
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 35/2020**

Precautionary Measure No. 563-20

Members of the Yanomami and Ye'kwana Indigenous Peoples regarding Brazil¹

July 17, 2020

Original: Portuguese

I. INTRODUCTION

1. On June 16, 2020, the Inter-American Commission on Human Rights ("the Inter-American Commission," "the Commission," or "the IACHR") received a request for precautionary measures from Hutukara Associação Yanomami and the Conselho Nacional de Direitos Humanos, on behalf of the members of the Yanomami and Ye'kwana Indigenous Peoples ("the persons proposed as beneficiaries"), by which they urged the IACHR to require the State of Brazil ("Brazil" or "the State") to adopt the necessary measures to protect their rights to life and personal integrity. According to the request, the persons proposed as beneficiaries are in a situation of risk in the context of the COVID-19 pandemic, considering their situation of particular vulnerability, failures in health care, and the presence of unauthorized third parties in their territory.

2. The Commission requested information from the State, pursuant to Article 25 of its Rules of Procedure, on June 17, 2020, and received reports on June 23 and 25, 2020. The applicants submitted additional information on June 21 and 30, and on July 14, 2020.

3. Having analyzed the factual and legal claims made by the parties, the Commission considers that the information submitted demonstrates prima facie that the members of the Yanomami and Ye'kwana Indigenous Peoples are in a situation of seriousness and urgency, since their rights to life and personal integrity are at serious risk. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, the IACHR requests Brazil to: a) adopt the necessary measures to protect the rights to health, life and personal integrity of the members of the Yanomami and Ye'kwana Indigenous Peoples, implementing, from a culturally appropriate perspective, measures to prevent 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 the applicable international standards; b) agree upon the measures to be taken with the beneficiaries and their representatives; and c) report on the actions taken to investigate the incidents 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

4. The applicants indicated that the Yanomami Indigenous Land (TIY) is located in the region of the Orinoco-Amazon interfluve. It is home to the Yanomami and Ye'kwana peoples with a total

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

population of almost 26,000 people, distributed in 321 villages. The people proposed as beneficiaries belong mostly to "villages of recent contact"² including groups in voluntary isolation³.

5. According to the request, the persons proposed as beneficiaries face a particular risk from the COVID-19 pandemic. Firstly, the applicants indicate that indigenous people have significant comorbidities, such as high incidence of respiratory diseases, providing data indicating that between 2010 and 2019, there has been a 6% increase in the number of deaths of children between 0 and 14 due to respiratory infections, and a 300% increase in the population over 50. In 2019, 35 people are reported to have died of "unspecified pneumonia".⁴ For example, in early April 2020, a young Yanomami reportedly died of VIDOC-19, and in early May another five positive cases were confirmed. Since then, new cases have been detected weekly within the TIY: 82 cases on 8 June, 150 at the end of June with 4 deaths. The applicants warn that, considering the difficulty of obtaining data throughout the Yanomami Land, that number may actually be higher.

6. Second, the applicants alleged weaknesses in the health care system for the Yanomami and Ye'kwana peoples, noting that the Yanomami Special Indigenous Health District (DSEI-Y) had been evaluated as "the second most critical of all the 34 DSEI in the country," while the Base Areas of health care are among the most vulnerable in the country, with "the lowest availability of beds [and] the greatest constraints on transfer of patients. In this regard, it was reported that there is a lack or insufficiency of medicines, doctors, basic protection equipment and rapid examinations. The applicants also indicated that health care has decreased in the most remote communities, due to the termination of the "Más Médicos" program,⁵ which would have reflected an increase in indigenous child mortality.

7. In the context of the COVID-19 pandemic, the DSEI-Y adopted a New Coronavirus Contingency and Prevention Plan, which, according to the applicants, does not take into consideration "the socio-cultural realities of the indigenous peoples of the TIY", whose cultural habits, such as several families at home, who share household utensils, hinder social isolation measures. Moreover, the plan would not propose concrete measures or "feasible and effective" strategies for "removal, prevention and isolation of cases within the TIY" and would not consider the protection of groups in voluntary isolation, who are in a region of "intense mining encroachment". In effect, the request indicates that the Contingency Plan "abstracts the existence of thousands of non-indigenous informal miners in the area and disregards one of the main vectors of the disease."

8. In addition to the above, the applicants alleged that the minimum quarantine period for the entry of health professionals into the YTL would be breached, using only rapid tests⁶ and having reported that some people entering Yanomami Land, even those authorized (such as some pilots of the planes used), would not use personal protective equipment, such as masks. Concern was expressed with the increasing number of DSEI-Y officers contaminated and consequently away, critically increasing the shortage of officers in the short term. Additionally, the applicants alleged that

² They are classified as such internally. Persons with "initial contact" can be understood as "[i]ndigenous peoples in situations of initial contact are peoples or segments of indigenous peoples who have intermittent or sporadic contact with the majority non-indigenous population, usually referring to those who have recently initiated a process of contact. However, 'initial' should not necessarily be understood as a temporary term, but as a reference to the low degree of contact and interaction with the majority non-indigenous society. See: IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II. Doc. 47/13, 2013, para. 11.

³ "Indigenous peoples in voluntary isolation are peoples or segments of indigenous peoples⁹ who do not have sustained contact with the majority non-indigenous population, and who tend to shun any kind of contact with people outside their own village". See: IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas*, 2013, para. 14.

⁴ This is particularly relevant considering the role of older people for these indigenous peoples, who are essential to the survival of the Yanomami and Ye'kwana cultural heritage.

⁵ See: Brazilian Ministry of Health, *Mais Medico Linha do Tempo*. Available at: <http://maismedicos.gov.br/linha-do-tempo>. Access July 1, 2020.

⁶ The applicants indicate that the Ministry of Health reported that such examinations, in the case of asymptomatic patients, would be only 25% accurate.

the proposed beneficiaries face difficulties in receiving health care in the urban network, as the Roraima State health system has reached its limit, with no beds available for treatment of severe cases.

9. Thirdly, the applicants alleged that the "Yanomami and Ye'kwana population is dangerously exposed to the disease due to the intensification of mining activity on their lands since 2018, without the Brazilian State having taken the necessary measures to prevent it with due diligence". The miners who are in the TIY would often come into contact with indigenous peoples, being potentially important vectors of COVID-19, especially considering that they transit through the territory and urban areas.⁷ The applicants provided a lot of information, most of it dated between 2019 and 2020, denouncing an increasing presence of miners. This information included studies using satellites that locate their activities in the vicinity of several villages, one of which is made up of indigenous people in voluntary isolation.

10. According to the file, it is estimated that there are currently 20,000 informal miners in the TIYs, despite the fact that it is an illegal activity. This number reflects the growth of gold exploration in Roraima, which is attributed by the applicants to the lack of measures implemented to suppress it, highlighting mainly the deactivation of three "Bases de Protección Etnoambiental" (BAPE).⁸ In this sense, a public civil action was initiated for the reopening of the three BAPes, which was decided in November 2018 in favor of the reopening, on the basis, among others, that the actions of repression against mining alleged by the State are "sporadic" and "deficient". Such decision was confirmed on June 15, 2020, in a judicial appeal, where the responsible court affirmed that

[...] The issue under discussion is relevant not only because of the environmental and security implications that may derive from the immediate failure to comply with the sentence, since these are measures to contain the miners who are active in the region and who enter the Yanomami Indigenous Land in illegal mining activity, as well as because there is evidence of the need for greater attention to prevent the spread of viral epidemics and other problems resulting from the contamination of rivers and fauna with mercury, as stated by the Federal Public Prosecutor's Office, a situation that is aggravated by the current context of the pandemic that the country is undergoing.

11. Despite the decision to reopen the BAPes in 2018, according to the applicants, only one BAPE would have been reopened, being currently operational. It was also noted that, although there had been some progress in the judicial area of illegal mining, these had not been concluded without resulting in convictions, "contributing to a widespread feeling of impunity".

12. In addition to the above, the applicants provided a study indicating that the 14 health base areas in areas close to mining are the most vulnerable. On this point, a study by the Socio-environmental Institute⁹ concluded (considering only the villages close to mining), that without protective measures implemented, 40% of the group analyzed (5,600 Yanomamis) would end up contaminated by COVID-19.

13. Applicants provided information indicating recurrent contact between the miners and the proposed beneficiaries. On 13 March 2020, already in the context of the COVID-19 pandemic, the authorities were reportedly informed of the arrival of a group of 50 people in the vicinity of one of the

⁷ The applicants contextualized the threat apparently represented by the presence of miners, indicating that the connection between the presence of unauthorized third parties in the TIY and the effects on the lives of the Yanomami People due to diseases has roots in the history of the contact of the people with non-indigenous people. According to studies provided, in 1974-75, in the context of the construction of a highway, 22% of the population of four villages affected by the constructions died of infectious diseases. Between 1987 and 1990, before the growth of the illegal mining market, 22% of the Yanomami in the state of Roraima perished. Considering that the people proposed as beneficiaries are classified as a recently contacted indigenous people and that some groups were not even contacted (voluntary isolation), their "immunological memory" is therefore "more sensitive to diseases". See: RAMOS, Alcida Rita e TAYLOR, Kenneth I. "The Yanomami in Brasil 1979 and Yanomami Indian Park, Proposal and Justification". IWGIA Document 37. Copenhagen, 1979. P. 123; Instituto Socioambiental, O Impacto da Pandemia na Terra Indígena Yanomami, 2020, p. 27. See also: IACHR, Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, 2013, para. 118.

⁸ Connected to the suppression of illegal mining activity.

⁹ Instituto Socioambiental, The Impact of the Pandemic on the Yanomami Indigenous Land, 2020, p. 3.

communities, who set up a camp and rafts for the mining activities. They also reported that satellite images had shown that mining is located a few kilometers from a community in voluntary isolation, where the corresponding BAPE has been turned off. By way of example, the applicants indicated that on 17 April 2020, three miners allegedly arrived at one of the health posts, at the Catrimani Mission, requiring use of the post's radio system. On 15 June, information was reportedly received concerning the presence of five armed miners' rafts in the vicinity of two communities.

14. The applicants maintain that encounters between the proposed beneficiaries and the miners are often hostile and violent: "the indigenous communities of TIY commonly feel threatened by illegal mining workers, very often armed, who bring alcoholic drinks, harass their women, steal from their plantations, recruit their young people for illegal activities. In the most serious cases, the conflicts result in attacks and deaths. Furthermore, the phenomenon of illegal mining would also violate the ontological vision of the Yanomami people, according to which the minerals were put into the earth by a deity. In this context, the authorities filed a Public Civil Action to demand the implementation of an Emergency Plan before the COVID-19 and the withdrawal of the miners from the TIY, which was rejected on May 11, 2020 as they considered that it was not appropriate to determine if the measures taken by the State were sufficient to protect the Yanomami. The appeal decision was still pending as of the date of the applicants' report.

15. Fourthly, the applicants added that the proposed beneficiaries are also at risk from mercury contamination resulting from illegal mining. According to the file, monitoring by the Socio Environmental Institute recorded a loss of 1,925.8 hectares of forest as a result of illegal mining. In March 2020 alone, 114 hectares were reportedly affected. As a result of the alleged environmental contamination, a 2018 study verified that the Yanomami population near mining areas is contaminated. The Waikas Ye'kuana and Waikas Aracaça communities have reportedly experienced contamination rates of 27.7% and 92.3% respectively. The research also highlighted that, in the Waikas Aracaça community, three girls, less than three years old, presented significant contamination rates.

16. Finally, the applicants alleged that the leader of the indigenous peoples in question, Davi Kopenawa Yanomami, is frequently threatened. The Hutukara Association Yanomami reportedly received accounts from indigenous people who were allegedly harassed because of their relationship with the proposed beneficiary. In December 2019, a family member was allegedly assaulted by two people who asked about him and threatened to kill him. The applicants also indicated that vehicles were reportedly driving suspiciously through Davi Kopenawa Yanomami's workplace, observing or recording him. In 2017, the above-mentioned proposed beneficiary was reportedly included in the Human Rights Defenders Protection Program, receiving as a protection measure a "Police Plan", which, according to the application, was not being adequately implemented. In July 2019, investigations related to alleged threats against the proposed beneficiary were reportedly closed (without further information on the reason for this).

17. On 30 June 2020, the applicants sent information alleging that two indigenous Yanomami people had been killed by mining workers following disagreements over food exchange. It was also indicated that in the Waikas community at least 15 people proposed as beneficiaries would be suffering from symptoms of COVID-19, allegedly after a young Yanomami had been with the mining workers. Finally, on July 14, the applicants indicated that on July 3 it would be judicially determined that the State would present, within 5 days, an "Emergency Plan" to withdraw the mining workers from the TIYs. The deadline expired on 10 July, and no determined Plan was received.

2. Response from the State

18. The State provided information indicating that there are two domestic judicial proceedings related to the present case, one in which the reopening of three APEBs was determined, a decision

confirmed on June 15, 2020; in the second, the presentation of an emergency plan for effective territorial monitoring of the TIY, with the withdrawal of environmental violators, in the context of the COVID-19 pandemic was requested. This would have been rejected, with the appeal pending. In that sense, according to the State, the issues presented in the request for precautionary measures are already being analyzed by the judiciary at the internal level.

19. The State added that measures have also been taken to guarantee food security for the country's indigenous peoples in the context of the pandemic. By way of illustration, it indicated that 35 of the Yanomami families in question received a basic food basket, in addition to the other 9,000 distributed by the National Indian Foundation (FUNAI) in the state of Roraima (without specifying whether these reached the communities proposed as beneficiaries).

20. With regard to specific actions for health care, the State reported that it carried out consultation meetings between institutional bodies, highlighting measures implemented by FUNAI's coordination in Roraima, including at least the DSEI Leste Roraima and the DSEI Yanomami, the latter having a scope of action in the territory of the proposed beneficiaries. Among the actions highlighted by the State are the following: i) distribution of food - aid from the Army and DSEI Leste - for families in general; ii) distribution of food for families with suspected and/or confirmed cases, so that they can be isolated; iii) coordination, together with the Districts, of the structures and flows to be implemented; iv) participation in the standardization and implementation of the protocol at the regional level; v) request for 35 housing units (120 beds) from UNHCR for care in DSEI Leste; vi) Request for a specific facility for quarantine and isolation of the Yanomami indigenous people (due to the specific characteristics of the ethnic group, they cannot be isolated from other chronic patients); vii) Request for inspection of mining and access points for the Yanomami IT; viii) purchases to support the health barriers maintained by indigenous people (food, shop, [Individual Protection Equipment] - process underway; and ix) inspection work to verify illegal activities of non-indigenous people in the leste area (called the plow area, which does not cover the Yanomami TI).

21. The State also indicated that a mapping of the 61 sanitary barriers installed on indigenous lands (unspecified) was made, and detailed actions carried out by DSEI-Leste Roraima.¹⁰ As for the DSEI-Yanomami, the State reported that it comprises 78 Basic Indigenous Health Units and 37 Base Care Centers. In May 2020, the DSEI-Y carried out a mission to transfer "medicines, food, and infrastructure" to a village (Xexena). In addition, the Uraricoera Pole Base team visited three communities (Rerebe, Naperobi, and Korekorema) to monitor the situation of the indigenous people in quarantine, after having had contact with a person with COVID-19.

22. In addition, DSEI-Y went to communities with positive cases of COVID-19 to do rapid tests and early diagnosis, obtaining individual protection equipment¹¹ and having received the donation of three portable nebulizers. The Indigenous Health House, as well as the Basic Indigenous Health Units, were also disinfected.

23. From the annexes provided by the State, it can be seen that a "National Contingency Plan for Human Infection by the New Coronavirus in Indigenous Peoples" was drawn up, as well as District Plans. These plans "define the level of response and the corresponding command structure to be set up, at each level of response. It is noted that the National Plan, a copy of which was provided to the Commission, recognizes that historically "indigenous peoples have been observed to be more biologically vulnerable to viruses, especially respiratory infections", highlighting the particular vulnerability of peoples who have been recently contacted or isolated. In addition, the annexes refer to "Rapid Response Teams", in charge of carrying out "actions related to the confrontation of the

¹⁰ It is clear from the file that it is not the DSEI-Leste Roraima that is focused on the proposed beneficiaries, but the DSEI-Yanomami.

¹¹ Material sent on 22 May 2020: Masks: 7,800; N95 masks: 500; Disposable gloves: 2700; Disposable surgical apron: 320; Disposable cap: 0; Protective goggles: 3; Quick tests: 360. Material stock on 22 May 2020: Masks: 50; Masks N95: 10; Disposable gloves: 221,250; Disposable surgical apron: 7088; Disposable cap: 27000; Protective goggles: 428; Rapid tests: 283; Liquid alcohol 70%: 1104 L.

COVID-19 pandemic" and restrictions on contact between FUNAI agents and other civilians and indigenous peoples, in order to avoid "the expansion of the epidemic". The State did not detail these aspects in the annexes.

24. With regard to the specific protection of indigenous peoples in voluntary isolation, the State indicated that this is ensured by the Ethno-environmental Protection Front and the BAPE, strategically located within indigenous lands. In this regard, the State emphasized that a BAPE was reopened in the TIY, adding information on national actions to monitor indigenous lands in general and detailing the legislation relevant to peoples in voluntary isolation.

25. The State added information on the proceedings related to the territorial protection of indigenous lands in Brazil. It stated that "[i]n 2019, FUNAI's General Coordination of Territorial Monitoring supported the development of 877 territorial protection actions implemented by the body's Regional Coordination Offices, Local Technical Coordination Offices and Ethno-environmental Protection Front, covering 315 indigenous lands. Of these, 331 were actions of Inspection, 502 of Prevention of Illicit Activities and 44 of Collection of Territorial Information". The State also added detailed information on fire prevention and firefighting in indigenous territories.

26. Regarding the fight against illegal mining in the territory of the proposed beneficiaries, the State indicated that "Operation Curare XI" was carried out to combat this activity at the TIY, providing general information on plans and public policies at the national and regional levels.

27. Specifically, with respect to proposed beneficiary Davi Kopenawa Yanomami, the State reported that he was incorporated into the Program for the Protection of Human Rights Defenders from September 2017 to the present. The federal Protection Program team reportedly provided him with three face-to-face visits, in 2016, 2017 and 2019, in which "the context of risk and threat remained, with mining repeatedly reported by the defender as the main cause of insecurity on indigenous land". According to the State, "[the] Team has encountered great difficulty in articulating protection measures in the state of Roraima. Recently, in June 2020, a letter was sent by the [Protection Program] to the Secretary of Public Security of the State of Roraima, requesting the adoption of protection and security measures in the surroundings of the [Socio-environmental Institute] and [Hutukara Yanomami Association - working place of the proposed beneficiary], in view of the possibility of retaliation to the officials and indigenous people who participate in a campaign on the relationship between illegal mining and COVID-19. However, to date, no response has been provided.

28. Considering the above, the State alleged that the present request for precautionary measures does not meet the requirements of the IACHR's Rules of Procedure, indicating an alleged lack of exhaustion of domestic resources, as well as recalling the subsidiary nature of international jurisdiction, since the applicants have not demonstrated that the measures implemented by the State would be insufficient or inefficient. Furthermore, the State added that "[in this] context, it is perceived that the issue of illegal mining activity [...] is a truly ancient situation whose contours have been defined over time, not yet showing [a current risk], which is incompatible with the request for urgent measures".

2.1 Additional information sent by the State

29. On June 25, 2020, the State sent complementary information indicating that there would be an "Integrated Operational Security Plan for Reactivation of the Yanomami IT BAPE", it was indicated that several consultation meetings were held, recalling that one of the three BAPE to be reactivated is already in operation. Likewise, the State informed that FUNAI is financially supporting the "sanitary barriers" both in the part of the Indigenous Land in Roraima and in the Amazon. These barriers, according to information contained in the file, are not related to the efforts to control and remove the

miners, but they would contribute to combat the dissemination of COVID-19 among the indigenous people (not detailed).

30. With regard to the reopening of the other BAPE, the State reported that the next one will be the BAPE Serra da Estrutura, "whose priority is to guarantee the monitoring and protection of the isolated peoples living in the region. For the reinstallation of the BAPE, the State implemented in 2019 the operations to combat mining entitled "Mutum e Mucajai". This BAPE was allegedly used in the aforementioned Operation Curare XI in 2019 (see *supra* para. 26).

31. The State added that, given the "seriousness of the criminal actions practiced in the Amazon region," the use of the National Force was authorized in 2019 for actions between August and October 2019 on indigenous lands, detailing national operations to repress environmental and related crimes. However, up to the date of the state report, the National Force would not have been used in the Yanomami Indigenous Lands. Particularly regarding the TIY, the State reported on the obstacles to combating mining, explaining that the "[...] Yanomamis occupy a large mountainous region on the border with Venezuela, in a continuous area of 9,419,108 hectares [...]". Furthermore, the State emphasized that "[...] the fight against the miners diminishes the tension in the areas and contributes to minimize the spread of diseases."

32. In this context, particularly with regard to COVID-19, the State argued that, as of January 2020, the Ministry of Health would be making available "a series of technical documents so that indigenous peoples, managers and collaborators can adopt measures to help prevent and treat infection by the new Coronavirus". In this regard, the members of the DSEI-Y team "are oriented to prioritize the work of active home searches for cases of Flu Syndrome (GS) and Severe Acute Respiratory Syndrome (SARS), classifying cases and avoiding the circulation of people with respiratory symptoms. The diagnosed cases would have been treated according to the specific protocols for treatment of COVID-19.

33. Regarding the applicants' allegations about mercury contamination, the State reported that a working group was set up to implement the Minamata Convention,¹² which deals with the use of mercury, adding that there is a system of notification of mercury contamination in the indigenous health system.

34. The State alleged, in contrast to the information available in its first report (see *supra* para. 27) that "there is no news of a request for adoption of any protection plan in favor of leader Davi Kopenawa Yanomami", indicating that he should make his request to the Program for the Protection of Human Rights Defenders.

35. Finally, the file contains a statement by the State that, although FUNAI has been implementing actions to protect the YTD, "[...] in order to protect the lives of the Yanomami and Ye'kwana, as well as territorial protection, it is necessary to move forward, and therefore it is essential that efforts be made to promote inter-institutional coordination with public security and environmental agencies, to be led by the senior management of this Foundation".

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

36. El The precautionary measures mechanism is part of the Commission's function of overseeing Member State compliance with human rights obligations established in Article 106 of the Charter of the Organization of the American States. These general oversight functions are set forth in Article 41 (b) of the American Convention on Human Rights, also contained in Article 18 (b) of the Statute of the IACHR. The precautionary measures mechanism is described in Article 25 of the Commission's Rules

¹² International treaty to protect human health and the environment from the adverse effects of mercury. See: UNEP, Minamata Convention. Available at: <https://www.unenvironment.org/resources/report/minamata-convention-mercury>.

of Procedure. Pursuant to this article, the Commission grants precautionary measures in serious and urgent situations, and when these measures are necessary to prevent an irreparable harm.

37. The Inter-American Commission and the Inter-American Court of Human Rights (the Inter-American Court" or "I/A Court H.R." have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective. As regards the protective nature, these measures seek to avoid irreparable harm and protect 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. The protective nature aims to preserve the rights that may be at risk until the petition that is under consideration in the Inter-American System is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits of the case and, in this way, prevent the infringement of the rights at issue, a situation that could render moot or disprove the *effet utile* of the final decision. In this sense, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, to fulfill the ordered reparations. For such purposes, 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.

38. 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.¹³ Moreover, with regard to the State's view on the alleged non-exhaustion of domestic remedies, which is one of the requirements for admissibility of a petition, the Commission recalls that the mechanism of precautionary measures is governed exclusively by Article 25 of the Rules of Procedure. In this regard, paragraph 6.a states only that: " considering the request, the Commission shall take into account its context and the following elements: a. whether the situation of risk has been reported to the relevant authorities, or the reasons why it could not have been done [...]".¹⁴

39. In relation to the context indicated, in the present case, the Commission notes that different risk factors were alleged, such as the invasion of outsiders into their territory - which has reportedly increased at present - who come into contact with the indigenous population and generate violence; deficiencies in adequate and timely access to medical care; the condition of special vulnerability of the indigenous population; factors that are currently, and jointly, reflected in the risks suffered by the TIY in the face of the current COVID-19 pandemic. All of the above would operate simultaneously, in a complex scenario. In this regard, it is important to emphasize that there is no dispute between the

¹³ See in this regard, I/A Court H.R. *Matter Inhabitants of the Miskitu Indigenous People Communities of the North Caribbean Coast Region regarding Nicaragua*. Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23rd, 2018, considerandum 13; I/A Court H.R., *Matter of children and adolescents deprived of liberty in the "Complexo do Tatuapé" of the CASA Foundation*. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4th, 2006. Considerandum 23. Available at: http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf

¹⁴ Article 46 of the American Convention, cited by the State, refers to "petitions or communications presented in accordance with Articles 44 or 45 [...]" which refer exclusively to the system of petitions and cases. It is noted that Articles 44 and 45 of the American Convention refer to "complaints or claims of violation" of the Convention. The purpose of the mechanism of precautionary measures 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, precautionary measures "[...] shall relate to situations of gravity and urgency that present 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.

parties regarding the special need for protection of the persons proposed as beneficiaries, recognized by the State in its report (see *supra* para. 35), which would have been reaffirmed in the domestic judicial decision of June 15, 2020, which stated that "[...] the issue under discussion is relevant not only because of the environmental and security implications [...] but also because there is evidence of a redoubled attention needed to prevent the spread of viral epidemics and other nuisances resulting from the contamination of rivers and wildlife with mercury, [...] a situation that is aggravated by the current context of the pandemic [...]. (see *supra* para. 10).

40. In fact, the Commission has stated that "historically, indigenous and tribal peoples have been subject to conditions of marginalization and discrimination," and it therefore reiterates that "special protection is required under international law in general, and under inter-American law specifically, in order for indigenous peoples to be able to exercise their rights fully and equally with the rest of the population. In addition, it may be necessary to establish special protection measures for indigenous peoples in order to ensure their physical and cultural survival - a right protected in a number of international instruments and conventions.¹⁵ In this regard, the divergence between the parties was limited to assessing whether the current situation constitutes a serious risk of irreparable harm.

41. With regard to the analysis of the procedural requirements, in relation to the requirement of seriousness, the Commission notes that the source of risk that has been most highlighted by the applicants relates to the possible consequences arising from exposure to COVID-19, and notes that the spread of the virus would have reached the interior of the Yanomami Indigenous Lands, with contamination in the villages. In relation to the above, the Commission notes that, according to the information provided, by the end of June 2020, 150 positive cases were confirmed on the TIY, including 4 deaths.

42. In this context, the Commission notes in the first place that, according to the applicants, the health system designed to care for the proposed beneficiaries has serious deficiencies, as it is described as "the second most critical of the 34 [Indigenous Special Health Districts] in the country. The applicants alleged a lack of medicines, doctors, basic protective equipment, quick tests, beds, and adequate means of transferring patients, highlighting a pattern of evasion by health professionals, allegedly due to the closure of government programs, as well as the spread of COVID-19 by the professionals themselves (see *supra* para. 6).

43. Secondly, in addition to the alleged shortcomings of the indigenous health-care network provided to the persons proposed as beneficiaries, the Commission notes that the applicants have stressed that, considering that the Yanomamis and Ye'kwana are peoples who have had recent contact with each other or are isolated, they would be particularly vulnerable from an immunological point of view. This would be based on mortality data for the aforementioned peoples, highlighting deficiencies due to respiratory infections (see *supra* para. 5), and is supported by information sent by the State, which recognizes that historically "greater biological vulnerability of indigenous peoples to viruses, especially respiratory infections, was observed", highlighting the particular vulnerability of peoples who have been recently contacted or isolated.

44. Thirdly, the Commission notes that the current situation of the persons proposed as beneficiaries is part of an increase in the presence of unauthorized third parties at the TIY in relation to recent years, with an estimated presence of twenty thousand mine workers. In fact, the applicants provided copies of numerous and detailed complaints about the presence of mining in the Indigenous Lands of the beneficiaries. Beyond the allegations that the presence of such persons in the TIYs would often lead to hostile situations (see *supra* para. 46), such individuals would be important potential vectors in the spread of COVID-19, given their constant passage through the TIY and urban communities. This aspect is paramount to be taken into account in terms of the serious impact that

¹⁵ IACHR, Compendium on Equality and Non-Discrimination: Inter-American Standards, OEA/Ser.L/V/II.171, Doc. 31, 12 February 2019, p. 103-106. Available at: <http://www.oas.org/es/cidh/informes/pdfs/Compendio-IgualdadNoDiscriminacion.pdf>.

the rights to life and personal integrity of the proposed beneficiaries would suffer, derived from the multiplication of unwanted contacts, a factor that is beyond the control of the proposed beneficiaries.

45. In view of the alleged considerable presence of miners in the TIY, not contested by the State, the Commission observes that the State has not implemented adequate measures, despite the mentioned domestic judicial decision from 2018 and confirmed in June 2020, which determined the reopening of the three "Bases de Protección Etnoambiental" (BAPE), and the decision of 3 July 2020, which ordered the creation of an "Emergency Plan" for the withdrawal of the miners. The Commission notes with concern that the decision is unfulfilled, and highlights that the BAPE related to the protection of isolated groups has not been reactivated (see *supra* para. 30), nor is there any information that suitable alternative measures have been adopted.

46. The Commission further notes that the presence of these persons at the TIY goes hand in hand with hostile situations and violence against the indigenous population (see *supra* para. 17), which has been observed for many years. The IACHR has previously stated that the Yanomami indigenous people "are under constant threat from illegal gold miners and other outsiders who invade their lands," and has received information about the murder of indigenous persons and has emphasized the importance of FUNAI.¹⁶ In the present request, the facts of alleged threat and violence are noted with concern, particularly the recent murder of two indigenous Yanomamis allegedly by mining workers. In this regard, it is noted that the State has not replied to the acts of harassment and violence alleged by the applicants.

47. The Commission takes note of the State's response and observes that it referred in large part to general actions to protect indigenous peoples in Brazil, public policies, and plans or projects for policies or actions to be developed. Without prejudice to their importance, it should be noted that the State did not explain how these would operate in a concrete manner with respect to the persons proposed as beneficiaries. In addition, it did not clarify whether they are in fact implemented in favor of the Yanomami and Ye'kwana peoples.¹⁷ It is also noted that some of the information refers to measures related to the DSEI-Leste Roraima, which would not be the district for the Yanomami and Ye'kwana, as well as other issues that are not directly related to the sources of risk identified on this occasion, such as operations to combat illicit activities in other Indigenous lands, and fire-fighting measures. Moreover, the State did not specify whether the National Contingency Plan for Human Infection by the New Coronavirus in Indigenous Peoples, the respective District Plan or the sanitary barriers would be adequately implemented in the TIY and, if so, whether they are effective.

48. In line with the above, the Commission notes that the information submitted by the State shows that certain measures were taken in certain villages - such as the distribution of basic baskets, medicines, visits, disinfection operations, among other specific measures¹⁸- which have been positive. However, the Commission understands that these measures may not be sufficient to address the problems raised,¹⁹ given the size of the Yanomami and Ye'kwana indigenous peoples, who number some 26,000 people in 321 villages, their specific immunological vulnerabilities, and the challenges facing the health system that serves them, which consists of 37 base areas.

49. In the present situation, on the basis of the allegations of both parties, it appears that the persons proposed as beneficiaries, in the current height of the pandemic, would have fewer protective measures implemented in their favor than would have existed in ordinary periods in previous years, mainly taking into account the alleged evasion of health professionals, that two BAPes remain

¹⁶ IACHR, Situation of Human Rights of Indigenous People and Tribes of the Panamazonía, OAS / Ser.L / V / II. 176, 2019, paras. 406 - 408.

¹⁷ For example, Quick Response Teams (see above para. 23), due diligence by FUNAI Roraima.

¹⁸ For example: the performance of rapid tests in communities where cases of COVID-19 have been identified; the sending of Individual Protection Teams to DSEI-Yanomami, as well as the alleged preparation of health teams to deal with COVID-19 cases.

¹⁹ The State itself has been made aware of the need to increase protection measures in favor of the persons proposed to benefit them to protect their lives and integrity (see above, para. 35).

deactivated, and the lack of protective measures to replace them. In this regard, the Commission recalls that the protective measures must be appropriate and effective; that is, the measures implemented, by their nature, must address the risk faced and produce results in such a way that the risk ceases.²⁰ In this scenario, the Commission notes with concern the allegation that, without protective measures implemented, it is estimated that 40% of the people proposed as beneficiaries in the villages near mining activity will be contaminated with COVID-19.

50. On the other hand, as regards the other risk factors, the Commission does not have sufficient information at this stage to make the same determination. Without prejudice to the foregoing, it should be recalled that, in light of the alleged acts of violence, the State has a duty to protect the rights to life and personal integrity of all individuals within its jurisdiction, particularly in this case indigenous leaders such as Mr. Davi Kopenawa Yanomami, because of his particular exposure. The Commission also notes that the applicants warned that the presence of mining would affect the health of the people proposed as beneficiaries, particularly through mercury contamination. In this regard, it should be recalled that exposure to mercury, according to the World Health Organization, "(even in small amounts) can cause serious health problems and is dangerous for intrauterine and early life development"²¹ and, according to research provided by the applicants, Yanomami communities, particularly those near mining sites, would have significant levels of mercury contamination, including rates of more than 90% of contaminated people in the Waikás Aracaça community and data that three girls under three years of age already show high rates of mercury contamination (see *supra* para. 15).

51. In light of the above, the Commission considers that, from the *prima facie* standard applicable to the mechanism of precautionary measures, the rights to life, personal integrity and health of the members of the Yanomami and Ye'kwana Indigenous Peoples are at serious risk.

52. With regard to the requirement for urgency, the Commission considers that it has been met, taking into account, in the context of the COVID-19 pandemic, the information available on the spread of the virus, the confirmed positive cases and deaths, as well as the particular immunological vulnerability of indigenous peoples who have been recently contacted or are isolated. This, coupled with the apparent lack of adequate prevention measures and medical care. In these circumstances, the adoption of urgent measures to protect the rights to life and personal integrity of the beneficiaries is justified, while also ensuring access to adequate medical treatment, in accordance with applicable international standards.

53. With regard to the requirement of irreparable harm, the Commission considers that it has been met, since the possible impact on the rights to life and personal integrity, by their very nature, constitutes the maximum situation of irreparability.

54. Finally, with respect to the principle of complementarity, the Commission recalls that this principle applies transversally to the Inter-American System, insofar as the international jurisdiction is "auxiliary" to national jurisdictions, and does not replace them. The Commission considers, however, that calling upon the principle of complementarity as an argument of inadmissibility for the adoption of precautionary measures, requires that the State concerned satisfy the burden of demonstrating that the beneficiaries are not in the situation established in Article 25 of the Rules of Procedure, in view of the fact that the measures adopted by the State have had a substantive impact in reducing or mitigating the risk in such a way that a situation of seriousness and urgency which requires international intervention to prevent irreparable harm is not identified.²²

²⁰ IACHR, Second Report on the Situation of Defenders and Defenders of Human Rights in the Americas, 2011, par. 521. Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>.

²¹ "Elemental mercury and methylmercury are toxic to the central and peripheral nervous systems. Inhalation of mercury vapour can be harmful to the nervous and immune systems, the digestive system and the lungs and kidneys, with sometimes fatal consequences. Inorganic mercury salts are corrosive to the skin, eyes and intestinal tract and, when ingested, can be toxic to the kidneys. WHO, Mercury and Health, 31 March 2017. Available at: <https://www.who.int/es/news-room/fact-sheets/detail/mercury-and-health>

²² *Ibidem*.

55. In that regard, in the present case, the Commission has found that the situation arising in the light of Article 25 of the Regulation meets the requirements, and that it is therefore appropriate to adopt precautionary measures to safeguard their rights.

IV. BENEFICIARIES

56. The Commission declares that the beneficiaries of the present precautionary measures are the members of the Yanomami and Ye'kwana Peoples, who are sufficiently identifiable under the terms of Article 25.6.b of the IACHR Rules of Procedure.

V. DECISION

57. In the light of the foregoing, the Commission considers that the present case meets *prima facie* the requirements of seriousness, urgency and risk of irreparable harm established in Article 25 of its Rules of Procedure. Accordingly, the Commission requests that Brazil:

- a) adopt the necessary measures to protect the rights to health, life and personal integrity of the members of the Yanomami and Ye'kwana Indigenous Peoples, implementing, from a culturally appropriate perspective, measures to prevent 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 the applicable international standards;
- b) agree upon the measures to be taken with the beneficiaries and their representatives; and
- c) report on the actions taken to investigate the incidents that led to the adoption of this precautionary measure so as to prevent such incidents from reoccurring.

58. The Commission requests Your Excellency's Government to inform the Commission, within 20 days from the date of this communication, of the adoption of the agreed precautionary measures and to update this information on a regular basis.

59. 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 prejudice to the possible violation of the rights protected in the American Convention and other applicable instruments.

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

61. Approved on July 17, 2020 by: Joel Hernández García, President; Antonia Urrejola, First Vice-President; Margarete May Macaulay, Esmeralda Arosemena de Troitiño, Edgar Stuardo Ralón Orellana and Julissa Mantilla Falcón, members of the IACHR.