

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 13/2024**

Precautionary Measure No. 1109-23
Certain families of the native Kichwa community Santa Rosillo de Yanayacu¹
regarding Peru
March 25, 2024
Original: Spanish

I. INTRODUCTION

1. On December 12, 2023, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission” or “the IACHR”) received a request for precautionary measures presented by the Legal Defense Institute (*Instituto de Defensa Legal*, IDL), Forest Peoples Programme (FPP), Federation of Indigenous Kechua Chazuta Amazonian Peoples (*Federación de Pueblos Indígenas Kechua Chazuta Amazonía*, FEPIKECHA),² and Coordinator of Development and Defense of the Indigenous Peoples of San Martín (*Coordinadora de Defensa y Desarrollo de los Pueblos Indígenas de San Martín*, CODEPISAM)³ (“the requesting party” or “the applicants”),⁴ urging the Commission to require that the State of Peru (“Peru” or “the State”) adopt the necessary measures to protect the rights to life and personal integrity of the members of the native Kichwa community Santa Rosillo de Yanayacu,⁵ of the Kichwa people, as well as the leaders of FEPIKECHA and CODEPISAM (“the proposed beneficiaries”). According to the request, the proposed beneficiaries are at risk following threats, harassment, attacks, and the recent murder of the community leader in an alleged context of land trafficking, illegal logging, and drug trafficking in their territory.

2. Under Article 25(5) of its Rules of Procedure, the Commission sent a communication to the applicants on December 13, 2023, and received a response on December 14, 2023. On the same day, the Commission requested information from the State and received a response on January 11, 2024, after a timeline extension was granted. The Commission forwarded the State’s communication to the applicants on January 17, 2024, and received a response on January 29, 2024.

3. Upon analyzing the submissions of fact and law offered by the parties, the Commission considers that the information presented shows *prima facie* that the proposed beneficiaries are in a serious and urgent situation, given that their rights to life and personal integrity are at risk of irreparable harm. Therefore, it requests that the State of Peru: a) adopt the necessary and culturally appropriate measures to safeguard the life and personal integrity of the beneficiaries. Among other things, it is requested to adopt the essential measures to ensure that the beneficiaries who are displaced in the city of Tarapoto can return safely to their community; b) consult and agree upon the measures to be implemented with the beneficiaries

¹ For the purposes of this resolution, the Commission has decided to keep the names of the persons mentioned in the alleged facts confidential. Communications with their full names have been forwarded between the parties and are known to them.

² The request indicated that the organization groups 10 indigenous communities belonging to the Kichwa people of Chazuta and Bajo Huallaga in the San Martín region of the Peruvian Amazon.

³ The request indicated that the organization brings together 128 native communities and 8 indigenous federations in the San Martín region.

⁴ In the precautionary measures form, the applicants indicated that they have the express agreement of the proposed beneficiaries. The applicants also indicated that CODEPISAM and FEPIKECHA signed the request for precautionary measures on behalf of their leaders and the Santa Rosillo de Yanayacu Native Kichwa Community, one of their base communities. In addition, the applicants attached minutes of extraordinary assemblies of the native community between 2020 and 2022, as well as various communications presented to state entities about the situation of the community.

⁵ The Commission notes that the parties used the terms “Yanayacu” and “Yanayaku” interchangeably. In its analysis, the Commission will use the term “Yanayacu”, since it was the term informed by the applicant when submitting the request for precautionary measures.

and/or their representatives; and c) report on the actions taken to investigate the alleged events that gave rise to these precautionary measures, so as to prevent such events from reoccurring.

II. SUMMARY OF FACTS AND ARGUMENTS

A. Information provided by the requesting party

4. The proposed beneficiaries are the members of the native community of Santa Rosillo de Yanayacu, of the Kichwa people, located in the district of Huimbayoc, in the province and region of San Martín, and the leaders of FEPIKECHA⁶ and CODEPISAM,⁷ who reportedly accompany the community in their complaints. In 2015, the community was recognized by the Regional Directorate of Agriculture of San Martín. The territory of the community was reportedly geo-referenced in 2017. However, to date it does not have a collective title deed.

5. The Huimbayoc district reportedly faces an alarming increase in illicit activities such as illegal logging, drug trafficking, and land trafficking. It was noted that, according to the report made by the Regional Environmental Authority (ARA), between 2001 and 2019, 591.90 hectares of forest were lost in the community, and between 2020 and 2021, and another 139.19 hectares were deforested. The presence of a clandestine airstrip near the territory of the community was reportedly detected. Since 2017, the proposed beneficiaries have reportedly continued to be subjected to aggression and harassment by illegal loggers, drug traffickers, and land traffickers who have invaded their territory and plundered their natural resources.

6. The delay in the titling process allegedly caused the entry of the so-called “settlers” which caused an intense polarization within the community, dividing it between those who favor the communal title and those who favor titling as individual rural properties. This latter is purportedly being encouraged by the group of “settlers,” who have allegedly created a parallel governance structure in the form of “Caserío Santa Rosillo” so as not to have to abide by the decisions made in the assemblies of the Board of Directors of the native Kichwa community Santa Rosillo de Yanayacu. In this regard, on June 8, 2022, the District Municipality of Huimbayoc approved the creation of the hamlet Caserío Santa Rosillo.⁸ There were allegations of existing proof of possession that was reportedly unduly granted by the District Municipality of Huimbayoc. On August 15, 2019, the Regional Agrarian Directorate of San Martín reportedly excluded the community from the titling process due to conflicts between community members and settlers. Despite the creation of a Technical Titling Board for native communities in the San Martín region, the process is reportedly stalled.

7. The community’s territory reportedly also overlaps with concessions for timber purposes, the protected natural area Cordillera Azul National Park, the Urcuyacu ecosystem conservation and recovery zone, the Cordillera Azul National Park buffer zone, and permanent production forests. The request stated that, between 2014 and 2016, the Directorate of Titling of the Regional Government of San Martín issued ten individual titles to alleged loggers in the city of Tarapoto. On April 18, 2018, the community and FEPIKECHA reportedly denounced threats from migrants who sought to appropriate the territory to deforest and traffic timber, supported by “false communal authorities.”

⁶ The request referred to M.G.A. (president), C.R.S. (vice president), and A.C.P. (director).

⁷ The request identified: W.T.C. (president) and W.S.T. (vice president).

⁸ The applicant stated that, although the municipality’s recognition of the hamlet is not of the nature of sanitation of rural property, “it does contribute to divisionism and does not contribute to the resolution of conflicts that the native community, its federation and its regional organization have sought in the Technical Board of Titling.”

8. Q.I.A, Apu of the community and president of the Board of Directors of the native Kichwa community Santa Rosillo de Yanayacu, with the support of community members,⁹ monitored, surveilled, and defended the forests of the territory, verifying illegal logging activity and the presence of drug trafficking. Criminal complaints were filed in this regard between 2016 and 2023 with the Regional Government of San Martín and the Public Prosecutor's Office.

