

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 67/2020**

Precautionary Measure No. 306-20

Poqomchi' Mayan Indigenous Families of Washington and Dos Fuentes  
Communities regarding Guatemala<sup>1</sup>

October 14, 2020

Original: Spanish

**I. INTRODUCTION**

1. On April 13, 2020, the Inter-American Commission on Human Rights ("the Inter-American Commission", "the Commission" or "the IACHR") received a request for precautionary measures submitted by the Peasant Committee of the Highlands (*CCDA* for its Spanish acronym) ("the applicants"), urging the IACHR to require the State of Guatemala ("the State" or "Guatemala") to adopt the necessary protective measures to guarantee the rights of indigenous Poqomchi' Mayan families of the Washington and Dos Fuentes Communities, located in the municipality of Purulhá, Baja Verapaz department, Guatemala ("the proposed beneficiaries"). According to the request, the proposed beneficiaries are in a situation of risk due to the issuance of eviction orders and a series of threats, harassments and acts of violence perpetrated against them, in the framework of an agrarian conflict over specific plots of land where they claim their ancestral property.

2. The IACHR requested information from the State, pursuant to Article 25 of the Rules of Procedure. The State responded on September 1, 2020 following the granting of an extension. The representatives submitted information on August 14, 2020.

3. Having analyzed the submissions of fact and law provided by the parties, in view of the specific context in which they occur, the Commission considers that the information shows *prima facie* that the members of the Poqomchi' Mayan Indigenous Families of Washington and Dos Fuentes communities face a serious and urgent situation of irreparable harm given that their rights to life and personal integrity of the members are at serious risk. Consequently, in accordance with Article 25 of the IACHR's Rules of Procedures, it is hereby requested that Guatemala: (a) adopt the measures necessary, while implementing an adequate intercultural approach, to protect the rights to life and personal integrity of the members of the Poqomchi' Mayan indigenous families of the Washington and Dos Fuentes Communities. In particular, the State should attend to their housing conditions, health, food and access to safe drinking water, especially of children, women and the elderly, as well as of people in a situation of displacement; (b) adopt the protection measures culturally appropriate to protect the life and personal integrity of the families and avoid acts of violence from third parties; (c) consult upon the measures to be adopted with the beneficiaries and their representatives taking into consideration the importance of safeguarding the cultural identity of the beneficiaries, as members of the Poqomchi' Mayan people; and (d) report on the measures adopted in order to investigate the facts that led to the adoption of this precautionary measure so as to avoid their reoccurrence.

**II. SUMMARY OF FACTS AND ARGUMENTS**

**1. Information submitted by the applicants**

4. The proposed beneficiaries are members of the Poqomchi' Mayan indigenous communities, called Washington and Dos Fuentes, located on the Pancoc, Los Encinos, Tamaxaque, San Rafael and Corozal Pantuts farms, all located in the Mojón Panimá village, Purulhá municipality, Baja Verapaz

<sup>1</sup> Pursuant to Article 17.2.a of the IACHR's Rules of Procedure, Commissioner Edgar Stuardo Ralón Orellana, Guatemalan, did not participate in the debate nor the deliberation of this matter.

department. The Communities are composed of approximately 70 families (500 people, including pregnant women, children and elderly).

5. The proposed beneficiaries claim that, by virtue of their ancestral property, they should be recognized as the legitimate owners of the land they occupy. Indeed, the applicants explained, as background, that the Poqomchi' Mayan communities from the nineteenth century were forced to work as *mozos colonos* for landowners of German origin (hereinafter "the landowners" or the "landowner family") in their ancestral lands. Several generations of indigenous people were allegedly employed in planting, maintenance, harvesting and other work of coffee exploitation in conditions of servitude, without wages and with the promise to recover the ownership of their ancestral lands.

6. As a reference, the applicants noted that, to this date, there are purportedly more than 36,000 families living under the *mozo colonato* system described above; mainly indigenous people living on the lands they claim. Due to the lack of legal certainty regarding the indigenous communities' lands, as well as the absence of adequate means to deal with the existing agrarian conflict, several displacements have occurred in recent decades. The CCDAs highlighted that it has sought dialogue and negotiation with the State: an alleged agreement was signed on August 9 and November 11, 2017 through which viable solutions were reportedly sought in 52 cases. However, they indicated that these had not been resolved despite the plans and deadlines planned for their fulfillment. The applicants indicated that although Government Agreement 374-2014 on agrarian policy was approved as a mechanism to help solve the current agrarian problem, to this date it is claimed that has not been implemented.

7. In the case of the proposed beneficiaries, on March 28, 2005, the first extrajudicial eviction attempt allegedly took place, during which the authorities burned their houses with all their belongings, including crops and clothing. That same night a one-year-old baby allegedly died from the cold. This first eviction attempt reportedly occurred after the *mozos colonos* decided to stop working for the landowner family.

8. The applicants indicated that, despite numerous efforts to resolve the land ownership, 34 residents were criminally charged with aggravated trespassing, coercion, and theft. In November 2016, 34 arrest warrants were issued, of which seven were executed. In addition to appealing to the courts, the applicants indicated that the landowner family is trying to evict the proposed beneficiaries extrajudicially, by means of a group of workers armed as private security agents. For instance, they specified that when an eviction is approaching, shots are to be fired into the air in the proximity of the houses to threaten and to generate fear. According to the request, when requesting support from the Purulhá Police, the authorities are not able to travel immediately to the place due to long distances and access difficulties, and thus contacting to the farm administrator. Although a series of communications were allegedly established as the usual mechanism to stop threats and shots into the air, these efforts were not sufficient.

9. In line with the above, according to the request, the residents filed various complaints: on April 6, 2015, before the Justice of the Peace of Purulhá; on July 15, 2016, when several people filed a complaint with the National Civil Police of Purulhá (PNC for its Spanish acronym) for problems and threats with the landowner family; before Police Substation 52-11 in the municipality of Purulhá (without indicating the date), when a complaint was filed for intimidating shots into the air against the leader of the Poqomchi' Maya communities. Today, a criminal case is still pending in the Purulhá Peace Court (15008-2017-00174 OF 1 °).

10. By 2018, the acts of violence purportedly did not stop. For example, on July 20, in reprisal for a failed eviction attempt, some 15 armed men ambushed the proposed beneficiaries, killing one of them and wounding another (both people belonged to the Washington Community, both located in the San Rafal Corozal farm). The landowner later stated to the authorities that he had only ordered

shots to be fired into the air. In relation to these events, the applicants claimed that they had no knowledge of subsequent criminal proceedings.

11. In the framework of the criminal proceedings against the proposed beneficiaries, 3 Mayan community members were acquitted and 4 were convicted. Nevertheless, in the criminal resolution dated September 26, 2018, the Baja Verapaz Criminal Court ordered a discussion table to be held to resolve the agrarian “conflict” that led to the complaint against 34 residents:

[...] XVI) Be it referred to Secretary for Agricultural Affairs of the Presidency of the Republic, the National Land Fund, the Cadastral Information Registry, the Human Rights’ Ombudsman, the Social Investment Fund and any other entity that by their nature have as responsibility the resolution of agrarian conflicts so that a discussion table is executed for it to definitively resolve matters related to the property and delimitation of the areas mentioned in this decision, which includes the legitimate ancestral and community rights that may correspond [...].

12. The applicants reported that, despite the aforementioned court decision, eviction orders continued to be issued. For instance, on December 5, 2019, the private security agents, who accompanied the authorities in charge of their execution, allegedly took advantage of the moment in which the proposed beneficiaries left the farm to enter their homes, take their belongings and food and subsequently destroy them. Upon the subsequent evictions, the applicants indicated that legal requests for the protection of constitutional rights were filed on two occasions. On February 13, 2020, another eviction was scheduled, the execution of which was set for April 23, with the presence of about 1,500 police officers. In this background, it was allegedly not until March 13, 2020 when a hearing was scheduled by the court to continue with the process of formation of the discussion table.

13. Regarding the most recent risk events, the applicants referred to the following events that occurred from February 2020 to this date, in which they highlighted the actions of the armed group in charge of private security agents at San Rafael farm:

- On February 14 at 7:00 AM, approximately 11 private security agents and approximately 40 farm workers entered the San Rafael farm, cutting down the cardamom plantation owned by the inhabitants of the Dos Fuentes village, shooting into the air to intimidate and destroy the crops in an area of approximately 6 blocks. The inhabitants called the PNC, but they never arrived.
- On February 24, the armed security of San Rafael farm purportedly cut the hose that supplies water to the Dos Fuentes Community, monitoring the water source for at least 3 days to prevent community members from trying to restore the supply and firing shots above the dwellings.
- On March 25 at 6:30 AM, a group of inhabitants from Dos Fuentes were organizing themselves to start their agricultural work, among which were the Ichich Mac brothers. A group of approximately 5 private security agents of the landowner approached and from approximately 25 meters away they fired in the direction of the Ichich Mac brothers. Young Isaac Ichich received a gunshot wound to his leg, and was transferred to a hospital. After communicating with the PNC, the police never appeared. The following day, a complaint was filed with police substation No. 12 of the PNC; a communication with the Human Rights’ Ombudsman was carried out, and a complaint with the Public Ministry was submitted without success.
- On March 30, the applicants were informed that some members of the community were threatened by the workers of the San Rafael farm, who told them that they “had to withdraw” from the land, since otherwise “they were going to be killed”. Upon these threats, the proposed beneficiaries withdrew; however, the people in charge of the farm's security fired shots into the air for about 15 minutes.
- On April 1, inhabitants of the Washington community were reportedly attacked with firearms as they went out to do their agricultural work in the early hours of the morning. 5 private security agents from San Rafael farm purportedly started shooting 'indiscriminately', but the peasants managed to shelter in the mountains.
- On April 2, the inhabitants of Dos Fuentes allegedly decided not to leave their homes due to constant threats. At approximately 6:00 AM, private security agents of the landowner reportedly entered the community and fired directly at the houses. The villagers managed to collect 22 shells, but they assured that there were

more. Consequently, several members of the communities decided to leave, thus leaving them more vulnerable and exposed.

- On April 5, at 6:00 AM, according to the applicants, a group of at least 20 men, wearing ski masks, dressed in military green and carrying heavy-caliber firearms, entered the Washington Community, managing to block access to the Poqomchi' Mayan Community. Subsequently, they allegedly burned their houses and destroyed the crops. The families that were on the outskirts of the community were not able to take out their chickens, domestic animals, corn, clothes, beds, among other personal items. Of the 70 families belonging to Washington and Dos Fuentes, 36 belong to Washington and were by force evicted and some forcibly displaced due to the lack of access to safe drinking water, sanitary conditions, food, and constant threats received by workers of the San Rafael farm.
- Due to these events, a complaint was filed with the Prosecutor's Office, who tried to carry out the procedure, unsuccessfully. Indeed, by going to the farm, their entry was blocked. As the inhabitants of Washington were evicted, they took refuge in the Dos Fuentes Community, some moving to other Guatemalan departments. In this sense, from that date, members of Washington reportedly remain in Dos Fuentes, while the population of their community of origin decreased to only around 90 people.
- On May 9, in the afternoon, when members of the Dos Fuentes Community were returning from working the land, they were allegedly attacked with firearms by the landowner's security agents, who threatened them with death. However, the community members purportedly run away and managed to hide.
- On May 16, at around 11:30 AM, the security agents appeared in the Dos Fuentes Community and fired shots. The Police affirmed that "they have verified and that nothing happens there", although they acknowledge the continuous presence of armed persons. The police denied the facts of May 9, despite not having carried out due diligence.
- On May 17, at around 6:00 AM, there were repeated attacks by the landowner's security agents against the inhabitants of Dos Fuentes. The Police reportedly regretted not being able to execute the verification visit due to lack of personnel and to the distance.
- On May 19, in the afternoon, it was claimed that the security agents appeared at the farm and fired threatening shots at members of the community.
- On May 21, the landowner's workers reportedly fired shots in the air and towards the community in the afternoon. People allegedly took cover by throwing themselves to the ground.
- On May 25, in the morning, the armed group fired at least 50 shots at 8 community members, who threw themselves to the ground and managed to flee the scene. The shooters also allegedly uprooted the cornfields. The following day, the Office of the Human Rights' Ombudsman and the Presidential Commission on the Coordination of Human Rights Policy for the Executive (COPREDEH for its Spanish acronym) allegedly visited an area where the planting was not uprooted.
- On May 29, 8 workers from the San Rafael farm reportedly shot directly at 10 inhabitants of Dos Fuentes, but they managed to throw themselves to the ground to take cover and then flee.
- On the morning of May 30, around 15 armed workers from the San Rafael farm reportedly appeared in the community. One of them purportedly wounded a 14-year-old young man in the arm, who was transferred to a hospital by the police. It was also claimed that shots were also fired at the home of another community member. The workers allegedly cut off the community's safe drinking water supply, having previously uprooted the corn planting at the beginning of the week. Before with these events, a complaint was filed with the Public Ministry.
- On June 1, it was indicated that the cornfield from the community's crops were reportedly uprooted.
- On June 2, at 12:00 PM, when the wounded young man was going back to the community, he had to return upon the presence of armed workers who were shooting. By that date, the Police purportedly inspected the place where the young man was shot.
- On June 28, between 3:00 and 5:00 AM, workers and community members who support the landowner's family reportedly destroyed the corn and bean crops of the Dos Fuentes Communities. This occurred despite the fact that the community had a perimeter security scheme. Due to this attack, a loss of around 56 cords was calculated, equivalent to 560 bags of corn.

- On July 4, in the morning, security agents from the San Rafael farm reportedly again cut the cornfield. On July 11, shots were allegedly reported, which were informed to the Police.
- On July 13, once again, the security agents of San Rafael farm reportedly fired at members of the Dos Fuentes Community. The above was reported to the PNC and the Human Rights' Ombudsman. Despite this, at 3:00 PM, shootings continued towards the community.
- On July 20, from 8:00 to 10:00 AM, shots were allegedly fired by the security agents of San Rafael farm. On July 21, in the morning and in the afternoon, shots were fired by these agents, putting 4 children at risk who were in the cornfields.
- On July 22, during the morning, more shots were allegedly fired. On July 25, some women, children, young people and adults were attacked by shots from the security agents of San Rafael farm.
- On July 27, this same group shot José Antonio Juc Pérez in the abdomen area, who was transferred by the police to a hospital. This was reported to the Human Rights' Ombudsman. On July 28, a member of the Dos Fuentes Community was injured again, who was in an alleged vulnerable health status.

14. In their communication of August 14, 2020, the applicants noted that the Public Ministry linked three files on the attacks suffered by members of the Washington and Dos Fuentes Communities<sup>2</sup>. In this context, the landowner allegedly stated that in the investigations executed by the Prosecutor's Office there has been an "abuse of authority". The applicants have also questioned the delay in the response by the Police to the alleged facts; and that up to the moment the people who shot and executed the various attacks against the Washington and Dos Fuentes Communities have not been identified yet.

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

15. The State maintained that the request is notoriously inadmissible and that it does not have factual and legal support. The State referred to the judicial decision of the Criminal Court of Baja Verapaz, in which the following was resolved:

XVI) Be it referred to Secretary for Agricultural Affairs of the Presidency of the Republic, the National Land Fund, the Cadastral Information Registry, the Human Rights' Ombudsman, the Social Investment Fund and any other entity that by their nature have as responsibility the resolution of agrarian conflicts so that a discussion table [SIC] is executed for it to definitively resolve matters related to the property and delimitation of the areas mentioned in this decision, which includes the legitimate ancestral and community rights that may correspond [ ...] XIX) Be the immediate eviction of the proesos [SIC] ESTEBAN ICHICH, HERMELINDO ICHICH MAC, RICARDO CHUN LAJ AND TOMAS CHOC MISTI ordered from the areas they are occupying within the farms [...], and be orders and writs issued appropriately where it may correspond.

16. Arising from the foregoing, the State questions the applicants' allegations regarding the alleged facts of July 20, 2018, December 5, 2019, and February 12, 2020, as well as the existence of a reported violation to due process guarantees. According to the State, if the proposed beneficiaries consider that their rights were violated in the framework of the criminal process, there are procedural mechanisms to exercise said rights. Moreover, the State set forth that on December 11, 2019, the Purulhá [SIC] Judge of the department of Baja Verapaz executed a ruling in which it was established that the eviction ordered rendered by the Baja Verapaz Court had been complied with. Said ruling, apart from the eviction, states as follows: that the fundamental rights of the persons who were evicted were not violated, that the municipal hall of Purulhá was enabled to function as shelter, as well as the schools of the area; and that the PNC acted respectfully towards the human rights of the petitioning parties. Thus, there are reportedly not sufficient elements to prove that, in connection with the evictions at issue, their rights were violated.

<sup>2</sup> The files in question were those related to the extrajudicial eviction suffered by the Washington Community; the attack on a community member with a gunshot wound on March 25, 2020; and the aggression suffered on June 2, 2020 by a gunshot wound.

17. As regards the request for suspension of the evictions, the State established that there exists a risk of violation of the property rights of those persons who have been affected, in the sense that they would be deprived of the right to access justice to claim the restoration of their property, generating an environment of uncertainty, arbitrariness and abuse. The State indicated that certain mechanisms are in place to claim the ownership of real property, and further asserted that the position of the applicants seems contradictory, since they claim to have fair and lawful title to support their ownership, while at the same time seeking acknowledgement of said right. On this matter, what the applicants allegedly seek is for the IACHR to become a decision-making authority and decide on the issue, thereby substituting the established constitutional organs, and infringing the principle of sovereignty and independence of the Member States.

18. With respect to the investigations of the alleged crimes against the members of the communities, the State indicated that it respects and is guarantor of human rights. This implies that, in the event of a threat or violation against a person, the State would activate the mechanisms stipulated by the domestic legal system for their protection and restoration. Therefore, the State highlighted that it will timely report the advances of the criminal investigation related to the alleged crimes denounced.

19. Finally, the State noted that the Court, in its judgment, ordered that a discussion table be formed, the purpose of which would be to definitely settle the matter of property and delimitation of the areas mentioned in the judgment. In respect thereof, the State pointed out that information on the current state of the discussion table and its actions to this date shall be timely sent.

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

20. Precautionary measures are one of the mechanisms of the Commission for the exercise of its function of overseeing compliance with human rights obligations, as established in Article 106 of the Charter of the Organization of American States. These general oversight functions are established in Article 41(b) of the American Convention on Human Rights (“American Convention”), as well as in Article 18(b) of the Statute of the IACHR. The precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission, by which the Commission grants precautionary measures in urgent and serious situations and where such measures are necessary to prevent an irreparable harm to persons.

21. The Inter-American Commission and the Inter-American Court on Human Rights (hereinafter “the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary. Regarding the protective nature, these measures seek to avoid irreparable harm and to protect the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations while it is being considered by the IACHR. The objective and purpose of the precautionary nature is to preserve the rights potentially at risk until the petition under consideration of the Inter-American System is decided upon. Their objective and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits, and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, implement the ordered reparations. 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 of threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

22. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie*<sup>3</sup> if a serious and urgent situation exists.

23. As a preliminary remark, the Commission deems it relevant to clarify that, in the framework of the precautionary measures’ mechanism, the Commission is not called upon to determine who the allegedly lawful owners of the claimed lands are, nor to declare violations to human rights consecrated in the American Convention or other applicable instruments attributable to the State. As indicated in resolutions regarding Guatemala on matters similar to the one at issue<sup>4</sup> and in line with the representations included in the State’s response, this procedure does not call for assessments on the merits, nor for a settlement on the ownership of rights in dispute, nor for a ruling on any criminal liability of the persons involved in the incidents alleged. The analysis performed below relates exclusively to the provisions set forth in Article 25 of the IACHR’s Rules of Procedure, which can be determined without a review of the merits, as this would be better suited to the review of a case.

24. As regards the requirement of seriousness, the Commission identifies as a contextual aspect that this matters occurs within an existing conflict on the ownership of the property between indigenous and non-indigenous peoples in several areas in Guatemala. As the IACHR assessed in its 2017 Country Report, this kind of agrarian conflict has a bearing on the violence faced by indigenous communities in the country.<sup>5</sup>

25. In this regard, the Commission recalls that indigenous peoples in general have the right to legal certainty regarding the ownership of their lands, and that legal uncertainty makes them particularly vulnerable and prone to facing conflicting situations.<sup>6</sup> Some of the factors identified as possible sources of risk are: lack of knowledge of the rights arising from ancestral possession and use, possession of property titles not acknowledged by common law, the existence of property titles in conflict with other titles, titles not fully registered or unrecognized titles.<sup>7</sup> In the framework of precautionary measures previously granted in similar contexts, the Commission has taken into consideration these elements when analyzing the alleged situation, not to make a statement on their compatibility with the American Convention or the merits of a hypothetical petition, but as an element that potentially contributes to promote and increase the risk factors mentioned.<sup>8</sup>

<sup>3</sup> In that regard, for instance, in relation to the provisional measures, the Inter-American Court has considered that this standard requires a minimum of details and information that allow for the *prima facie* assessment of the situation of risk and urgency. I/A Court H.R., Matter of the children and adolescents deprived of their liberty in the “Complexo do Tatuapé” of the Fundação CASA. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

<sup>4</sup> IACHR, Resolution 43/18. PM 44/18. Families of the Q’ueqchi Mayan community “La Cumbre Sa’kuxhá”, Guatemala. June 18, 2018. Available (in Spanish) at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/43-18MC44-18-GU.pdf>; IACHR, Resolution 7/18. PM 872/17. Evicted and displaced families of the Q’eqchi Mayan community “Nueva Semuy Chacchilla”, Guatemala. February 10, 2018. Available (in Spanish) at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/7-18MC872-17-GU.pdf>; IACHR, Resolution 3/18. PM 860/17. Indigenous families of the Chaab’il Ch’och’ community. January 25, 2018. Available (in Spanish) at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/3-18MC860-17-GU.pdf>; and IACHR, Resolution 36/17. PM 412/17. Evicted and displaced inhabitants of Laguna Larga community, Guatemala. September 18, 2017. Available (in Spanish) at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/36-17MC412-17GU.pdf>

<sup>5</sup> IACHR, Situation of Human Rights in Guatemala, December 31, 2017, para. 376. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.pdf>

<sup>6</sup> IACHR, Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources, Norms and Jurisprudence of the Inter-American Human Rights System, December 30, 2009, para. 87. Available at: <http://cidh.org/countryrep/Indigenous-Lands09/TOC.htm>

<sup>7</sup> Ibidem

<sup>8</sup> See, for instance: IACHR, PM 505/15 –Members of the Indigenous Communities “Esperanza, Santa Clara, Wisconsin and Francia Sirpi” of the Miskitu people, from Wangki Twi-Tasba Raya, Nicaragua, October 14, 2015. Available (in Spanish) at:

26. In the specific matter, the Commission observes that the proposed beneficiaries are in a situation of particular vulnerability, to the extent that the events of risk declared herein are the alleged consequence of the lack of legal certainty as regards the ownership of certain lands claimed as their own (see para. 4 and 5 above), in addition to the decision of the proposed beneficiaries to stop working as *mozos colonos* in the farms where they are currently located (see para. 7 above). The facts alleged suggest that the conflict exists since 2005, at least, and that it intensified with time and persists to this date.

27. In fact, in connection with the incidents reported in 2020, the Commission notes that the proposed beneficiaries were allegedly subjected to serious affectations to their rights to life and personal integrity. The events reported are as follows: i) death threats, as the one received on March 30, 2020, in which they were told to withdraw under at the risk of being killed; ii) deprivation of their sources of survival, by destruction or by being unable to access them; iii) destruction of their housing; iv) restrictions to their agricultural activities; v) armed intimidation and aggression throughout 2020, in some occasions with alleged use of high-caliber weapons, causing injuries that required medical attention at the hospital (see para. 13 above); among others.

28. In view of the foregoing, the Commission stresses the particular seriousness of these facts, as they imply that the members of the identified communities have been subjected to death threats and armed aggression throughout time. The Commission further stresses the manifest animosity or hostility by the alleged aggressors, to the extent that the proposed beneficiaries' rights to life and personal integrity are threatened not only by the reported actions to attempt directly against them, but also by the destruction of their means of survival and housing.

29. In addition to the inherently offensive nature of these acts with regard to the rights abovementioned, the Commission notes that the risk faced by the proposed beneficiaries is accentuated by the fact that some of them are currently displaced or substantially reduced in number, consequence of the violent evictions and pressure to which they have been subjected. In these circumstances, the fact that, according to the information provided, the risk events detailed are attributable to personal or private security groups heavily armed and with military-looking uniforms must also be considered, as well as the wide scope of action these groups reportedly have in the area. Such acts put the proposed beneficiaries in a situation of greater vulnerability, to the extent that they perpetuate an environment of hostility and intimidate them at the time of claiming their rights in the agrarian conflict yet unresolved.

30. The Commission notes the State's response and agrees that the analysis of the alleged failures in the domestic legal processes in light of the American Convention exceeds the mechanism of precautionary measures, due to the assessments of the merits it would entail. In this regard, the Commission reiterates that it is not called upon to make a statement thereon in this proceeding, nor to issue abstract judgements that refer to matters other than the specific situation of the persons proposed as beneficiaries pursuant to Article 25 of the Rules of Procedure. Furthermore, the Commission notes that the State has declared that no rights were violated during the judicial eviction on December 11, 2019, and that shelters were authorized.

31. Having specified the foregoing, the Commission considers that there is no dispute between the parties regarding the judicial decision of 2018 that required the competent entities to "form a discussion table to definitely solve the matters related to the ownership and delimitation of the areas [...]including the any relevant ancestral and community rights," which is pertinent insofar as it could contribute to mitigating the source of risk. It is further undisputed that the applicants had filed

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<http://www.oas.org/es/cidh/decisiones/pdf/2015/MC505-15-ES.pdf>; PM 505/15 (Extension) –Miskitu Indigenous People from Wangki Twi-Tasba Raya, Nicaragua, August 8, 2016. Available (in Spanish) at: <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC505-15-ES-2.pdf>; and IACHR, Resolution 57/19. PM 887/19. Families of the Nueva Austria del Sira Community, Peru, November 6, 2019. Available (in Spanish) at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/57-19MC887-19-PE.pdf>

several complaints with different entities bringing to their attention the facts alleged throughout 2020 to achieve effective protection of their rights; among said entities, the applicants have communicated with the National Police, the Public Prosecutor's Office and the Human Rights Ombudsperson's Office.

32. Both regarding the advances on the establishment of a discussion table and the status of the open investigations, the Commission notes that the State has asserted that it would timely report afterward. However, to the date of this resolution, the IACHR has not received any additional information on the matter. On the contrary, the applicants have reported that no advances have been made as to the creation of the discussion table and that no individuals responsible for the serious aggression alleged has been identified, thereby questioning the Police's actions. Moreover, though the applicants stated that the proposed beneficiaries have perimeter security, the Commission emphasizes that this measure has not prevented the risk factors from being sustained over time and continuing to occur, which is pertinent when analyzing the suitability and effectiveness of the protection measures.

33. In this context, it must be remarked that, in accordance with the information provided, no substantive advances as to punishment of those who are allegedly responsible of the denounced facts can be identified, which is a relevant aspect when establishing the risk that the proposed beneficiaries allegedly face and the possibility of its recurrence. Similarly, it is unknown whether any additional effective protection strategies or schemes have been implemented, in addition to the alleged perimeter security, so as to guarantee, in the meantime, their rights to life and personal integrity. To the extent that the situation of the proposed beneficiaries closely related to the actions performed to denounce the aggression and to promote the establishment of a space for dialogue, the Commission understands that while any proceedings in said investigations are pending and the judicial decision of 2018 is not implemented (see para. 10 and 15 above), it is likely that new incidents of risk will take place. In particular, it is noted that, according to the applicants, the Prosecutors had difficulties to perform their duties in the area, since the landowner has categorized the legal proceedings as an "abuse of authority", questioning the actions of the competent entity for the investigation in the country.

34. Accordingly, since the members of the Washington Community have scattered upon the conditions in which they lived, it is especially relevant to consider, when assessing the seriousness of the matter presented, that since the families have left the place they used to inhabit, the social cohesion of the group may be affected and this could impact its cultural identity,<sup>9</sup> causing a breakdown of the social fabric, community weakening and fragmentation, which in the most serious cases may cause a total loss or severe deterioration of their ethnical and cultural identity.<sup>10</sup> In line with the foregoing, the Inter-American Court has declared that forced displacement of indigenous peoples, out of their community, may put them in a situation of particular vulnerability, which due to

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<sup>9</sup> The I/A Court H.R. considers that the right to cultural identity is a fundamental right and of collective nature of indigenous communities, which must be respected in a multi-cultural, pluralist and democratic society. See: I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations.* Judgment of June 27, 2012, para. 217. Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_245\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf)

See: I/A Court H.R. *Case of Chitay-Nech et al v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 25, 2010, para. 123. Moreover, the I/A Court HR, quoting the report Guatemala, Memory of Silence, remarked that the displacement of civilian populations underscored by its massive nature and destructive effect. See: I/A Court H.R. Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_212\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_212_ing.pdf)

Moreover, the I/A Court HR has considered that displacement can affect the community, traditional, cultural and ancestral bonds of the groups as such. See: I/A Court HR. *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 30, 2016, para 191. Available (in Spanish) at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_328\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_328_esp.pdf)

<sup>10</sup> For instance, see *inter alia* the case of impacts on the cultural identity of indigenous peoples by development projects and extractive industries: IACHR, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities, December 31 2015, para. 264 and 265. Available at: <http://www.oas.org/en/iachr/reports/pdfs/extractiveindustries2016.pdf>

its destructive after-effects on the ethnic and cultural fabric, causes a clear cultural or physical risk, or risk of extinction of the indigenous peoples.<sup>11</sup>

35. In view of the foregoing, the Commission concludes that, from a *prima facie* review of precautionary measures, the rights to life and personal integrity of the Poqomchi' Mayan indigenous families of the Washington and Dos Fuentes Communities are in a situation of serious risk.

36. As regards the requirement of urgency, the Commission considers that the elements included in the request suggest the possibility that the proposed beneficiaries continue facing an imminent materialization of harm to their rights, as it has already happened during 2020, when members of the community were injured and required medical attention. This is due to the indicators of ongoing risk, the seriousness of the reported events and the lack of information about the suitability and effectiveness of the protection measures, together with the sustained effort by the proposed beneficiaries to procure that their complaints be settled and that spaces of dialogues be created under the terms of the judicial decision of 2018. On this last item, the Commission observes that, despite the fact that nearly two years have passed since this decision, to this date there is reportedly no information about the status of its enforcement. In said circumstances, the passage of time may imminently cause greater impact to the rights of the proposed beneficiaries, thereby requiring the immediate adoption of measures to safeguard their rights. Consequently, the Commission deems this requirement met.

37. As it pertains to the requirement of irreparable harm, the Commission considers that it is also met, to the extent that the possible impact to the rights to life and personal integrity of the families of the communities constitutes the greatest situation of irreparability.

#### **IV. BENEFICIARIES**

38. The Commission hereby declares that the beneficiaries of this precautionary measure are the Poqomchi' Mayan indigenous families of the Washington and Dos Fuentes Communities, the members of which are determinable under the terms of Article 25(6) of the Rules of Procedure of the IACHR.

#### **V. DECISION**

39. In view of the aforementioned background, the IACHR considers that this matter meets *prima facie* the requirements of seriousness, urgency and irreparable harm set forth in Article 25 of its Rules of Procedure. Consequently, the IACHR requests that Guatemala:

- a) adopt the measures necessary, while implementing an adequate intercultural approach, to protect the rights to life and personal integrity of the members of the Poqomchi' Mayan indigenous families of the Washington and Dos Fuentes Communities. In particular, the State should attend to their housing conditions, health, food and access to safe drinking water, especially of children, women and the elderly, as well as of people in a situation of displacement;
- b) adopt the protection measures culturally appropriate to protect the life and personal integrity of the families and avoid acts of violence from third parties;
- c) consult upon the measures to be adopted with the beneficiaries and their representatives taking into consideration the importance of safeguarding the cultural identity of the beneficiaries, as members of the Poqomchi' Mayan people; and

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<sup>11</sup>I/A Court H.R. Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012, para. 177. Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_250\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_250_ing.pdf)

- d) report on the measures adopted in order to investigate the facts that led to the adoption of this precautionary measure so as to avoid their reoccurrence.

40. The Commission requests that the Government of Guatemala kindly inform the Commission, within a period of 15 days, as from the date of notification of this resolution, regarding the adoption of the precautionary measures that have been consulted upon and to periodically update this information.

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

42. The Commission instructs its Executive Secretariat to notify the present Resolution to the State of Guatemala and the applicants.

43. Approved on October 14, 2020, by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay; Esmeralda Arosemena de Troitiño; and Julissa Mantilla Falcón, members of the IACHR.

María Claudia Pulido  
Acting Executive Secretary