applicants have referred to the existence of various murders over time, recently identifying at least 5. Although the State referred to the applicable legal framework and the existence of investigations, the current context of violence was not disproved. In this sense, the Commission understands that, although it does not have sufficient information to analyze the specific situation placing the members of indigenous peoples at risk due to their actions for territorial defense, it considers it crucial to understand the particular context faced by indigenous peoples of the TI Araribóia. Inasmuch as the allegations regarding the impact on health are related to the high presence of third parties that carry out illegal activities, the Commission notes that the applicants alleged that TI Araribóia is being seriously impacted by the high number of “invasions” by third parties, which, in the IACHR’s opinion, places the members of the indigenous community who live in that Indigenous Land in a situation of special vulnerability.

36. The above clarification is relevant insofar as the Commission considers that “indigenous and tribal peoples have been historically subject to conditions of marginalization and discrimination,” therefore it reiterates that “within international law in general, and in inter-American law specifically, special protection is required so that indigenous peoples can exercise their rights fully and equitably with the rest of the population. Furthermore, it may be necessary to establish special measures of protection for indigenous peoples in order to guarantee their physical and cultural survival –a right protected in various international instruments and conventions–.³³ Furthermore, in the case of indigenous peoples in voluntary isolation, the Commission has indicated that “[...] States have ‘the duty to prevent the occurrence of these comprehensive situations of human rights violations, so as to preserve the life and physical integrity of the members of indigenous and tribal peoples, through the adoption of the public health preventive measures which are pertinent in each case. These safeguards are particularly important for indigenous peoples in voluntary isolation or initial contact’.”³⁴

37. Regarding the seriousness requirement, the Commission observes that the spread of COVID-19 has been alleged among the proposed beneficiaries in TI Araribóia in Brazil. In particular, it is observed that, according to the applicants, the proposed beneficiaries are exposed to the spread of COVID-19 due to forced contact with unauthorized third parties present in the Indigenous Land who allegedly serve as potential vectors of the virus given their constant passage through the area and the outside of that Land. It is essential to take the foregoing into account, in view of the serious impact that the rights to life, personal integrity and health of the proposed beneficiaries reportedly bear, derived from the multiplication of unwanted contacts, a factor whose control is beyond their scope. Such contacts purportedly have a special impact on the situation of those indigenous persons who are in a situation of isolation.

38. In line with the above, the Commission notes that relevant data were provided that allegedly indicate an increase in the illegal exploration of resources within the Indigenous Land, which reportedly

³³ IACHR, Compendium on Equality and Non-Discrimination: Inter-American Standards, OEA/Ser.L/V/II.171, Doc. 31, February 12, 2019, pp. 103-106. Available at <https://www.oas.org/en/iachr/reports/pdfs/Compendium-EqualityNonDiscrimination.pdf>.

³⁴ IACHR, Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, 2013, para. 116.

has as a consequence a 113% increase in deforestation in the TI Araribóia in 2019, and more than 29,000 hectares until March 2020. As indicated, such activities of exploration by third parties are carried out with a proximity of around 5 kilometers from the areas where it is known that peoples in isolation live (see *supra* para. 9). According to the applicants, those situations are known to the State in light of various complaints filed, having reported that “[t]he State of Brazil has been omitting the constitutional obligation to supervise and protect indigenous lands.” In this regard, the IACHR observes that the decision of the STF of July 8, 2020 indicated that “[...] there is no doubt that the removal [of unauthorized third parties] is imperative and that the presence of those groups in indigenous lands constitutes a violation to the right of those people to their land and their culture, and threatens their life and health.”³⁵ On that occasion, the STF ordered the development of a plan to combat COVID-19, to isolate the “invaders” from indigenous communities; that sanitary barriers be created, among others.

39. In addition to the above, according to the request, the DSEI Maranhão, responsible for the health care of the proposed beneficiaries, already in early July 2020 was presented as the epicenter of positive cases of COVID-19 among the indigenous peoples in that region. Indeed, the Commission observes that, according to the available information presented by the parties, there are between 25 and 69 deaths from COVID-19 confirmed in an alleged under-notification scenario, with an estimated contagion of 50% of the Guajajara population, according to the Awá Ethno-environmental Protection Front.³⁶ Moreover, according to information provided by the State itself, until August 2020, more than 8% of the population of the TI Araribóia had already been diagnosed with COVID-19 (1,394 positive cases); and by September it had been purportedly identified that the DSEIs with the “highest category of incidence on the map” correspond geographically to municipalities in states such as Maranhão (see *supra* para. 25).