9. On September 14, 2018, M.I.A., brother of Q.I.A., was allegedly assaulted, insulted, and received death threats at his home by J.S.S. On September 17, 2018, a complaint was filed with the police authorities of Tarapoto due to "the aggression suffered and the death threats made by a group of illegal loggers" who were operating in the territory. He stated that the threats began in September 2017 and intensified in March and April 2018. On April 18, 2018, a complaint was filed with the Special Prosecutor's Office for Environmental Matters of San Martín, which allegedly agreed to visit the community three times, but never did. The complaint was filed. Faced with this situation, the community leaders reportedly raised their complaint with the Regional Subprefecture. They also reported that people outside the community had tried to usurp charges to carry out illegal timber extraction. One of them was purportedly L.R.R.

10. On January 7, 2019, Q.I.A. and M.I.A. were allegedly kidnapped by L.R.R. and a group of individuals who surrounded them in their residences and transported them to another location within the community. At this location, they were allegedly physically assaulted and held as punishment. They were reportedly released at dusk on January 8, 2019. This incident was reported to the Mixed Provincial Prosecutor's Office of La Banda de Shilcayo for the crime of kidnapping. Subsequently, the complaint was filed. On January 15, 2019, the brothers and other community leaders publicly denounced being victims of threats by "certain community members" and migrants who opposed the territorial defense activities they carried out.

11. The applicants indicated that, on April 28, 2020, the community members established the "communal patrol" of Santa Rosillo de Yanayacu to patrol their territory. At the same time, groups opposed to the communal leadership promoted the creation of a "peasant patrol." On August 9, 2020, an extraordinary assembly was held at the residence of Q.I.A., who then held the position of vicepresident of the community. During the meeting, it was reported that Q.I.A. was allegedly kidnapped and beaten with sticks and ropes in his own home. Q.I.A. allegedly identified the perpetrators, who, in addition, are allegedly responsible for the illegal logging of timber in the territory.

12. On August 21, 2020, Q.I.A. and his brother M.I.A. filed a request to activate the early warning procedure for human rights defenders with the Ministry of Justice. On February 8, 2021, the Ministry of Justice declared the request admissible and ordered a series of actions, including protection actions and public visits to raise awareness about the risk faced by human rights defenders. On September 25, 2020, Q.I.A. requested personal guarantees against L.R.R. and J.B.O. due to the alleged threats they received, which were granted on February 26, 2021. M.I.A. also requested personal guarantees against L.R.R. and J.S.S., which were granted on the same day.

13. The applicants indicated that Q.I.A. was attacked on July 19, 2021, in apparent retaliation for promoting a fiscal inspection related to coca leaf plantations in the community's territory. The assaults allegedly resulted in injuries to his cheekbone, right eye, and chest. The foregoing reportedly forced Q.I.A. and his brother M.I.A. to take refuge with their relatives in the city of Tarapoto. The Ministry of the Interior, the Ministry of Justice, and the Ministry of the Environment issued a statement indicating coordinated actions within the framework of the intersectoral mechanism to protect human rights defenders and with the Peruvian National Police. According to the applicants, the XI San Martín Police Macro Region provided

⁹ The request referred to the following persons in the community as persons seeking collective titling of the territory: K.A.I.M., G.K.R.S., A.A.I.R., B.M.M.F., M.I.P., G.I.M (or G.P.I.M.), H.I.A., A.J.I.M., R.I.M., M.I.A., N.P.I., V.T.P., A.I.P., M.I.P., M.I.G., M.I.B., L.I.B., S.M.I.M., E.I.M. and A.B.T.

temporary protection. They subsequently returned to their community as they were unable to support themselves financially outside of it.

14. On July 26, 2021, after the attack against Q.I.A. and an inspection to detect drugs was carried out in Tarapoto, the Ministry of the Interior granted personal guarantees to several community members, including Q.I.A. and M.I.A. and their families against a group of individuals – including E.S.S., E.M.S., J.B.O., L.R.R., S.J.R.M., and R.Y.I. To date, none of the actions indicated have been efficiently implemented, and the personal guarantees obtained by the community members have not been effective due to deficiencies in supervision, as well as lack of budget and coordination between the state institutions involved. According to the request, on August 21, 2021, the community authorities reported that individuals linked to illegal activities in the territory set fire to the house of E.I.M., president of the communal patrol, in apparent retaliation for his work of territorial control and monitoring. On December 4, 2021, the community authorities denounced death threats by illegal loggers “who acted in retaliation for the complaint that the community filed against them.”

15. On July 31, 2022, L.R.R. allegedly broke into M.I.A.’s house to threaten and intimidate his family. On August 5, 2022, FEPIKECHA, along with other indigenous organizations, filed a “compliance complaint” against the Ministry of the Interior and the Ministry of Justice and Human Rights “for not providing effective protection measures to human rights defenders at the national level.” The case is pending before the Seventh Constitutional Court (*Séptimo Juzgado Constitucional*) of Lima.

16. On April 3, 2023, two people with firearms allegedly asked for Q.I.A., which was considered an “attempted attack.” These people were identified by Q.I.A. and are said to be responsible for the deforestation in the territory of the community in August 2022 “and for the threatening graffiti, with images of revolvers, that were made on some trees.” It was alleged that, on April 28, 2023, the United Nations Committee on the Elimination of Racial Discrimination (CERD), within the framework of its early warning and urgent action procedure, requested information from the State on the measures taken in this situation.

17. On November 29, 2023, Q.I.A. was killed by three gunshots. His delegation was allegedly ambushed by hooded and armed individuals when he returned to his community. A.B.T., a member of the delegation, was injured, while the vicepresident of the community, M.I.P., managed to hide from the aggressors. In the early hours of November 29, 2023, agents of the High Complexity Investigation Division (*División de Investigación de Alta Complejidad*, DIVIAC) and the Specialized Prosecutor’s Office against Organized Crime reportedly arrested 16 persons suspected of being members of the criminal network “El Clan de los Topa,” an organization linked to illegal timber trafficking. The applicants indicated that they suspect the possible involvement of the police in the murder. Regarding the investigations, it was alleged that those responsible have not yet been arrested, even though all the necessary police procedures have been completed with the respective police reports in the hands of the Specialized Prosecutor’s Office for Organized Crime (*Fiscalía Especializada en Criminalidad Organizada*, FECOR) since December.

18. The applicants listed a series of interventions that they have allegedly carried out since 2018 with various state entities with a view to protecting their territory and the community members from invasions by people engaged in illegal activities.¹⁰ Between 2019 and 2023, the community alleged that it

¹⁰ The applicant referred to the following: i) Meeting with the Regional Government of San Martín on January 11, 2018 where an act of agreements is signed recognizing the community authority and the commitment to establish environmental control mechanisms; ii) Request for intervention presented to the Regional Agrarian Directorate of San Martín presented on January 12, 2018, to solve the territorial conflict and denounced threats against their lives by land and wood traffickers, requesting personal guarantees in the provincial sub-prefecture of San Martín; iii) Report on the situation of human rights defenders in the Amazon presented to the Congress of the Republic on December 18, 2020; iv) Meeting with the Office of Human Rights and Persons with Disabilities on December 22, 2020 to request the implementation of a multisectoral strategy for native communities affected by coca and illegal logging, as well as a high-level commission to address the situation of critical areas; v) Meeting with the United Nations Office for South America - OHCHR on January 21, 2021 to discuss the protection measures required by indigenous peoples; vi) Meeting with the Commission on Indigenous Peoples of the Congress of the Republic on February 12, 2021 to address the serious situation of Santa

filed nine criminal complaints against people involved in illegal logging, drug trafficking, and land trafficking, as well as three complaints for threats and attacks against members of the community.¹¹ The applicants stressed that many of the persons reported are repeat offenders and remain at large.

19. On January 4, 2024, 14 people entered the territory of the community with machetes and without authorization, allegedly with the intention of cutting down trees. On January 7, 2024, nine “settlers” who in recent years settled illegally in the territory, approached the houses of the indigenous community members, armed with artisanal spears, and proceeded to kill their animals and threaten the community members. According to the applicants, these individuals allegedly stated that “just like they cut up their pigs, they are also going to cut up animals, horses, pigs, dogs and also people, since they want all the members of the native community Santa Rosillo de Yanayacu to leave the communal territory because they say that since what happened with Q.I.A. the community has ended.” On January 26, 2024, two leaders of FEPIKECHA and community members of the native Kichwa community Túpac Amarú received death threats after denouncing illegal logging in their territory. In the aftermath of the attack, leaders were forced to leave community territory to find police shelter. These events were purportedly reported to the Prosecutor’s Office for Human Rights and Interculturality.

20. The applicants stated that the Intersectoral Mechanism for the Protection of Human Rights Defenders is severely constrained by economic, programmatic, and operational issues. The territorial protection measures implemented by the State are reportedly insufficient to prevent illegal activities in the Bajo Huallaga area and violence against indigenous community members. It was stated that the situation of community members who relocated outside the community for safety reasons is extremely precarious. It is said that these individuals lack the economic resources to survive outside the communal territory and are reportedly forced to return to the conflict zone.

21. On December 4, 2023, the State granted personal guarantees to 30 community members, but it allegedly does not ensure the necessary economic resources to implement these measures in practice. The Peruvian National Police reportedly do not carry out daily patrols to ensure the protection of FEPIKECHA leaders or the community, since they do not have resources and purportedly only make video calls, even though in many of their communities they do not have mobile network coverage. The applicants

Rosillo de Yanayacu; vii) Request for the implementation of the technical board for the titling of communities presented on February 26, 2021; viii) Meeting with committees of the Congress of the Republic, in addition to the ministries of the Interior, Foreign Affairs, Defense, Agrarian Development, Justice and Human Rights, the Ombudsperson’s Office and also the National Commission for Development and Life without Drugs (DEVIDA), on March 14, 2021, to address the problems of degree in Santa Rosillo de Yanayacu and “the lack of real protection for the lives of its leaders”; ix) Participation in the thematic hearing of the IACHR where the case of Santa Rosillo de Yanayacu as an emblematic case; x) Open letter to the Peruvian State of June 14, 2021, demanding the implementation of concrete measures to protect human rights defenders of indigenous peoples; xi) Participation in the technical board on titling of native communities in San Martín on August 12, 2021; xii) Participation in the technical board on titling of native communities in San Martín on September 2, 2021, where it was agreed that the Directorate of Titling, Reversal of Lands and Rural Cadastre would carry out a technical visit to the community; xiii) Creation of an ad hoc commission to resume the process of communal titling on November 4, 2021; xiv) Meeting with the Ministry of Culture to address the situation of Santa Rosillo de Yanayacu on December 16, 2021; xv) Meeting with the Deputy Minister of Interculturality on February 4, 2022 to follow up on the agreements signed; xvi) Participation in the technical board of titling of native communities on April 27, 2022; xvii) Installation of the regional board for the protection of human rights defenders in San Martín on September 2, 2022; xviii) Participation in the reactivation of the technical board for the titling of native communities of the San Martín region on March 24, 2023; xix) Participation in the regional board for the protection of human rights defenders in San Martín on March 31, 2023.

¹¹ The applicant referred to the following: i) Complaint for the crime of promoting or favoring illicit drug trafficking in 2019, currently with a preliminary investigation closed; ii) Complaint for the crime of kidnapping in 2019, currently with a preliminary investigation closed; iii) Complaint for crimes against forests and forest formations in 2020, currently with a completed preparatory investigation; iv) Complaint for crimes against forests and forest formations in 2021, currently with a completed preparatory investigation; v) Complaint for the crime of trafficking illicit drug offense of 2021, currently in the preparatory investigation phase; vi) Complaint for crimes against forests and forest formations of 2022, currently with formalized preparatory investigation; vii) Complaint for crimes against forests and forest formations of 2022, currently in the preliminary investigation phase; viii) Complaint for crimes against forests and forest formations of 2022, currently in the preparatory investigation phase; ix) Complaint for crimes against forests and forest formations of 2022, currently with formalized preparatory investigation; x) Complaint for the crime of illegitimate granting of rights over 2022 properties, currently with formalized preparatory investigation; xi) Complaint for the crime of disobedience and resistance to the authority of 2022, currently in the preliminary investigation phase; and xii) Complaint for the crime of coercion of 2023, currently in the preliminary investigation phase.

state that the State is absent, and that the only protection mechanism that reaches the community is the native patrol, provided with limited own resources and without support from the State or the Peruvian National Police.

22. It was reported that community leaders who were transferred to the city required psychological support due to the impacts generated on their physical and mental well-being. The son of Q.I.A. stated that:

We have been brought to Tarapoto from our community, where we have our crops and can do the daily activities we are used to. We live off agriculture. To bring us to the city is to be deprived of our freedom and, with police protection, they don't let us out so much either. We are in a living room surrounded by four walls. We want to return, but as long as there is no justice it is not possible. My family is afraid... It's not easy to keep that many people in the city. As a family, we worry and wonder why the legal process is taking so long. The community right now is a mess. It is poorly organized and again they have begun to cut down the trees, because they say that there will never be justice for my father's death and that the case will come to nothing.

23. The applicants proposed various measures for the protection of community members and leaders of their indigenous federations. These measures include activating intersectoral protection mechanisms, such as the Public Prosecutor's Victim and Witness Assistance Program, to provide ongoing care for the physical and psychological integrity of affected individuals. In addition, the applicants emphasized the need to thoroughly investigate acts of violence and establish security details with an intercultural perspective and protection measures that respond to the specific needs of the community, in coordination with local authorities and indigenous leaders. Emphasis was also placed on strengthening community self-protection measures and deploying police intelligence work to address risk factors in the community.

B. Response from the State

24. The State indicated that the proposed beneficiaries are the native Kichwa community Santa Rosillo de Yanayacu, as well as the leaders of the indigenous movement of FEPIKECHA and CODEPISAM. Santa Rosillo is politically located in the district of Huimbayoc, province and department of San Martín and in the Buffer Zone of the Protected Natural Area (ANP) Cordillera Azul National Park. According to the State, the native Kichwa community Santa Rosillo de Yanayacu "has ancestral customs and traditions, they belong to the Kichwa linguistic family, a Kichwa ethnolinguistic group, and they also consider the forest as their home, their pharmacy, and their food pantry through ancestral hunting and fishing." The State stressed that "the documentation does not show the express agreement of the potential beneficiaries belonging to the community."

25. The State affirmed that it initially approved the "Protocol to Guarantee the Protection of Human Rights Defenders" and later the "Intersectoral Mechanism for the Protection of Human Rights Defenders." Supreme Decree [the highest hierarchy law provision issued by the Peruvian Executive Power], No. 002-2022-JU linked the National Commission for Development and Life without Drugs (*Comisión Nacional para el Desarrollo y Vida sin Drogas*, DEVIDA) to the Intersectoral Mechanism, which allegedly introduced "new prevention and protection measures in accordance with the functions of this entity" and enabled DEVIDA to support with information and implementation of urgent protection measures. Therefore, actions are being carried out "in order to prevent negative consequences" against the leaders and members of the native Kichwa community Santa Rosillo de Yanayacu, "which, according to the regulations, are monitored and can be modified." In this sense, the State indicated that, under its internal mechanisms, it is possible to "articulate and improve" the protection measures that have previously been granted in favor of community leaders, as well as the monitoring and follow-up of the situations of the leaders of FEPIKECHA and CODEPISAM.

26. Regarding the protection measures implemented, the State reported what was reported by the National Police of Peru (PNP), XI Police Macro-Region San Martín. On November 30, 2023, the PNP staff, a forensic physician, a necropsy physician, the provincial prosecutor and the deputy prosecutor of the Super Provincial Criminal Prosecutor's Office of Human Rights and Interculturality of San Martín, Tarapoto, reportedly went to Mr. Q.I.A.'s property. As part of the visit, they interviewed Mr. M.I.A., who indicated eight people as suspects,¹² "because on previous occasions they had problems [with Q.I.A.]." On the same date, they allegedly went to the property of two possible perpetrators, where they allegedly seized firearms and boots "in order to carry out the relevant expertise," and performed "atomic absorption expertise." In relation to the other suspects, "certificates of domiciliary verification of each of them" were made.

27. Similarly, the State also reports that they transferred Mr. Q.I.A.'s body by helicopter, along with his immediate family members,¹³ "because they had injuries" and for the performance of the necropsy examination. The necropsy was carried out on the same day, at the Institute of Legal Medicine of Tarapoto, concluding as a cause of death:

"1. Hypovolemic shock. 2. Trauma to thoracic viscera. 3. Closed chest trauma. Weapon: Multi-projectile firearm. Distance: Long. Trajectory: From back to front, from left to right, and from top to bottom. Time of death: Twenty-four (24) to thirty-six (36) hours."

28. On December 1, 2023, ten relatives of Mr. Q.I.A.¹⁴ were relocated to the city of Tarapoto, "in order to safeguard his integrity." Moreover, the State affirmed that the First Court for Preparatory Investigation declared the requirement of protection measures in favor of 20 people,¹⁵ who are allegedly in Tarapoto, "and who have been provided with security measures through foot and motorized patrols. "Regarding the members of the community, the PNP reported that, in 2023, an operations order was formulated to "execute police operations of intelligence, security, surveillance, protection, maintenance of public order [...] during the investigation proceedings in the native Kichwa community Santa Rosillo de Yanayacu." The foregoing, as a result of the provision of personal guarantees and protection measures in favor of Q.I.A. and M.I.A. This would allow "the clarification of the facts and avoid the commission of more crimes, safeguarding the physical integrity of the said persons."

29. In the report of December 22, 2023, attached by the State, the PNP stressed that "there is no economic budget or logistical means for the execution of preventive patrol operations in the area," and therefore, to execute the order of operations formulated. As a result, efforts have been reportedly made to obtain a budget.¹⁶ Additionally, this report warns that "it is not possible to visit or patrol the native Kichwa community Santa Rosillo de Yanayacu, because they do not have a budget, logistical resources (hiring a *chalupa* – boat) and resources for humans (per diems for food and lodging)." On December 19, 2023, an increase in police personnel was requested, considering that the patrol requires "at least" seven police officers, "due to the dangers at the location, since during the movement of PNP Personnel through the different places and waterways through the Huallaga River they could be subject to attacks and ambushes" "which puts PNP personnel at imminent risk in case of any eventuality that arises due to the lack of immediate support." In relation to the foregoing, the Peruvian State, through the Supranational Specialized

¹² L.R.R., J.C.G., J.B.O., S.J.R.M., D.V.P., J.S.S., J.S.S. and R.T.P.

¹³ B.T.M.F. (wife), G.P.I.M. (son), and A.B.T. (daughter)

¹⁴ M.I.A., N.P.I., V.T.P., A.D.I.P., M.I.P., M.A.G., E.I.M., M.I.B., L.I.B. and G.M.I.B.

¹⁵ K.A.I.M., G.K.R.S., A.A.I.R., B.M.M.F., M.I.P., G.I.M (or G.P.I.M.), H.I.A., A.J.I.M., R.I.M., M.I.A., N.P.I., V.T.P., A.I.P, M.I.P., M.I.G., M.I.B., L.I.B., S.M.I.B., E.I.M., and A.B.T.

¹⁶ The following requests were highlighted: i. on February 13, 2023, a report was sent to the head of administration of XI-MACREPOL-SAM, "requesting an additional travel allowance budget for secondment and therefore carrying out the corresponding procedures, in order to provide the guarantees and safeguard the physical integrity" of Q.I.A., without a response having been obtained to date; ii. On February 22, 2023, the XI-MACREPOL-SAM Administration Unit sent the budget requirement, additional resources for travel expenses and tickets for PNP personnel to the V-MACRO HUANUCO POLICE REGION - UE 035 REGPOL HUANUCO SAN MARTIN UCAYALI administration UNIT; iii. On April 18, 2023, the V-MACRO HUANUCO POLICE REGION - EU Administration Unit 035 REGPOL Huánuco San Martín Ucayali - Budget Area sent the request to the PNP INSTITUTIONAL PLANNING DIRECTORATE - Secretariat - DOCUMENT RECEPTION UNIT, which is pending in the General Office of Planning and Budgets (OGPP).

Public Prosecutor's Office (PPEs), affirmed that it "will carry out the corresponding monitoring, in order to timely report on the progress in the implementation of protection measures in favor of the proposed beneficiaries."

30. The State reported that they contacted the president of CODEPISAM and asked him if he already had, or had previously requested, personal guarantees in his favor. According to the State, Mr. W.T.C. stated that he did not require personal guarantees. The Moyobamba Police Division, through the PNP Naranjillo Rural Police Station, indicated that it will deploy preventive patrol actions in the vicinity of Mr. W.T.C.'s home, "in order to prevent threats and/or the commission of criminal offenses in his grievance." The PNP staff of the Lamas PNP Police Station reportedly went to the premises of the Federation of Kechwa Indigenous Peoples of the San Martín Region, located in the Population Center native kechwa community Wayku, district and province of Lamas, in order to meet with Mr. W.S.T.; however, the premises were closed. In addition, the neighbors allegedly informed them that this organization keeps its doors closed and has not been inhabited "for a long time."

31. The PNP Sisa Rural Police Station reportedly contacted Mr. H.T.T., who indicated that he is the leader of FECONAKED, a federation led by CODEPISAM, and stated that to date he has not requested personal guarantees. Similarly, they allegedly tried to contact Mr. E.T.T., representative of the Kichwa Huallaga El Dorado Federation (FEKID), CODEPISAM branch, without obtaining a response. The police station indicated that "they will maintain constant communication with both leaders in order to coordinate daily patrols of each other's homes and safeguard their integrity". The PNP Chazuta Rural Police Station reported that, on December 12, 2023, it contacted Mr. M.I.A., "who was informed of the guarantees in his favor". On December 21, 2023, they reportedly recorded an interview and home visit to the president of FEPIKECHA, Ms. M.G.A., who indicated "being a victim of threats of aggression and death in the native community of Tupac Amaru".

32. The Head of the Cordillera Azul National Park of the National Service of Protected Natural Areas (JPNCAZ-SERNANP) indicated the activities carried out within the scope of the native community Santa Rosillo de Yanayacu, such as patrols, conversation agreements, increase of personnel, coordination with leaders, monitoring of the problem of illegal logging and deforestation, and delivery of information to the Environmental Crimes Prosecutor's Office.¹⁷

33. The State alleged that the proposed beneficiaries are not clearly determined, which leads to a lack of identification and consequent evaluation by the Prosecutor's Office for the protection measures from this sector. In relation to the identification of those responsible, the State considered that it is not appropriate to evaluate an ongoing investigation procedure under the precautionary measures mechanism. Regarding the requested logistical support, such as the granting of adequate clothing and digital

¹⁷ The following were reported: (i) Joint patrol between the JPNCZ-SERNANP and the native community of Santa Rosillo de Yanayacu to the Huangana Pozo sector, within the territory of the community and near the border of the Cordillera Azul National Park; (ii) Coordinations and participation in informative meetings in the native communities of Santa Rosillo de Yanayacu (held on September 23, 2023) and Anak Kurutuyaku (held on September 22, 2023). As a result of these meetings, it was agreed to sign Conservation Agreements to improve the conservation of communal forests and promote sustainable economic activities for the families of the community; (iii) Support for the Native Round of the Native Community of Santa Rosillo de Yanayacu with backpacks for the members of said native round; (iv) Improvement of the infrastructure of the San José de Yanayacu Surveillance and Control Post, with the support of the executor of the Administration Contract (CIMA), to improve coordination with the native community of Santa Rosillo de Yanayacu; (v) Increase in Park Ranger personnel at the San José de Yanayacu Surveillance and Control Post, to develop a greater number of patrols included within the native community of Santa Rosillo de Yanayacu; (vi) As a result of coordination with the leaders of the native community of Santa Rosillo, a community member of said community was hired to improve the surveillance of the sector; (vii) As a member of the Technical Board of Surveillance and Control of Forestry and Wildlife, led by the Regional Environmental Authority of the Regional Government of San Martín, the PNCAZ-SERNANP Headquarters, reported the problem of illegal logging and deforestation that had been occurring in the area of Bajo Huallaga, including the area of the native community of Santa Rosillo de Yanayacu; (viii) The Special Prosecutor's Office for Environmental Matters of Alto Amazonas was informed of cases of illegal logging and deforestation, for the corresponding investigation. The investigations are followed in Fiscal Files No. 128-2021, 041-2018, 54- 2019, 008-2020 and 35-2021; and (ix) The leaders of the native community of Santa Rosillo (Mr. Q.I.A. and others) were accompanied and supported with external legal advice for cases of environmental crimes. Facilities were also provided with the financing of tickets and per diems for its leaders (Q.I.A. and others).

connectivity, the State considered that this mechanism “does not constitute the ideal procedure.” Moreover, the State considered that the request for psychological accompaniment is a “reparation measure.” On the request for certification of the native kichwa community Santa Rosillo de Yanayacu, declaration of an emergency zone in the districts of Huimbayoc, Chipurana, and Papaplaya of the San Martín region, and the plan with a preventive approach against organized crime, the State indicated that they must be addressed under Resolution 3/2018.

34. Lastly, the State affirmed that it is awaiting information requested from the entities involved in the facts of this request for precautionary measures, and that once it collects the necessary information, “it will be brought to the attention of the IACHR in the shortest possible time (15 business days).”

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

35. The precautionary measures mechanism is part of the Commission’s function of overseeing 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, as well as in Article 18(b) of the IACHR Statute. The mechanism of precautionary measures is set forth in Article 25 of the Commission’s Rules of Procedure. 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.

36. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have repeatedly established that precautionary and provisional measures have a dual nature, both protective and precautionary.¹⁸ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.¹⁹ To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and how vulnerable the proposed beneficiaries would be left in case the measures are not adopted.²⁰ Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under the consideration of the IACHR. These measures aim to safeguard the rights at risk until the petition pending before 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 enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations.²¹ For the purposes of making a decision, and in accordance with Article 25.2 of its Rules of Procedure, the Commission considers that:

¹⁸ See in this regard: I/A Court H.R. Matter of the Yare I and Yare II Capital Region Penitentiary Center. Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. Case of Carpio Nicolle et al. v. Guatemala. Provisional Measures. Order of July 6, 2009, considerandum 16.

¹⁹ See in this regard: I/A Court H.R. Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center. Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. Bámaca Velásquez Case. Provisional Measures regarding Guatemala. Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. Case of Fernández Ortega et al. Provisional Measures regarding Mexico. Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. Matter of Milagro Sala. Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish].

²⁰ See in this regard: I/A Court H.R. Matter of Milagro Sala. Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish]; I/A Court H.R. Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center. Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 9; I/A Court H.R. Matter of the Criminal Institute of Plácido de Sá Carvalho. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6 [in Spanish].

²¹ See in this regard: I/A Court H.R. Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center. Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 7; I/A Court H.R. Matter of “El Nacional” and

- 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.

37. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. The information provided should be assessed from a *prima facie standard of review to determine whether a serious and urgent situation exists*.²² Similarly, the Commission recalls that, by its own mandate, it is not called upon to determine any individual liabilities for the facts alleged. Moreover, in this proceeding, it is not appropriate to rule on violations of rights enshrined in the American Convention or other applicable instruments. This²³ is better suited to be addressed by the Petition and Case system. The following analysis relates exclusively to the requirements set forth in Article 25 of the Rules of Procedure, which can be resolved without making any determinations on the merits.²⁴

38. Before carrying out the analysis of the procedural requirements, the Commission proceeds to address four preliminary aspects raised by the parties during the processing of this application:

- Regarding the *universe of proposed beneficiaries*, the Commission notes that, in addition to the members of the Kichwa Santa Rosillo de Yanayacu Native Community, the applicants identified certain leaders of FEPIKECHA and CODEPISAM. After assessing the statements that the leaders of these organizations gave to the State and the information available in the file, the Commission considers that it does not have sufficient elements to analyze their situation under the terms of Article 25 of its Rules of Procedure. Notwithstanding the foregoing, the Commission recalls that the State maintains all of its international obligations set forth in Article 1.1. of the Convention and other applicable instruments, including providing protection from situations of imminent risk, when appropriate.
- Regarding the *determination of the proposed beneficiaries*, subsection 6.b. of Article 25 of its Rules of Procedure establishes that the Commission will consider “the individual identification of the proposed beneficiaries of the precautionary measures or the determination of the group to which they belong or are linked.” In this regard, the Commission notes that, according to public information from the State, the total population of the community would amount to approximately 225 people in the community.²⁵ However, and in light of the allegations of polarization within the community and considering the sources of risk, the Commission identifies that the proposed

“Así es la Noticia” newspapers. Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, considerandum 23; I/A Court H.R. Matter of Luis Uzcátegui. Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, considerandum 19.

²² See in this regard: I/A Court H.R. Matter of Members of the Miskitu Indigenous Peoples of the North Caribbean Coast regarding Nicaragua. Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018, considerandum 13 [only in Spanish]; 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 provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006, considerandum 23.

²³ IACHR. Resolution 2/2015. Precautionary Measure No. 455-13. Matter of Nestora Salgado regarding Mexico. January 28, 2015, para. 14; IACHR. Resolution 37/2021. Precautionary Measure No. 96/21. Gustavo Adolfo Mendoza Beteta and family regarding Nicaragua. April 30, 2021, para. 33.

²⁴ In this regard, the Court has indicated that “[it] cannot, in a provisional measure, consider the merits of any arguments pertaining to issues other than those which relate strictly to the extreme seriousness and urgency and the necessity to avoid irreparable harm to persons.” See in this regard: I/A Court H.R. Matter of James et al. regarding Trinidad and Tobago. Provisional Measures. Order of the Inter-American Court of Human Rights of August 29, 1998, considerandum 6; I/A Court H.R. I/A Court H.R. Case of Barrios Family v. Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of April 22, 2021, considerandum 2 [in Spanish].

²⁵ Ministry of Culture of Peru. [Database of Indigenous or Native Peoples \(BDPI\) Santa Rosillo de Yanayacu](#).

beneficiaries are a group determinable on the basis of three criteria: (1) their ethnic relevance, (2) their geographical location and (3) by the position or actions of defense of the communal territory. Regarding criteria (1) and (2), both the State and the applicant confirmed their relevance to the Kichwa ethnolinguistic group and the location of the proposed beneficiaries.²⁶ Regarding criterion (3), the Commission assesses that, to the extent that the facts of risk reported are related to the actions of defense of the communal territory, the proposed beneficiaries are families that are members of the community that have a position of collective protection of the same, or adopt actions in favor of the safety of the families and the collective titling of their territory. Consequently, the Commission concludes that the proposed beneficiaries are a group determinable on the basis of such criteria. At the time of reaching this determination, the Commission starts from the available information that reveals that the State is already aware of certain persons under such criteria, having provided them with protection. In addition, the State, through its internal institutions, allegedly already had direct dialogue and contact with the proposed beneficiaries based on various steps that they have taken over time in favor of the collective rights of the community.

- Regarding the *express agreement of the proposed beneficiaries*, at the time of considering compliance with the provisions of Article 25.6.c of the Rules of Procedure, the Commission starts from the presentation of the information presented, the particular circumstances of the matter, and the flexibility that the risk mechanism must have, aimed at the timely protection of people in a serious and urgent situation.²⁷ In the matter at hand, the applicants have expressly indicated that they have their agreement in the form of precautionary measures; particular information or statements of the proposed beneficiaries are included; and documentation has been sent to which only the proposed beneficiaries could have access, or know. The Commission identifies that CODEPISAM and FEPIKECHA are indigenous organizations that have the Kichwa Santa Rosillo de Yanayacu community as a “base community” (see *footnote 4* above).
- Regarding the *scope of the precautionary measures mechanism*, the Commission recalls that it is not called upon to rule, through this mechanism, on the compatibility of judicial decisions or the compatibility of the Community titling procedure in light of the American Convention, or other administrative procedures that led to the delivery of proof of possession or property titles to other persons. Moreover, it is also not up to the mechanism of precautionary measures to determine the extent or scope of the property right of the Santa Rosillo de Yanayacu Native Community or to resolve the controversy over who are the owners of the disputed lands. These claims, by their very nature, require determinations on the merits that would be appropriate to analyzed in a petition or case.²⁸

39. Having made these clarifications, the Commission shall assess compliance with the procedural requirements.

40. When analyzing the situation, the Commission considers it relevant to understand the alleged facts in the context in which they occur. In this matter, the Commission recalls that the situation of the Santa Rosillo de Yanayacu Community has been the subject of pronouncements by various mechanisms

²⁶The applicants reported that the proposed beneficiaries have been recognized as a community since 2015 and have had their territory georeferenced since 2017. The State indicated that it has already provided protection to certain members of the community, which reflects that it is informed of the situation of this group. The PNP also provided a report on the safety conditions to reach the community, which reveals that its location is known.

²⁸The Commission recalls that this understanding is the same one it has maintained in previous decisions on precautionary measures for members of indigenous communities. IACHR. Resolution 81/2019. Precautionary Measure No. 776-20. Members of the Native Community of Santa Clara de Uchunya and another regarding Peru. October 28, 2020, para. 23; Resolution 25/2023. Precautionary Measure No. 61-23. Matter of Members of the Pataxó Indigenous People located in the Barra Velha and Comexatibá Indigenous Lands in the State of Bahia, Brazil. April 24, 2023, para. 46; Resolution 50/2022. Precautionary Measure No. 517-22. Members of the Guapoy’s community of the Guarani Kaiowá Indigenous People with respect to Brazil. October 2, 2022, para. 32.

of the United Nations System, who identified that the proposed beneficiaries face a context of violence as a result of the insecurity and illicit activities that allegedly operate in the area.

41. In January 2021, the representative of the Office for South America of the United Nations High Commissioner for Human Rights expressed concern about the alleged threats of drug trafficking and illegal logging in the Peruvian Amazon, including the Santa Rosillo de Yanayacu Native Community, as well as “the inefficiency of measures for the protection of indigenous defenders.”²⁹ Additionally, on January 31, 2024, the Special Rapporteur on the Rights of Indigenous Peoples of the United Nations (UN) expressed concern about the reforms to forest and wildlife legislation in Peru, which “could legalize and encourage the dispossession of Indigenous Peoples’ lands and even threaten their physical and cultural survival.” In his perspective, this “setback in the country’s forest governance turns its back on the threats, attacks, and murders of indigenous and environmental defenders, who oppose illicit activities in the forests of their territories.” The Special Rapporteur also mentioned that “in recent years, 33 indigenous leaders have been killed, including the leader of the Kichwa People” and that “territorial dispossession is the engine of violence against indigenous leaders and implies a withdrawal of the State in rural areas.” In the Rapporteur’s opinion, this omission would be exploited by criminal groups involved in illegal logging, informal mining and drug trafficking, “promoting illegal economies that destroy the social fabric and undermine public institutions.”³⁰

42. In line with the assessment by the United Nations System, the Commission emphasizes that the applicants referred to the context of the illicit activities that allegedly operate in the area, such as illegal logging, drug trafficking, and land trafficking. In this sense, they referred to an unsafe context given the presence of third parties and the so-called “settlers.” The State also provided information on the unsafe context in the area in a similar sense, through the reports of the Peruvian National Police and the Head of the Cordillera Azul National Park of the National Service of Protected Natural Areas.

43. According to the available information, the presence of people identified as “settlers” generated problems within the community, which led to the halting of the process of titling their territory, at least since 2019. In addition, it has been reported that there are various rights to third parties superimposed on the geographical area that the community claims as its own. In this regard, the Commission considers that the absence of legal certainty on the territory of the community generates an additional impact to the contextual problem in which the situation of the proposed beneficiaries is inserted.

44. The IACHR also warns that the presence of third parties has a differentiated impact on the life dynamics of the members of an indigenous community, either by the actions of violence they carry out or by the activities outside their customs that seek to impose themselves. In this regard, the Inter-American Court indicated that non-consensual interference in indigenous communities by non-indigenous inhabitants and activities unrelated to traditional customs, impacts their traditional forms of subsistence and can generate “real damage to cultural identity.”³¹

45. Having specified the context in which the situation of the proposed beneficiaries is inserted, the Commission proceeds to analyse their specific situation in the light of Article 25 of the Rules of Procedure.

46. When analyzing the requirement of *seriousness*, the Commission considers that it has been met. In reaching this determination, the Commission notes the existence of multiple factors that, analyzed

²⁹ UN. United Nations High Commissioner for Human Rights [Hostility and threats against indigenous defenders intensify in the Peruvian Amazon](#), January 21, 2021.

³⁰ UN. United Nations High Commissioner for Human Rights [Peru: Reforms in forest legislation threaten the survival of Indigenous Peoples, warns UN expert](#), January 31, 2024.

³¹ I/A Court H.R. *Comunidades Indígenas Miembros De La Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina*. Merits, Reparations and Costs. Judgment of February 6, 2020, para. 284.

as a whole, contribute to evaluating the situation of the persons proposed as beneficiaries. In this regard, the Commission considers the following:

- i. The proposed beneficiaries have been subject to continuous threats, intimidation, harassment, attacks, and kidnappings since at least 2017. These events have mainly focused on their leaders or community leaders.
- ii. The reported facts reveal the presence of “settlers”, whose actions could be related to illicit activities in the area and in the community that allegedly seek to impose a form of organization different from the original one, which could put them at risk of undermining their own forms of indigenous organization and leadership, affecting community life, and altering their life plans³².
- iii. The Apu leader of the community was murdered at the end of November 2023. He had allegedly been the target of various aggressions in recent years, prior to his murder. This person had visible leadership in complaints of illegal activity in the area and in advocacy actions on behalf of the rights of the community.
- iv. After the murder of the communal leader, in November 2023, several members of the community had to be displaced due to security concerns, including the family of the leader who was killed.
- v. The unsafe conditions continue following the murder of the community leader. It was reported that, on January 4, 2024, 14 unidentified people entered the territory with machetes with the intention of cutting down trees. On January 7, 2024, nine “settlers” approached the houses of the indigenous community members, armed with artisanal spears, killing their animals and telling them that “just like they cut up their pigs, they are also going to cut up animals, horses, pigs, dogs and also people” and that they want all members of the community to leave the communal territory.

47. Upon requesting information from the State, the Commission assesses the measures implemented for the protection of human rights defenders, in particular, the Intersectoral Mechanism for the Protection of Human Rights Defenders, as well as the modifications made to it. Regarding the proposed beneficiaries, the Commission takes note of the steps taken to protect the relatives of the murdered leader and other members of the community, especially the protection and monitoring measures adopted by the PNP and the Head of the Cordillera Azul National Park of the National Service of Protected Natural Areas.

48. By analyzing the available information, the Commission identifies that the alleged risk situation is known by various State entities. The documentary support presented by the applicant shows that the facts were reported, at least since 2018, to various entities with the possibility of implementing measures in favor of the proposed beneficiaries. However, after approximately five years, the Commission understands that insufficient measures were taken for the protection of members of the community, including its leaders.

49. The previous understanding is verified with the recent murder of one of its leaders, in November 2023. According to the information available, the leader’s death was caused by multiple projectiles in his body, and after an ambush, which accounts for the intensity of the armed aggression directed at him and the delegation that accompanied him. Taking into account the threats of January 2024, the Commission notes that the aggressors’ intention to expel the people who were still in the community continues, after the displacement of their leaders, stating that the community is “over.”

50. In the Commission’s opinion, the impact of the assassination of an indigenous leader should not only be analyzed individually, but it is also necessary to understand it from a collective point of

³² I/A Court H.R. Case of the Plan de Sánchez Massacre v. Guatemala Guatemala. Repairs Judgment of November 19, 2004. Series C No. 116, para. 49.16

view. In this regard, the Commission recognizes, in line with the jurisprudence of the Inter-American Court in the case of indigenous peoples, that the loss of a leader can mean the dismemberment and damage to the integrity of the community; frustration at the enormous trust placed in him to help them realize their objectives as a community; and feelings of loss in the face of the collective efforts made so that, supported by their community, they can act in the development of their mission as a special person in the collective.³³

51. In addition, the Commission notes that, according to the State's own information, there are limitations to the effective protection of the proposed beneficiaries. In this regard, according to a PNP report of December 2023, there are no resources, logistical means, or personnel necessary to execute the surveillance operations. The PNP also expressed concern about the danger of the area and the possibility that police officers could be subjected to attacks and ambushes. The Commission has no information indicating whether the PNP received the necessary support to effectively carry out its protection work in favor of the members of the community.

52. With regard to the protection measures for certain proposed beneficiaries who were transferred to the city of Tarapoto for safety concerns, the Commission considers that it is understandable that they receive differentiated protection given their specific situation of risk in light of recent events. Since it is a temporary measure, the Commission understands that eventually this group of proposed beneficiaries will return to their community. In this regard, the Commission has no elements to assess what the conditions of their return would be like, which is concerning given the reports of the NPP itself on the area. In the event that the relocation of these proposed beneficiaries be extended over time, it is necessary to consider the impact that this measure could generate from a cultural perspective. If this is the case, the Commission understands that the members of the community would be outside their territory and without the possibility of carrying out the daily subsistence activities that they would carry out in it, which would also affect their economic conditions of staying in a city. The Commission considers it relevant that the State take into account the impact of said measure when evaluating the protection measures to be implemented.

53. Furthermore, the Commission understands that differentiated measures may be implemented depending on the facts presented and the people involved. Consequently, the additional measures that may be taken by the Public Prosecutor's Office do not necessarily require that they be implemented for all members of the community in the same way. There may be situations that merit that certain people receive particular and additional protection depending on the facts that arise against them or that involve them.

54. In relation to other protection measures (such as logistical support and digital connection), the Commission considers that, after the continuity of events against the proposed beneficiaries during approximately five years, it is appropriate to carry out an updated risk assessment with a view to identifying the most suitable and effective measures for the situation raised. Within the framework of this updated assessment, the Commission considers that those actions that have been working can be included as those that require reinforcement. In this space, among other proposals that the State has, those that indicate the need to adopt measures in the face of risks in transit to the community and possible communication difficulties in the area could be considered.

55. In relation to the issue of psychological support, the Commission notes that it has no elements to indicate that such an offer does not exist in Peruvian institutions. There is also no information to indicate that any proposed beneficiary has requested psychological care as a result of violent risk events and that the State has refused to provide it. In any case, the Commission understands that, within the framework of certain protection measures, psychological support is usually provided to people who have been exposed to situations of risk and violence, such as the violent murder of a family member or community leader. In this regard, the Commission considers that this possibility can be evaluated as part of the additional or reinforced measures that may be adopted within the framework of the existing Peruvian

³³ I/A Court H.R. Case of Escué Zapata v. Colombia. Merits, Reparations and Costs. Judgment of July 4, 2007, para. 124.

institutional framework. In particular, and at least, to the relatives of the murdered indigenous leader. The measures to be adopted may include: providing information to the proposed beneficiaries on the existing institutional offer, the corresponding procedure to receive it, and the time points when the care can effectively be provided under the current circumstances. Having made this clarification, the Commission considers it important to indicate that it is not a question of determining that the State must “repair” the proposed beneficiaries, as if it were the result of a petition or case. What is sought is that, through an existing institutional offer in the country, and in light of the events of violence experienced over time, the proposed beneficiaries have the support to access it.³⁴

56. Regarding the investigations, although the State indicated the steps taken after the murder of Q.I.A., it did not provide information on its current status, nor on the status of any ongoing investigations into the other events reported over time. This is a relevant aspect when establishing the risk that the proposed beneficiaries face and the possibilities of their recurrence, especially considering that some “settlers” allegedly possess firearms, among other lethal weapons such as machetes.

57. In response to the State’s questions, the Commission recalls that, in this mechanism, the Commission does not determine the violation of rights recognized in articles of the American Convention, such as Articles 8 and 25. This analysis must be carried out in an eventual petition or case. For the purposes of the precautionary measures mechanism, the investigation component is relevant in relation to the mitigation of sources of risk. The Commission has considered that the investigation of the facts that merited the precautionary measures is part of the State’s duty of protection to put an end to the risk against the beneficiaries.³⁵ In the same vein, the Inter-American Court has decided, within the framework of provisional measures, to continue with the investigations of risk events in order to mitigate the risks to the life and personal integrity of a person.³⁶

58. In summary, taking into consideration the alleged background and the aforementioned context, assessed as a whole, the Commission considers that the seriousness requirement is met and that *prima facie* the rights to life and personal integrity of the people of the Kichwa Santa Rosillo de Yanayacu Native Community are at serious risk. In making this consideration, the Commission takes into account: i. the context applicable to the alleged situation and that gives special seriousness to the allegations presented; ii. the repeated threats of death, intimidation, attacks, and kidnappings over time; iii. the recent murder of the community leader; and iv. the need to strengthen protection measures in light of what was reported by the PNP itself and the risk situation identified.

59. Regarding the requirement of *urgency*, the Commission notes that it is met in the face of the imminent materialization of a possible impact on the life and integrity of the people of the Santa Rosillo de Yanayacu Kichwa Native Community, after the murder of its leader in November 2023. As well as due to the continuity of the aggressions that led various members to move for security reasons, and that in January 2024, armed settlers killed animals and threatened the proposed beneficiaries. Immediate measures are required in order to prevent new risk events from materializing, even with new deadly consequences, and to ensure that the proposed beneficiaries can live in the community in safety.

³⁴In the 2017 Comprehensive Policies for the Protection of Human Rights Defenders Report, the Commission stated the following: The Commission considers it crucial that States ensure that human rights defenders who have been victims of threats or attacks are not re-victimized when conducting a risk assessment. In this sense, they should not be forced to repeatedly relive the experiences they suffered by having to tell their experience before various bodies or explain their situation several times to several authorities. Many experts and civil society organizations have made it clear to the Commission that beneficiaries of protection measures often suffer psychologically from the threats and violence they endured and, therefore, States should recognize the importance of providing psychological support, as part of protection programs. See: IACHR. Towards Effective Integral Protection Policies for Human Rights Defenders. December 29, 2017, para. 278

³⁵IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. December 31, 2011, para. 433

³⁶I/A Court H.R. Matter of Salas Arenas et al. regarding Peru. Adoption of Provisional Measures. Resolution of the Inter-American Court of Human Rights of September 4, 2023, para. Considerandum 67.

60. As it pertains to the requirement of *irreparable harm*, the Commission finds it met, since the possible impact on the rights to life and personal integrity constitutes the maximum situation of irreparability.

V. BENEFICIARIES

61. The Commission declares the families of the Kichwa Santa Rosillo de Yanayacu Native Community to be beneficiaries under the terms established in paragraph 38 of this resolution. The Commission understands that such persons are identifiable under the terms of Article 25 (3), (4) and (6) (b) of its Rules of Procedure.

VI. DECISION

62. The Inter-American Commission on Human Rights concludes that the present matter meets *prima facie* the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests that Peru:

- a) adopt the necessary and culturally appropriate measures to safeguard the life and personal integrity of the beneficiaries. Among other things, it is requested to adopt the essential measures to ensure that the beneficiaries who are displaced in the city of Tarapoto can return safely to their community;
- b) consult and agree upon the measures to be implemented with the beneficiaries and/or their representatives; and
- c) report on the actions taken to investigate the alleged events that gave rise to these precautionary measures, so as to prevent such events from reoccurring.

63. The Commission requests that the State of Peru inform, within a period of 15 days from the date of this resolution, on the adoption of the requested precautionary measures and to update such information periodically.

64. The Commission emphasizes that, in accordance with Article 25.8 of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute prejudgment of any violation of the rights protected in the applicable instruments.

65. The Commission instructs its Executive Secretariat to notify this resolution to the State of Peru and the applicants.

66. Approved on March 25, 2024, by Roberta Clarke, President; Carlos Bernal Pulido, First Vice-President; José Luis Caballero Ochoa, Second Vice-President; Edgar Stuardo Ralón Orellana; Arif Bulkan; Andrea Pochak; and Gloria Monique de Mees, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary