

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 81/2019**

Precautionary Measure No. 776-20
Members of the Indigenous Community of Santa Clara de Uchunya *et al.*
regarding Perú¹
October 28, 2020
Original: Spanish

I. INTRODUCTION

1. On August 12, 2020, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures filed by the Institute of Legal Defense (*IDL* for its Spanish acronym) and Forest Peoples Programme (FPP) (“the applicants”) urging that the Commission request that the State of Peru (“Peru” or “the State”) adopt the measures necessary to protect the rights of the members² of the indigenous community of Santa Clara de Uchunya, of the Shipibo-Conibo people, and the members of the Federation of Native Communities of Ucayali (*FECONAU*³ for its Spanish acronym) (“the proposed beneficiaries”). According to the request, the proposed beneficiaries are at risk as they are subject to threats and aggression as a response to the defense of their land rights against the expansion of monoculture of oil palm and land trafficking in the Amazon region of Ucayali.

2. In the terms of Article 25 of the Rules of Procedure, the IACHR requested information from the State on August 17, 2020. The applicants provided additional information on August 22. Upon being the time extension requested granted, the State provided its response on September 4.

3. Having analyzed the submissions of fact and law provided by the parties, the Commission considers that the information shows, *prima facie*, that the members of the indigenous community of Santa Clara de Uchunya, and Mr. Miguel Guimaraes, as president of FECONAU, face a serious and urgent situation, since their rights are at risk of irreparable harm. Consequently, in accordance with Article 25 of its Rules of Procedure, the Commission requests that Peru: a) adopt the necessary measures, while implementing an appropriate cultural perspective, to protect the rights to life and personal integrity of the beneficiaries, avoiding in particular the commission of acts of violence by third parties, pursuant international human rights law; b) consult upon the measures to be adopted with the beneficiaries and their representatives; and c) 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 PROVIDED BY THE PARTIES

1. Information provided by the applicant

¹ Pursuant to Article 17(2) of the IACHR’s Rules of Procedure, Commissioner Julissa Mantilla, of Peruvian nationality, did not participate in the debate nor in the decision of the present matter.

² The applicants also individually identified the following members of the community: Carlos Hoyos Soria (former president), James Lozano Sangama (lieutenant governor), Álex Soria Bardales (municipal agent), Joel Nunta Valera (coordinator), Rodit Guerra Tenazoa, Righester Fasabi Sinuiri, Iván Flores Rodríguez and Huber Flores Rodríguez (community members).

³ The applicants indicated that it brings together 34 indigenous communities belonging to the Shipibo-Conibo, Ashaninca, Isconahua and Awajun peoples in the Ucayali region, in the Peruvian Amazon. Also, the applicants identified leaders of FECONAU.

4. The indigenous community of Santa Clara de Uchunya is located in Nueva Requena District, Province of Coronel Portillo, Ucayali region in the Peruvian Amazon. Its members belong to the Shipibo-Conibo people, which currently has approximately 250 people distributed in 50 families. It is recognized by the State since 1975 and it claims 86,713 hectares of land. However, the State acknowledges as their property 218.52 hectares since 1986. In February 2020, the Regional Government of Ucayali (*GOREU* for its Spanish acronym) approved a territorial expansion of 1592 hectares. The community is one of the bases composing FECONAU.

5. The applicants indicated that the ancestral land or subject of the claim by the community has been parceled out into hundreds of individual plots by the local authorities. Between 2008 and 2009, GOREU's Regional Directorate of Agriculture (*DRAU* for its Spanish acronym) allegedly granted 212 "proofs of ownership" to smallholders (land traffickers, generally migrants, settled in the Amazon region with the purpose of illegally acquiring and selling lands) regarding the ancestral land of the community. Some time afterward, the smallholders requested the granting of property of said plots overlapping with the land claimed by the community, and registered the titles with Public Registries, thereby becoming "formal owners." It is further alleged that the community was not given the opportunity to challenge said proofs or titles, since the community was not aware of their existence. The applicants indicated that said proofs were granted irregularly.

6. Subsequently, several smallholders simultaneously sold the plots to the company Plantaciones de Pucallpa S.A.C., owned by the Melka Group, known today as Ocho Sur P. S.A.S. (hereinafter, "the company"). In the aggregate, according to the applicants, the company got hold of the ownership of 6845 hectares belonging to the ancestral land of the community. Said plots are identified as "Tibecocha Farm." Towards the end of 2012, it was reported that hundreds of workers of the company violently entered in order to cultivate oil palm. The applicants indicated that the intrusion of oil palm has generated a wide and profitable market of purchase and sale of lands with agribusiness purposes.

7. Between 2014 and 2015, DRAU reportedly granted at least 82 new "proofs of ownership" regarding the land claimed by the community, which managed to challenge 17 of them, about which the community became aware on their own. On 2016, DRAU declared the nullity of the "proofs" *ex officio* after irregularities were identified.⁴ In 2018, the Office of the Comptroller General of the Republic allegedly considered that the title process of ancestral lands of the indigenous community is at risk as a consequence of the grant of the 17 proofs of ownership and the issuance of a proof of ownership in 2016, in favor of a smallholder linked to the oil palm company, who also reportedly challenged the community's title proceeding through judicial means.

8. According to the applicants, between 2012 and 2015, the company deforested around 7 thousand hectares of forest belonging to the ancestral land of the community. Moreover, it was reported that since the company established in the community's land, acts of violence and harassment were perpetrated by the workers and land traffickers related to the company. The applicants alleged that the following facts have occurred since 2014 to date:

⁴ The applicants mentioned the following irregularities: a. The signatures of the interested parties (smallholders) were doubtful as compared to the ones recorded in their identity documents. In some cases, no signature was obtained; b. Ocular inspections were performed, a main event in the grant of a proof of ownership, simultaneously –impossible to perform by only one inspector– in 14 out of 17 cases; c. In one of the cases, it was proved that the information obtained during the ocular inspection was falsified; and d. In one of the cases, it was proved that a 16-year-old minor was favored with the granting of a proof of ownership.

- January 1, 2014: Alleged land traffickers burned Huber Flores', his wife's, Nazalith Mozombite, and his son's, Carlos Antonio Flores Mozombite, home, taking advantage of the fact that they were out working on the field. The applicants indicated that said measure was in retaliation upon the family's refusal to leave the area.
- April 9, 2016: 6 alleged workers of the company armed with sticks and machetes threatened members of the community, including Carlos Hoyos Soria (then president), while they demarcated the ancestral land. When the proposed beneficiaries returned, their path was blocked by foreigners, who logged trees over the trail. One of the foreigners said: "If you try to pass through here, along the same way you used to enter, you will be dead and die. If you come here again, we will not allow it. Anything can happen to any of your leaders."
- May 5, 2016: Around 60 workers of the company violently prevented a prosecution inspection to be performed by Ucayali's Prosecutors together with the Ministry of Agriculture (*MINAGRI* for its Spanish acronym) and some police officers. The purpose was to corroborate whether the company still operated despite the administrative sanctions imposed. The workers prevented entry to the cultivation areas; they treated the State agents arrogantly; and they threatened them with machetes and cutting weapons. A minute was drawn up on the outskirts of the company's facilities, under multiple threats. It was claimed that oil palm plantations were seen in a 300 meters' radius and more.
- September 7, 2016: A member of the community was threatened by 3 foreigners after having confiscated their chainsaws. The proposed beneficiary allegedly found them logging trees, with chainsaws, within the traditional territory, without authorization. One of the foreigners said: "If one day we find you again, whether in the river or on a trail, you will not get out alive."
- February 11, 2017: A group of people, allegedly workers of the company, arrived at Huber Flores' home and demanded that he left the place. Said people carried firearms (guns and shotguns) and cutting weapons (machetes and knives). Upon his refusal, they tried to beat him.
- March 15, 2017: A member of the community was pursued by two men on motorcycles during the afternoon while he returned to the district's capital. The men said that they had been paid to kill him in retaliation for having confiscated the chainsaws in September 2016. The attackers affirmed having been sent by a person related to the company.
- May 5, 2017: During a prosecution inspection in the context of the investigations of forest crimes committed by the company, 10 foreigners, armed with machetes, were found in the community's territory logging trees with chainsaws and heavy machinery. One of the foreigners allegedly requested a "proof of ownership" from the Regional Government. The foreigner said to a member of the community: "You, son of a bitch, we will meet with you some other time and we will make you pay. You think you're so big." Five hectares of forest were identified as destroyed in two days.
- May 27, 2017: DRAU representatives and members of the community were intercepted by around 400 people, when they were demarcating 750 hectares of the traditional territory of the community. One of the foreigners highlighted: "If the authorities and the members of the community try to enter, blood will be shed." As they returned to the village, the DRAU delegation and the members of the community were intercepted again by another group of people, related to the company. One of them pointed out: "Do not go one meter further from there, or blood will be shed."
- June 8, 2017: During a new prosecution inspection, accompanied by FECONAU leaders and 11 members of the community, lands recently granted to land traffickers under "proofs of ownership" by DRAU were visited. During the inspection, deforestation of 15 hectares of forest was corroborated, and chainsaws, heavy machinery and seedlings of oil palm ready to be cultivated were found. The group was intercepted by dozens of people armed with staked and machetes. One of them said to the proposed beneficiaries: "If you wish to pass through here, you will not be able to do so." The inspection was allegedly interrupted.
- August 20, 2017: A delegation of the community went to maintain a traditional corn farm and, when there, found approximately 20 foreigners in a recently established settlement. They said: "The community cannot take another step forward because this territory is not theirs, it is ours, and if the community enters again, anything can happen."

- September 7, 2017: during the night, 3 strangers approached the home of Richester Fasabi, a member of the community. They said: "This land is ours [...] We were looking for you to tell you that, Richard. Two things: you are going to leave, because these lands belong to the company [...] otherwise, you will have to face the consequences." For his safety, Fasabi moved to another house. Afterwards, a friend confirmed that he knew one of the directors of the company, approached and said: "Why don't you sell these lands? This company is mercenary and you will have to face the consequences."
- September 7, 2017: That same day, in the city of Pucallpa, armed men knocked Robert Guimaraes door, and asked if he was at home. The armed men left and intimidating message with his youngest daughter.
- September 8, 2017: Two hooded men, one of them driving a small vehicle and the other sitting behind, stopped behind Policarpo Sánchez (FECONAU leader) when he was waiting for the traffic lights to change on his motorcycle. The hooded men said: "Ah, you are also from FECONAU, you know what's waiting for you."
- September 23, 2017: 15 workers, who identified themselves as company personnel, appeared at Huber Flores' home, asking who he was. They reprimanded him for his presence, and indicated that those lands, including his house, belonged to the company. The workers announced that the area would be cleared, deforested and fenced soon, so he and his family had to leave. Flores answered that none of those lands belonged to them, but to the community. He added: "To leave, you will have to kill me," to which they answered: "You already know what will happen to you, the next time we will not warn you." Then, Flores and his family decided to leave the area.
- December 11, 2017: A group composed of members of the community and FECONAU decided to explore one of the deforested areas in the community's territory so as to gather evidence of the destruction. There, they were fired at by armed people, which shots almost reached a person. The people assured they were obtaining a "proof of ownership" with DRAU's support; and indicated having been ordered to fire and kill.
- January 5, 2018: 2 armed and hooded people arrived at an elderly man's house in the community, whose house is located in the outskirts of the plantations. They appeared before a relative of the elderly man, showed a shotgun, and said they were looking for the leaders and members of the community. "We are willing to kill," they said. On January 20, 2018, several hooded people tried to attack the same house.
- April 2, 2018: Robert Guimaraes and Jamer López (FECONAU leaders) were violently assaulted by 2 hooded people, who threatened them with guns. Then, said people stole money from FECONAU, after having followed them up.
- April 18, 2018: The Prosecutor's Office proved the presence of plots with illegal cultivation of coca, near Zanja Seca Farm, of the company in the boundaries of the Permanent Production Forest (*BPP* for its Spanish acronym) in Ucayali. This was done in the context of the diligence of reconstruction of the facts regarding an investigation for the murder of 6 farmers in Bajo Rayal hamlet.
- July 7, 2018: Carlos Hoyos Soria (then chief of the community), and his brother, were attacked by 3 hooded people, who shot him at point-blank when he was demarcating the boundaries of his community. Both found a new path, recently built by land traffickers, in an area known as "*Tres Mil*". The members of the community were shot twice. They were not harmed but, in Carlos' case, his right shoulder was dislocated. Subsequently, they found shelter outside the community.
- March 10, 2019: During the night, a Jeep truck with tinted glasses parked 50 meters away from Miguel Guimaraes Vasquez' home (current FECONAU president) in the city of Pucallpa. The driver of the vehicle had previously asked a neighbor for Guimaraes' domicile.
- March 23, 2019: The same vehicle returned to Miguel Guimaraes' home at around eight in the evening. The driver knocked his door insistently. However, when no response was given, he left the place.
- July 16, 2019: After arriving in a boat with food, mats, machetes, a linear motorcycle, gallons of fuel, among other objects, approximately 15 people started to clean the river bank, as if they were preparing a camp. Several trees had been torn down 200 meters away from Huber Flores' home. According to the applicants, the intention of the foreigners is to deforest all the area to pretend ownership of several years and request DRAU an ownership title.

- January 2020: Guimaraes had been followed by two black trucks with tinted glasses, which followed him when he went to his domicile and to work.
- February 14, 2020: While verifying the boundaries of the community, Carlos Hoyos and Iván Flores, together with other members of the community, corroborated the existence of many trees recently logged and even a small sawmill. It was the area they had been given title of by GOREU few weeks ago. The invaders disappeared when they saw them arrive. Afterwards, other leaders such as James Rodríguez Sangama, Luisa Mori Gonzáles and Iván Flores Rodríguez report having been insulted and threatened by the traffickers that constantly intimidate them.
- March 2020: During the state of emergency arising from the pandemic, the company did not stop its activities.
- June 5, 2020: The Ombudsman Officer in Ucayali of the Ombudsman's Office, together with the Regional Health Directorate in Ucayali and the Public Prosecutor's Office, arrived at the premises of the company to review the labor and sanitary conditions and found, in a sample of 39 workers, that 35 had had a positive COVID-19 test result.
- June 9, 2020: FECONAU, together with other institutions, filed a criminal complaint against the company with the Prosecutors for crimes against public health and others.⁵ That same day, members of the community denounced the presence of foreigners who had deforested the lands that had been recently acknowledged by GOREU. In them, the foreigners cultivated and placed stakes as boundaries, and even built a shelter. Furthermore, in the area, members of the community have seen on several occasions intruders with cutting weapons (such as machetes and axes) and firearms. Miguel Guimaraes (president of FECONAU [sic]) received threatens to his life and integrity from an unknown telephone number. He was told, with insulting and threatening words, that they knew where he lived. It is not the first time that he received such calls.
- July 7, 2020: Two people related to land trafficking and to the company threatened members of the community to death when they carried out "self-boundaring" tasks in the land they had been recently given title to. Said people had entered unauthorized and carrying machetes and chainsaws. Their intention was to log. The invaders left saying they would return to those lands and expel them.
- July 20, 2020: the community reported the deforestation of their ancestral land. In addition to finding several cubic meters of logged trees in half a hectare of forest, more than one hectare of coca cultivation was identified.
- Recently, Mr. Guimaraes was allegedly assaulted twice by armed criminals who had also been following him. It was further claimed that he was stolen money, his motorcycle and other belongings, the first time at the entrance of his domicile, and the second one outside the offices of FECONAU in Pucallpa.
- August 17, 2020: The community denounced three loggers, who reported to have "ownership certificates"; they were found with chainsaws within the territory of the community, after having logged hundreds of trees. The loggers threatened the indigenous people with death, and threatened to return soon with their families to permanently invade the area. Nevertheless, as they were outnumbered, the loggers were directed to the center of the community where they were put at the disposal of the Public Prosecutors' Office.

9. Domestically, the applicants reported having held several meetings with local, regional and national authorities.⁶ Internationally, the applicants reported having made the Committee on the Elimination of Racial Discrimination (*CERD* for its Spanish acronym) and the United Nations Special Rapporteurship aware of the situation about the situation of human rights defenders. Moreover, the applicants reported the following complaints and actions in the domestic sphere:

⁵ The applicants mentioned the following crimes: spread of dangerous or contagious diseases, violation of sanitary measures, threats to safety and health conditions at work, and forced labor.

⁶ The applicants referred to, among others, personnel of the Congress of the Republic, the Ombudsman's Office, the Ministry of Agriculture and Irrigation, the Ministry of Environment, the Ministry of Interior, the Ministry of Justice and Human Rights, the Regional Government of Ucayali, and the Police Region of Ucayali, among others.

- “Requests for personal guarantees” with the Regional Prefecture in Ucayali so that they have police protection.⁷ There was a report about 13 requests for personal guarantees between 2017 and 2020, but no progress has been made since it is reported that the accused fail to appear at the scheduled hearings. Of those 13 [sic], guarantees were only granted in favor of Huber Flores, his wife and his son on August 17, 2017; and of Miguel Guimaraes on June 17, 2020. However, they claimed that said guarantees are not effective.
- Two criminal complaints for attempted aggravated homicide in 2007 and 2018, respectively, which were allegedly closed. The applicants challenged the fact that the Public Prosecutors’ Office does not identify the aggressors or access certain areas of the community’s territory. Furthermore, the identification is difficult due to the fact that the alleged aggressors, since most of them are foreigners, have reportedly denounced members of the community for having confiscated chainsaws and expelled land trafficker to the inside of their territory. With respect thereto, 5 investigations were reported about, 3 of which were closed.⁸
- 13 complaints filed by members of the community against the company and its workers, both for the invasion and the destruction of their lands, including the aggressions received.⁹ In one of them, the investigation was allegedly formalized, “organized crime” was identified, and included the company and several of their workers. Said case is pending in Lima due to its complexity. On December 15, 2017, upon request of the Specialized Prosecutor of Environmental Crimes, the National Criminal Court decided to grant precautionary measures “so that [the company, its workers and other persons that work in the company] refrain from performing any kind of predatory activity in the forest within the region of Ucayali, especially in the abovementioned areas.” It is claimed that said measures are not being complied with. In May 2017, the Prosecutors’ Office, in the context of one of the complaints, made a prosecution corroboration in the territory, and found 10 new hectares destroyed. In June 2017, in another prosecution corroboration, 15 more hectares were reported as destroyed with heavy machinery. A chainsaw and new oil palm seedlings were also found.
- A complaint for the protection of constitutional rights (*amparo*) regarding the community’s territory in 2016. After several adverse decisions, the Constitutional Court of Peru ordered to admit the complaint in September 2017. Since then, there has been no final resolution.
- Several decisions adopted by environmental authorities of the State, such as: (i) in September 2015, the General Directorate of Environmental Agrarian Affairs of the Ministry of Agriculture (*DGAAA* for its Spanish acronym) ordered “as a preventive measure [the company] to freeze the intensive agricultural activities it is developing in the plots located [...] in Nueva Requena District, Province of Coronel Portillo, Ucayali Department, until the classification of Lands according to their Greater Capacity of Use approved by the competent authorities is filed”; (ii) in July 2016, the DGAAA disapproved the study on lift and assessment of the soil resource filed by the company; (iii) in July 2016, the DGAAA specified the company’s administrative liability and sanctioned it with two fines, one of them for the approximate amount of USD 150,000. According to the applicants, the company appealed this sanction and, even to this date, the case is being heard by the Superior Court of Justice in Lima; and (iv) in January 2020, the DGAAA rejected the Environmental Compliance and Management Program (*PAMA* for its Spanish acronym).

10. Finally, in a general manner, the applicants challenged the matter of health and indicated that the Regional Health Directorate in Ucayali confirmed 18 positive COVID-19 cases in members of Santa Clara de Uchunya community, out of a sample of 25 people. Subsequently, the applicants

⁷ The applicants referred to 12 requests for personal guarantees regarding different persons in the community due to events of death threats and verbal abuse.

⁸ The status of the other two complaints is: i) preparatory investigation (formalized), and ii) with request of closure.

⁹ The applicants referred to the following complaints: (1) in 2015, for a crime against forests in preparatory incitement (formalized); (2) in 2016, for a crime against the public administration (closed proceeding); (3) in 2017, for a crime against forests at trial stage; (4) in 2018, for a crime against forests in preparatory investigation (not formalized); (5) in 2018, for a crime against forests in preparatory investigation (not formalized); (6) in 2018, for a crime against forests in preparatory investigation (formalized); (7) in 2018, for the offense of unlawful appropriation (aggravated) and damages (aggravated) in an intermediate stage; (8) in 2018, for a crime against forests (aggravated) in preparatory investigation (formalized); (9) in 2019 for a crime against forests (aggravated) in preparatory investigation (not formalized); (10) in 2020, for a crime against forests (aggravated) in preparatory investigation (not formalized); (11) in 2020, for the offense of unlawful appropriation (aggravated) in preparatory investigation (not formalized); (12) in 2020, for deforestation; and (13) in 2020, for criminal flagrancy and threats, 9 months of pretrial imprisonment was requested for the invaders. However, the request was dismissed yesterday, March 20.

reported that on June 16, 2020, said Directorate performed 27 serology tests for discard, out of which 12 cases were confirmed as positive and 15 are suspicious. They indicated in general terms that some persons presented symptoms and two allegedly died in July 2020. As declared by the applicants, the members of the community have mainly resorted to traditional medicine for treatment. On the side of the State, treatment has included provision of basic medicine, prior payment, upon diagnosis of the first 11 cases, pending follow-up.

2. Response from the State

11. The State reported that the requirements in Article 25 of the Rules of Procedure are not complied with. Moreover, the State indicated that, due to COVID-19 in the national territory and the mandatory social distancing measures, it was ordered that state entities suspend onsite activities and that remote working be given priority due to the global sanitary crisis, developing their activities gradually. Consequently, it was reported that not all the information has already been gathered, and they requested that the limitations to gather appropriate information be taken into consideration, which information, upon collection shall be referred in the form of a supplementary report.

12. The State highlighted that no specific information has been provided as regards the 34 communities comprising FECONAU, thereby being understood that the proposed beneficiaries are the members of Santa Clara de Uchunya indigenous community and the 3 FECONAU identified leaders. The State also indicated that the community is not registered with any Public Registry, and neither does a pending title exist as regards registration of the community's property with said entity. In Public Registries, only the registration entry corresponding to the inscription of the Community in the Register of Legal Persons of the Registry Office in Pucallpa is recorded. The State detailed that the Community must comply with domestic regulations, and the proceedings set forth therein, to achieve acknowledgment of the extension of their territory. Notwithstanding the foregoing, the State reported that said situation is subject to a legal process pending decision by the Constitutional Court.

13. The State reported it has a 2018-2021 National Plan on Human Rights aimed at guaranteeing management of public policy on said matter. Its Guideline No. 3 develops the design and execution of policies in favor of 13 special protection groups, among them, human rights defenders. As part of its goals, the Plan has foreseen the establishment of a "Registry of Risk Situations of Human Rights Defenders" and, for 2021, a "Mechanism Implemented for the Protection of Human Rights Defenders." To this date, after the creation of a work group in October 2019, and 6 meetings of said group, a proposed standard was established to regulate the implementation of a "Registry of Situations of Human Rights Defenders".¹⁰ Nowadays, the systematization of the contributions and comments to a second version of the proposed standard is being completed, so as to obtain subsequent approval and achieve the goal set forth in the Plan.

14. On the other hand, the State reported that on April 27, 2019 the "Protocol to Guarantee the Protection of Human Rights Defenders" was approved, which aims to: 1) promote acknowledgement of human rights defenders and work on the prevention of risk situations in which they may find themselves; 2) coordinate with the competent authorities and institutions a guarantee to protect their integrity and security; and 3) promote an adequate and effective investigation, prosecution, punishment and reparation in cases of attacks directed at these persons, by means of the organization of actions with the competent authorities and institutions.

¹⁰ Elaborated with the participation of representatives of State entities, civil society indigenous organizations and business unions.

15. Within the framework of the "Protocol", on August 12, 2020, Miguel Guimaraes Vasquez, president of FECONAU, Efer Silvano Soria, president of the Native Community of Santa Clara de Uchunya, and Juan Carlos Ruiz Molleda, lawyer of IDL, requested the Human Rights Ombudsman's Office (*DGDH* for its Spanish acronym) the activation of the "Early Warning Procedure"¹¹ of the Protocol, in favor of Carlos Hoyos Soria, Richester Fasabi Sinuiri, Huber Flores Rodríguez, Iván Flores Rodríguez and Miguel Guimaraes Vásquez, as well as the other members of the Native Community of Santa Clara de Uchunya. From that date, the aforementioned document was derived to analyze whether the requirements for the admission of the request for implementation of the Early Warning Procedure are met, and a decision is expected in the following days. The State specified that, previously, the activation of the Alert Procedure had not been requested. The actions provided by the framework of the "Protocol" only benefit people who carry out activities regarding human rights defense, special protection group to whom this sectorial instrument is directed which the Peruvian State has.

16. Regarding other protection measures, the State indicated that it has requested information on the guarantees granted in favor of the proposed beneficiaries and their execution. In addition, information was requested from the National Police of Peru and the Public Prosecutor's Office on the measures adopted within the framework of their authority. However, to date, such information has not been obtained, so the necessary coordination will continue to transfer the information in order to communicate it to the IACHR as soon as possible. Regarding the complaints, the State also indicated that information was requested from the Judiciary, Public Prosecutor's Office and National Police of Peru, without a response to date. Once the information is collected, a supplementary report will be sent.

17. Regarding the legal request for protection of constitutional rights, the State reported that, although it was initially declared inadmissible, on August 20, 2018, the Constitutional Court decided to admit it for processing. On September 25, 2019, the Court checked the case in a public hearing, being, to date, pending resolution. Therefore, the issues relating to the acknowledgement of the property claimed by the Community as its own are pending decision, being a matter to be determined at domestically and not in a supranational instance.

18. Finally, the Peruvian State indicated that it will forward the information it receives from the health sector, in order to forward it to the IACHR as soon as possible. In the context of COVID-19, the State considered it important that the IACHR considers the complementarity of the Inter-American System for the Protection of Human Rights, in line with what was indicated by the Inter-American Court when it decided on the request for Provisional Measures filed in favor of 4 victims and 1 relative

¹¹ The State explained the procedure for Early Warning against Attacks or Threats against Human Rights Defenders of the Protocol to Guarantee their Protection: For the admission of requests for activation of the aforementioned Procedure, compliance with the following requirements must be verified: a) identification of the potential beneficiary, and their current location; b) consent from (a) potential beneficiary (a), unless this (a) is impeded (a) by serious cause; c) narration of the facts related to the attack, the threat or the risk situation, which must be supported by evidence, as far as possible; d) express request for the protection action or urgent protection action that the potential beneficiary wishes to obtain. Furthermore, once the request for activation of the Early Warning Procedure has been accepted, the Coordination Team prepares two studies as quickly as possible: a) the Risk Assessment Study, which corresponds to the reported situation, and b) the Action Assessment Study protection or urgent protection action that, if applicable, should be granted. The result of both studies must be submitted by means of a technical report to the DGDH as soon as possible. If the result is favorable, the corresponding Resolution is issued, with the following protection actions: Legal assistance through public defense, within the framework of its powers; accompaniment of observers in court proceedings; visits of the Ministry of Human Rights and Justice (*MINJUSDH* for its Spanish acronym) officials, with the possibility of requesting the participation of the Ombudsman's Office; public acknowledgment by state entities; communication with the competent jurisdictional authorities so that the underlying structural causes are addressed in the investigation of an attack against the beneficiary; any other that may be required.

of *Case of the Miguel Castro Castro Prison v. Peru*, which is in the stage of Supervision of compliance with the Judgment, which case indicated the situation of persons deprived of liberty in the context of the COVID-19 pandemic.

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

19. 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 (“OAS”). These general oversight functions are established in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with this Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm to persons or to the subject matter of a petition or case currently under review of the organs of the Inter-American System.

20. 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 precautionary nature aims to safeguard the rights at risk until the request under consideration in the Inter-American System is resolved. 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” is determined as of the information provided and 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.

21. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.¹²

¹² 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*

22. As a preliminary aspect, the Commission considers it pertinent to clarify two aspects: the first, regarding the nature of the precautionary measures mechanism; the second, regarding the universe of proposed beneficiaries.

23. In the first place, the Commission recalls that, through the mechanism of precautionary measures, it is not called upon to make any determinations on the compatibility of judicial decisions or the compatibility of the Community's titling procedure with the American Convention, or of other administrative procedures that led to the delivery of proofs of ownership or property titles to other people. In the same way, it is not up to the Commission, in this procedure, to determine the extension or scope of the land right of the Santa Clara de Uchunya indigenous community or to resolve the controversy related to who the owners of the disputed lands are. Such matters, by their very nature, require determinations on the merits that may be more appropriately analyzed in a petition or case.

24. It is further recalled that, by its own mandate, the Commission is not called upon to find any criminal liability of the persons proposed as beneficiaries or of those reportedly involved in the alleged incidents. Therefore, the analysis that the Commission carries out below is exclusively related to the requirements of seriousness, urgency and risk of irreparable harm established in Article 25 of its Rules of Procedure, which can be resolved without making any determinations on the merits.

25. Second, the Commission emphasizes that the applicants have identified as proposed beneficiaries the members of Santa Clara de Uchunya indigenous community and FECONAU. Although it is noted that FECONAU brings together 34 communities in Ucayali, the applicants did not provide information on the situation of all those communities, except for Santa Clara de Uchunya indigenous community, which is one of the bases of the Federation. Similarly, although the applicants referred to certain leaders of the FECONAU, the available and recent information focuses mainly on Mr. Miguel Guimaraes Vasquez in his capacity as current president of the Federation. Thus, with regard to the State's assertions, the Commission deems, as proposed beneficiaries in this matter, the members of the Santa Clara de Uchunya indigenous community and Mr. Guimaraes in his capacity as president of FECONAU, when analyzing the procedural requirements.

26. Having specified these items, the Commission proceeds to analyze compliance with the seriousness requirement. In this regard, the Commission notes that the alleged facts are within a particular context that the Ucayali Region in Peru is experiencing. As indicated by the Ombudsman's Office of Peru in 2017, large-scale cultivation of oil palm and cocoa in regions, such as Ucayali, has been causing the loss of forest and wildlife heritage as a result of deforestation; environmental pollution due to improper handling of the chemical inputs used for the production of these crops; and, conflict situations around the ownership and property of private lands and indigenous territories.¹³ On that occasion, the Ombudsman's Office referred to the situation of the Santa Clara de Uchunya indigenous community and the impact to which it was exposed by such activities.¹⁴

27. Recently, the Commission observes that international bodies have alerted the State of Peru about the situation the Community is facing. In August 2019, the Committee on the Elimination of

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.

¹³ Ombudsperson's Office of Peru, "Deforestation by agro-industrial crops of oil palm and cocoa. Between the illegality and ineffectiveness of the State", Adjunct Reports Series - Report No. 001-2017-DP / AMASPP/MA, 2017, page 8.

¹⁴ *Ibidem*, pages 64-66

Racial Discrimination asked the State to “protect the members of the Indigenous Community of Santa Clara de Uch[u]nya from intimidation, harassment, threats and attacks by groups of land traffickers present within the ancestral territory.”¹⁵ And, in February 2020, the United Nations Special Rapporteur on the situation of Human Rights Defenders, after visiting Peru, described the situation of the community as an “emblematic example” when referring to the actions taken to defend their rights against activities that impacted them.¹⁶

28. In this context, the Commission identifies that, according to the applicants, the members of the Community have been exposed to various risk events as a consequence of the legal actions they initiated to protect their rights and territorial claims. Mainly, the Commission warns that such actions are intended to prevent both the presence of foreigners who seek ownership of the lands that the community considers theirs as well as the continuation of oil palm cultivation activities that would deforest the area, which they attribute mainly by the actions of a company and its workers. In this regard, the applicants reported the following events: i) members of the community were followed by unknown persons whenever they left the community or moved to the capital of the region; ii) insults and direct death threats that allegedly seek to get the community members to leave the area and not continue setting “self-boundaries” of areas that they sought to title and that were later titled in their favor; iii) the use of weapons such as shotguns, revolvers, knives or machetes, including chainsaws or heavy machinery to carry out their activities in the area, mainly on the outskirts of the community; iv) serious limitations on the movement of community members based on death threats; v) foreigners, on certain occasions, have allegedly surpassed the capacity of local authorities, preventing them from properly carrying out their inspection and investigation activities in the area; and vi) attacks against community members, such as burning of their homes or shots; among others. In the case of Mr. Miguel Guimaraes, president of FECONAU, the applicants reported on: i) tracking of trucks with tinted glasses during their commute to home and to work, and visits by unidentified people to their homes; ii) armed assault on property at the doorstep of his domicile and outside the FECONAU office, after follow-ups; and iii) threats against his life from unknown telephone numbers; among others.

29. The Commission understands the seriousness of such events in the particular context in which they appear. When analyzing them, it should be noted that they have been continued over time, at least since 2014, and despite the legal actions taken by members of the community with the support of the president of FECONAU. Furthermore, it is worth highlighting, in order to assess the seriousness of the impact that the proposed beneficiaries are likely to bear, the information according to which the foreigners are armed, having materialized attacks against the proposed beneficiaries, and having been able to surpass -by force and threats- the local authorities who have sought to control or investigate the events that occurred in the area. The foregoing suggests in effect that the alleged aggressors allegedly have sufficient means to carry out the possible materialization of subsequent damages to the rights to life and personal integrity of the proposed beneficiaries. In addition, given the continuity of the events reported, the Commission observes that various state institutions have already warned about the situation that the community is undergoing in the face of the irregular actions of the identified company, its workers, people related to it and local authorities,

¹⁵ In English: “3. Protect the members of the Santa Clara de Uchnya indigenous community from intimidation, harassment, threats and attacks by groups of land-traffickers present within the ancestral territory”. In: Committee on the Elimination of Racial Discrimination (CERD) Communication from the Chair to the Permanent Representative of Peru to the United Nations Office, 29 August 2019.

¹⁶ UN, End of Mission Statement, Michel Forst, United Nations Special Rapporteur on the situation of Human Rights Defenders Visit to Peru, January 21 to February 3, 2020. Available at: <https://www.ohchr.org/sp/NewsEvents/Pages/DisplayNews.aspx?NewsID=25507&LangID=S>

which in the Commission's opinion impacts the situation they are facing, which, by not being duly attended to, affect its continuity.

30. Along these lines, the Commission highlights what was identified by the Regional Directorate of Agriculture of Ucayali (DRAU) in 2016 and the Office of the Comptroller General of the Republic in 2018, who have already warned of the situation the community is facing in view of the actions of foreigners in the area and the activities of oil palm. The alleged events reportedly continue despite the fact that, at the request of the Special Prosecutor for Environmental Crimes, the National Criminal Court granted precautionary measures in 2017 ordering that the company involved refrain from continuing with predatory activities. In addition, the Commission notes that, between 2015 and 2020, administrative decisions were adopted that ordered the stoppage of intensive agricultural activities, sanctioned the company, and rejected its Environmental Compliance and Management Program. Some of these decisions were allegedly questioned through judicial means. Notwithstanding the abovementioned, in June 2020 the Ombudsman's Office identified that the company continued operating.¹⁷ In that sense, the Commission notes that, given the nature of the reported facts, despite even judicial and administrative decisions adopted to address the problem, the alleged risk situation has persisted over time.

31. The Commission takes note of the response provided by the State and the actions taken under the National Human Rights Plan. In particular, the decision that indicates that the proposed beneficiaries requested the activation of the "Early Warning Procedure" on August 12, 2020 within the framework of the "Protocol to Guarantee the Protection of Human Rights Defenders" stands out. As indicated by the State, there has not yet been a pronouncement on said activation request. Moreover, with regard to the appeal for the protection of constitutional rights initiated by the Community to protect its territory, the State indicated that it had been admitted by the Constitutional Court, and is pending a decision. Regarding other protection measures and complaints, the State indicated that it will provide a report once it receives the information from the competent entities.

32. However, the Commission observes that to date no information has been provided on the status of the protection measures reportedly granted to certain proposed beneficiaries or the actions taken in the framework of the complaints and criminal proceedings in process. Neither does the Commission have, to date, information on the result of the "Early Warning Procedure" and of the implemented measures. On the matter, the Commission notes that the proposed beneficiaries have required, on at least 13 occasions, measures of protection denominated "requests of personal guarantees", having only granted measures in favor of Huber Flores, his wife and his son on August 17, 2017; and of Miguel Guimaraes on June 17, 2020, with the aim of providing them with police protection. Similarly, the proposed beneficiaries have filed at least 15 criminal complaints for the facts concerned in the present request, which are in different procedural stages.

33. Also, although the State indicated that personal guarantees were granted to certain members of the community and the president of FECONAU, the information available does not allow for a review of the suitability or effectiveness thereof as regards the alleged situation of risk. In the same way, in spite of the fact that legal actions have been initiated regarding the alleged facts, the Commission understands that the risk sources have not yet been absolutely mitigated or neutralized, since in accordance with the elements contained in the request, it is possible to reasonably consider

¹⁷ Ombudsman's Office Ombudsman's Office: Company of Oil Palm in Ucayali Operated with 87% of its Workers with COVID-19, June 9, 2020. Available (in Spanish) at: <https://www.defensoria.gob.pe/defensoria-del-pueblo-empresa-de-palma-aceitera-en-ucayali-operaba-con-87-de-trabajadores-con-covid-19/>

that the proposed beneficiaries continue facing it. In effect, it is noticed that the company is still allegedly operating despite adverse administrative and judicial decisions, that armed foreigners are still in the area, and that the competent authorities, according to the claims, still face difficulties to perform their investigation and prosecution activities and to enforce their decisions. As demonstrated by the foregoing, during 2020, threats allegedly still occur against the proposed beneficiaries.

34. Moreover, it should be noted that, according to the information provided, no material advances have been made to sanction those who are allegedly liable for the events denounced, which is a relevant aspect at the moment of determining the risk that the proposed beneficiaries reportedly face and the possibility of reoccurrence, since it represents one of the main mechanisms that the State has to identify the sources of risk, understand the facts in context, as well as the common sources of risk related to the actions that the members of the Community have been carrying out together with the President of FECONAU. Similarly, when imposing the respective sanctions, the State sends a message of non-tolerance regarding acts against the proposed beneficiaries.

35. Thus, the Commission observes that the applicants indicated that, in one of the formalized investigations, the figure of “organized crime” was identified, which affects the seriousness of the risk situation in light of the facts alleged in this procedure. In turn, to the extent that it is closely related to the legal actions that they have been taking to defend their rights or claim ownership of certain territorial extensions, the Commission understands that, while such actions are pending and make progress, new events of risk are likely to occur. In particular, it is noted that a decision of the Constitutional Court and other criminal complaints are still pending.

36. In view of the foregoing, and given the continuity of risk factors against the proposed beneficiaries, the lack of information on suitable and effective protection measures, and the status of the investigations, the Commission concludes that, from the *prima facie* standard applicable to the precautionary measures mechanism, the rights to life and personal integrity of members of the Indigenous Community of Santa Clara de Uchunya and Mr. Miguel Guimaraes are in a situation of serious risk.

37. Regarding the requirement of urgency, the Commission considers that the elements contained in the request suggest the possibility that the proposed beneficiaries may face imminent materialization of damage to their rights, due to the indications about the persistence of the alleged risk situation, the seriousness of the reported events and the lack of information on the suitability and effectiveness of the protection measures, in conjunction with the continuity of the complaint actions that the proposed beneficiaries have initiated to defend their rights and claim ownership of certain geographic extensions.

38. Regarding the requirement of irreparable harm, the Commission understands that it has been met, since the potential impairment of the rights to life and personal integrity, by their very nature, constitute the maximum situation of irreparability.

39. In relation to the arguments of the State regarding the principle of complementarity, the Commission considers it pertinent to recall that, in effect, the State, through its domestic authorities, is primarily responsible for protecting the human rights of the persons under its jurisdiction; in this regard, the nature of international jurisdiction is “auxiliary” or “complementary,” without replacing

it.¹⁸ The Commission notes, however, that invoking the principle of complementarity as an argument that the adoption of precautionary measures is unwarranted requires that the State concerned satisfy the burden of proving that the proposed beneficiaries are no longer in a serious and urgent situation pursuant to Article 25 of the Rules of Procedure, in the sense that the measures adopted by the State have had a substantive impact in reducing or mitigating the risk, so that compliance with the requirements is no longer fulfilled and therefore international intervention to prevent irreparable harm is not required.¹⁹

40. In the present matter, although the Commission takes into account the actions taken by the State to protect the rights of the proposed beneficiaries, after the analysis carried out on the situation in question, and observes the requirements established in Article 25 of the Rules of Procedure have been met, in such a way that the adoption of precautionary measures is pertinent.

41. Finally, the Commission notes that the applicants have provided information on the health situation of the members of the Community. Although it is identified that the alleged situation is framed in the particular context of COVID-19, given the general nature of the information provided, even after further information has been requested, the Commission considers that it is not possible at this time to identify the requirements of Article 25 of the Regulation as met, being it necessary to have more information from the parties.

IV. BENEFICIARIES

42. The Commission hereby declares that the beneficiaries of these precautionary measures are the members of the Santa Clara de Uchunya indigenous community, who are susceptible to identification under the terms of Article 25(6)(b) of the IACHR Rules of Procedure, and Mr. Miguel Guimaraes Vasquez in his capacity of current president of FECONAU, all of whom are duly identified in this proceeding.

V. DECISION

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

- a) adopt the necessary measures, while implementing an appropriate cultural perspective, to protect the rights to life and personal integrity of the beneficiaries, avoiding in particular the commission of acts of violence by third parties, pursuant international human rights law;
- b) consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and

¹⁸ See *inter alia*: IACHR, *Francisco Javier Barraza Gómez regarding Mexico* (MC-209-14), Resolution of August 15, 2017, para. 22. Available (in Spanish) at: <http://www.oas.org/es/cidh/decisiones/cautelares.asp> ; IACHR, *Paulina Mateo Chic regarding Guatemala* (MC 782-17), Resolution of December 1, 2017, para. 34; Available (in Spanish) at: <http://www.oas.org/es/cidh/decisions/pdf/2017/49-17MC782-17-GU.pdf> ; and IACHR, *Santiago Maldonado regarding Argentina* (MC 564-2017), Resolution of August 22, 2017, para. 16. Available (in Spanish) at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/32-17MC564-17-AR.pdf>

¹⁹ *Ibid*

c) report on the measures adopted in order to investigate the facts that led to the adoption of this precautionary measure and thus avoid their reoccurrence.

44. The Commission requests that the Government of Peru 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.

45. 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.

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

47. Approved on October 28, 2020, by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay; and Esmeralda Arosemena de Troitiño; members of the IACHR.

María Claudia Pulido
Acting Executive Secretary