40. In this context, the Commission notes that the applicants alleged a series of questions regarding the insufficiency of the operational structure, medical supplies, and monitoring of the ill persons, indicating that there are indigenous persons affected by respiratory diseases. In particular, a lack of distribution by public entities of personal protective equipment (PPE) and hygiene products for indigenous persons was alleged,³⁷ as well as lack of quarantine compliance by health professionals, among others (see *supra* para. 6). In this regard, the IACHR observes that neither is the information presented by the State sufficient to disprove these allegations of the applicants, nor does it indicate that such allegations were subsequently overcome. On the contrary, the information provided by the State is sufficient to note, for instance, the insufficiency of PPE and rapid tests for the proposed beneficiaries –180 initial kits plus 500 tests carried out– for a population of 16,000 persons (see *supra* para. 22).

41. The Commission takes note of the information provided by the State and observes that different action plans have been developed nationally in favor of indigenous peoples, a copy of which has been provided to the IACHR (see *supra* para. 18). However, it is noted that these are general and/or programmatic in nature, without the State having clarified how they are being implemented in favor of the proposed beneficiaries and, be it the case, if they are effective. The State also indicated some specific measures that are allegedly having an impact on this situation, *inter alia*: food distribution, construction of sanitary barriers and “intermittent support points,” “Indigenous Basic Health Units”, and active search for cases of Influenza Syndrome and Severe Acute Respiratory Syndrome. Notwithstanding, the IACHR notes that the applicants questioned the effectiveness and/or sufficiency of such measures, alleging, *inter alia*, (i) that food distribution has been limited in quantity and geographic area (see *supra* para. 6); (ii) that sanitary barriers, even contemplated in the STF decision,³⁸ have been implemented by the indigenous persons themselves without state support, with a single exception (see *supra* paras. 13-14); and (iii) that the

³⁵ STF, ADPF 709 MC/DF, para. 42.

³⁶ Federal Public Ministry, PR-MA-MANIFESTAÇÃO-7454/2020, June 19, 2020.

³⁷ Federal Public Ministry, request for Public Civil Action, PR-MA-MANIFESTAÇÃO-7454/2020, June 19, 2020.

³⁸ STF, ADPF 709 MC/DF.

“intermittent support points” have been installed in regions fully occupied by the Awá, placing them at risk of contamination. Additionally, it was not specified whether the Indigenous Basic Health Units are sufficient and whether, in effect, the active search for cases of Influenza Syndrome and Severe Acute Respiratory Syndrome is being carried out.

42. Regarding the Awá people in voluntary isolation, although the State alleged that they are receiving special attention from the Awá Ethno-environmental Protection Front, it was not clarified how this is integrated for their protection in the alleged scenario of pandemic and continued presence of unauthorized third parties in the TI Araribóia, even close to the areas occupied by the Awá. Similarly, the applicants questioned the relevance of the Ethno-environmental Protection Base for this situation (see *supra* para. 14), without further clarifications in this regard by the State, despite the additional reports provided. It is also noted that the State emphasized the implementation of “Operation Green Brazil 2,” as an action to fight illegal logging in TI Araribóia, adding that several deforestation areas were identified which will be inspected in an operation with a date that will be set by the Command of the Operation Green Brazil 2” (see *supra* para. 26).

43. In this regard, although the Commission takes note of the planning of the above-mentioned operation, the applicants’ allegation on insufficiency and State omission is observed in the sense that, “[...] various action plans were jointly constructed, and that yet nothing has been done in the executive plan to lead or even support the defense of the TI Araribóia.” Even The STF, within the scope of ADPF 709, determined the elaboration of a plan to “isolate” the invaders from the indigenous communities and reaffirmed that it is the duty of the state to elaborate a plan to expel those persons from the territory,³⁹ recognizing “the risk in the delay, since there is an imminent risk of contagion if containment mechanisms regarding the entry to those lands are not created.”⁴⁰ However, on October 21, 2020, the STF Court rejected the second version of a “General Plan to Face and Control COVID-19 for Indigenous Peoples,” and ordered that it be reformulated. Taking into account the last communications from the parties, the Commission does not have information on the measures adopted on the reformulation of that plan (see *supra* para. 12).

44. Based on the above, the Commission does not have elements to indicate that state actions have been sufficient and effective to protect the indigenous peoples who inhabit the TI Araribóia from the multiplicity and complexity of the alleged risks, particularly considering that indigenous peoples in Brazil have historically presented with greater vulnerability to respiratory infections (see *supra* paras. 5 and 24). Thus, considering the current context of the COVID-19 pandemic, in which the proposed beneficiaries are purportedly in frequent contact with unauthorized third parties in the lands they inhabit, who would be potential vectors of the disease, in addition to the lack of sufficient and efficient health care measures in their favor; and, recalling the particular situation of vulnerability history of indigenous peoples, mainly peoples in voluntary isolation, the Commission considers that, from the standard *prima facie* applicable to the precautionary measures mechanism, the rights to life, personal integrity and health of the members of the Guajajara and Awá Indigenous Peoples of the Araribóia Indigenous Land are at serious risk.

45. Regarding the urgency requirement, the Commission considers that, taking into account the context of the COVID-19 pandemic, the information available on the progress of the spread of the virus, the confirmed positive cases and deaths, as well as the particular immune vulnerability of recent contact or isolated indigenous peoples. All the above, along with the continuous presence of unauthorized third parties in the territories and the alleged lack of prevention measures and adequate medical care. In these circumstances, the adoption of urgent measures to protect the rights to life, personal integrity and health

³⁹ STF, ADPF 709 MC/DF, para. 44.

⁴⁰ STF, ADPF 709 MC/DF, para. 28.

of the proposed beneficiaries is justified, also guaranteeing access to adequate and timely medical treatment, in accordance with applicable international standards.

46. As regards the requirement of irreparable harm, the Commission considers that it is met, since the possible impact on the rights to life and personal integrity constitute the maximum situation of irreparability.

47. Regarding the State's argument quoted in paragraph 28, the IACHR would like to indicate that it is not called upon to rule on each of the actions that the State must take for purposes of mitigating the risk pursuant to Article 25 of the Rules of Procedure. On this occasion, the IACHR understands, among other things, that it is the responsibility of the parties, based on the principle of consultation, to evaluate the actions that should be taken in favor of the beneficiaries, according to the applicable regulations. In this sense, the IACHR call the parties to promote such spaces and assess the corresponding protection measures. Furthermore, although situations of vulnerability may require the implementation of specific measures to guarantee the enjoyment of human rights (see *supra* para. 36), these are not a privilege, and are also not exclusive to specific groups.

48. Furthermore, on the information mentioned in paragraph 28, the IACHR reaffirms that:

In terms of budgets, the IACHR understands that implementing human rights means that the State is obliged to program, allocate and spend public resources in a manner that adheres to its obligations of implementation of international human rights treaties at all levels of the executive, legislative, and judicial branches as well as in all their structures.⁴¹

49. Lastly, in relation to the argument regarding the principle of complementarity, the Commission recalls that, in effect, the State, through its domestic authorities, is primarily responsible for protecting the human rights of the persons under its jurisdiction; in this regard, the nature of international jurisdiction is "auxiliary" or "complementary," without replacing it.⁴² The Commission notes, however, that invoking the principle of complementarity to support that the adoption of precautionary measures is unwarranted requires that the State concerned satisfy the burden of proving that the proposed beneficiaries are no longer in a serious and urgent situation pursuant to Article 25 of the Rules of Procedure, in the sense that the measures adopted by the State have had a substantive impact in reducing or mitigating the risk, so that compliance with the procedural requirements is no longer fulfilled and therefore international intervention to prevent irreparable harm is no longer required.⁴³

50. In this sense, in this matter the Commission has verified that the situation in question, in light of Article 25 of the Rules of Procedure, complies with the procedural requirements, and consequently the adoption of precautionary measures to safeguard their rights is appropriate.

IV. BENEFICIARIES

⁴¹IACHR, Public Policy with a Human Rights Approach, OEA/Ser.L/V/II. Doc. 191, September 15, 2018, para. 128. Available at <http://www.oas.org/en/iachr/reports/pdfs/PublicPolicyHR.pdf>.

⁴² See *inter alia*: IACHR, Francisco Javier Barraza Gómez regarding Mexico (PM-209-14), Resolution of 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 of 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 of August 22, 2017, para. 16. Available at <http://www.oas.org/es/cidh/decisiones/pdf/2017/32-17MC564-17-AR.pdf>

⁴³*Ibid.*

51. The Commission hereby declares that the beneficiaries of this precautionary measure are the members of the Guajajara and Awá Indigenous Peoples living in the Araribóia Indigenous Land in the state of Maranhão. Such persons are identifiable pursuant to Article 25.6.b of the IACHR's Rules of Procedure.

V. DECISION

52. In view of the above-mentioned background, the Commission considers that this matter meets *prima facie* the requirements of seriousness, urgency and irreparable harm established in Article 25 of its Rules of Procedure. Consequently, it requests that Brazil:

- a) adopt the necessary measures to protect the rights to health, life, and personal integrity of the members of the Guajajara and Awá Indigenous Peoples of the Araribóia Indigenous Land, implementing, from a culturally appropriate perspective, preventive measures against the spread of COVID-19, as well as providing them with adequate medical care in terms of availability, accessibility, acceptability and quality, in accordance with applicable international standards;
- b) consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and
- c) report on the actions taken to investigate the events that led to the adoption of this precautionary measure, so as to prevent such incidents from reoccurring.

53. The Commission requests that the Government of Brazil kindly inform the Commission, within 20 days, as of the date of this communication, about the adoption of the precautionary measures agreed and regularly update this information.

54. The Commission emphasizes 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 prejudgment on the possible violation of the rights protected by the American Convention and other applicable instruments.

55. The Commission instructs its Executive Secretariat to notify this Resolution to the State of Brazil and the applicants.

56. Approved on January 4, 2021, by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice-President; Margarette May Macaulay; Esmeralda Arosemena de Troitiño and Julissa Mantilla Falcón, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary