

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 94/2020**

Precautionary Measure No. 679-20

Members of the Munduruku Indigenous People regarding Brazil¹

December 11, 2020

Original: Spanish

I. INTRODUCTION

1. On July 16, 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 Associação das Mulheres Munduruku Wakoborün *et al.*, in favor of the members of the Munduruku Indigenous People (“the persons proposed as beneficiaries”), urging the IACHR to request that the State of Brazil (“Brazil” or “the State”) adopt the measures necessary to protect their rights to life and personal integrity. According to the request, the persons proposed as beneficiaries are at risk in the context of the COVID-19 pandemic, especially considering their particularly vulnerable situation, flaws in health care and the presence of unauthorized third parties in their territory.

2. The Commission requested information from the State, pursuant to Article 25 of its Rules of Procedure, on August 18 and October 15, 2020. After being granted time extensions, the State submitted reports on September 4, October 30, and November 5 and 13, 2020. The applicants sent additional information on August 24 and October 22, 2020.

3. Having analyzed the submissions of fact and law provided by the parties, the Commission considers that the information submitted shows *prima facie* that the members of the Munduruku Indigenous People are in a serious and urgent situation, since their rights to life and personal integrity are at serious risk. Consequently, in accordance with Article 25 of the IACHR’s Rules of Procedure, the Commission requests that Brazil: a) adopt the measures necessary to protect the rights to health, life and personal integrity of the members of the Munduruku Indigenous People, implementing, with a culturally adequate approach, prevention measures as regards the spread of COVID-19, as well as providing them adequate medical attention in terms of availability, accessibility, acceptability and quality, in accordance with the applicable international standards; b) consult and agree upon the measures to be implemented with the persons proposed as 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 prevent such events from reoccurring.

II. SUMMARY OF FACTS AND ARGUMENTS

1. Information alleged by the applicants

4. The applicants indicated that the Munduruku Indigenous People is composed of nearly 14,000 persons located in the riverbanks of Tapajós River and its tributaries, in the state of Pará, Brazil. The people is distributed in seven lands: Munduruku, Sai Cinza, Kayabi, Reservas Praia do Índio e Praia do Mangué,

¹ In accordance with Article 17(2)(a) of the IACHR’s Rules of Procedure, Commissioner Flávia Piovesan, a Brazilian national, did not participate neither in the debate nor in the decision of the present matter.

Sawre Muybu and Sawre Bapin, there being groups in voluntary isolation² in Sawre Muybu and Munduruku. According to the information provided, the persons proposed as beneficiaries are allegedly at particular risk in the context of the COVID-19 pandemic due to reported flaws in timely and adequate health attention and to considerably frequent contact with unauthorized third parties—who, it is claimed, perform illegal gold mining and wood extraction activities—present in their lands, who, it is alleged, are potential vectors of the disease. In addition, due to the gold mining activities, it is reported that there is environmental contamination of the area and parts of the Tapajós River, affecting the health of the persons proposed as beneficiaries.

5. According to the request, the indigenous peoples have historically presented with greater vulnerability to respiratory infections, which is allegedly acknowledged by the State in the “National Contingency Plan for Human Infection due to the New Coronavirus in Indigenous Peoples” from the Special Secretariat of Indigenous Health. Nevertheless, the Special Indigenous Health District (*DSEI* by its Spanish acronym) Tapajós River, responsible for the healthcare of the persons proposed as beneficiaries, is allegedly classified as a “critical level” of vulnerability, without specific and effective concrete measures having been implemented to face the pandemic. Neither was it explained with how many indigenous persons and in which lands the DSEI has allegedly performed and “active search” of cases of Influenza Syndrome and Severe Acute Respiratory Syndrome.

6. According to the request, “[...] the expenses incurred by DSEI Tapajós show that there is no significant change for the acquisition of essential items to face the pandemic (individual protection equipment and medical equipment, for instance), nor important services for the attention of the ill (expenses including tickets and transfers of staff or transfers of the ill) [...].” Moreover, the applicants stressed that, in addition to the fragility of the DSEI Tapajós River, there is allegedly no urban health public network, since from the two closest cities, one of them has no Intensive Care Units, and the other one has only four mechanical ventilators.

7. In this context, it is claimed that, between May and June 2020, 13 members of the Munduruku People died due to COVID-19.³ On August 24, 2020, the applicants reported that in the operating area of the DSEI Tapajós River, there are 1436 cases confirmed, this DSEI being the second most affected. In October 2020, the applicants reported 7 new deaths among the persons proposed as beneficiaries due to COVID-19.⁴

8. The applicants claimed that the National Contingency Plan for Human Infection due to the New Coronavirus in Indigenous Peoples, as well as other measures adopted by the State,⁵ are insufficient, since they do not foresee the removal of the unauthorized third parties from the indigenous lands; rather, they focus on mobility restrictions of indigenous persons in urban centers and the entry of authorized civilians to indigenous lands. As a correlated element, the request notes that the areas of greater COVID-19 contagion

² “Indigenous peoples in voluntary isolation are indigenous peoples or segments of indigenous peoples who do not maintain sustained contacts with the majority non-indigenous population, and who generally reject any type of contact with persons who are not part of their own people”. See: IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas*, 2013, para. 14. Available at: <http://www.oas.org/en/iachr/indigenous/docs/pdf/report-indigenous-peoples-voluntary-isolation.pdf>

³ Jerônimo Manhuary, Angélico Yori, Raimundo Dace, Vicente Saw, Amâncio Ikõ, Arcelino, Francidalva Saw, Martinho Borõ, Benedito Karo, Bernardo Akay, Amália Poxo, Joaquim Poxo, Apolônia Apiaká. On July 9, Elinaldo Kirixi. Other entities, such as Instituto Socioambiental, report 11 deaths until August 6, 2020.

⁴ Fernando Kirixi, in the village Morro do Korap, Cururu River; a Munduruku boy aged three in the village Sumaúma, Tapajós River; Carlito Kirixi, chief of the village Terra Preta, das Tropas River; Argelina Muo from the village Patawazal, Cururu River; a Munduruku member of the village Aipereg, Tapajós River; Mariano Boro from the village Sai Cinza and Luis Karo from the village Missão Cururu, Cururu River.

⁵ The applicants remark Technical Report 1, 2, 3 and 4/2020 from SESAI and Administrative Rule No. 419/PRES, dated March 17, 2020 from the National Foundation for the Indigenous (FUNAI by its Spanish acronym).

have been exactly those closest to mining areas, although the virus started to spread in villages farther away. In fact, as alleged by the request, resource exploration in the areas inhabited by the Munduruku People exponentially increased in 2019 and 2020, thereby reflecting how insufficient state actions are, and “forcing more and more contact, even with indigenous persons in voluntary isolation.”

9. According to the Technical Report on Imminent Contamination Risk of Indigenous Peoples by the New Coronavirus Caused by the Action of Illegal Invaders,⁶ 2019 was the year with the highest deforestation rate in the lands of the Munduruku People in the last 10 years, with an increase of 177% as compared with 2018. Similarly, during the first semester of 2020, four deforestation alerts were allegedly issued, since the deforested area until June reportedly surpasses the deforestation registered in 2017 of the referred lands.⁷

10. According to the documents provided, the alleged increase in illegal exploration activities in the areas inhabited by the Munduruku people is connected with a reduction in or insufficiency of state monitoring activities. “[...] three months before the end of 2019, out of 83 scheduled inspections, the [Chico Mendes Institute of Biodiversity Preservation] had, in fact, performed only 13. As a comparison, in 2018, 31 inspection were performed by ICMBio in the Amazonas [...].”⁸ During the pandemic, illicit exploration activities were allegedly not reduced.

11. The applicants added that the situation has been reported to the responsible authorities. On July 8, 2020, the Federal Supreme Court (*STF* by its Spanish acronym) granted precautionary measures in favor of the indigenous peoples in Brazil in the context of the COVID-19 pandemic,⁹ which ordered, *inter alia*, the creation of health barriers to prevent contact of unauthorized third parties with the peoples recently in contact or isolated; the creation of a “Plan to Face COVID-19 for the Brazilian Indigenous Peoples,” which must include measures to be adopted to “isolate” the invaders in connection with the indigenous communities; and the extension of indigenous health services to indigenous peoples in lands not yet demarcated.

12. The decision acknowledged “the risk in the delay, since there is an imminent risk of contagion if containment mechanisms as regards the entry to such lands are not created” and that “[...] there is no doubt that the removal [of unauthorized third parties] is imperative and the presence of those groups in indigenous lands constitutes a violation to the right of those peoples to their land and their culture, and threatens their life and health.”¹⁰ However, the precautionary decision at that time did not provide for the removal of those unauthorized persons, but ordered that a plan providing for prevention of entry be elaborated.¹¹ The decision took into consideration the allegation that “the National Contingency Plan for Human Infection due to the New Coronavirus in Indigenous Peoples, [...] is not precise, only expresses general guidelines and neither stipulates specific measures or a schedule nor defines responsibilities. It is observed, even, that the Plan did not have the participation of indigenous communities when prepared.”¹²

13. More than three months after the STF granted the above-mentioned precautionary measure, on October 21, 2020, the Court rejected the second version of a “General Plan to Face and Control COVID-19

⁶ Oviedo, A.; Oliveira de Araújo, E.N.; de Paula Batista, J.; Moreira dos Santos, T.; *Relatório Técnico sobre o Risco Iminente de Contaminação de Populações Indígenas pelo Novo Coronavírus em Razão da Ação de Invasores Ilegais*, June 22, 2019 (in Portuguese).

⁷ Oviedo, A.; Oliveira de Araújo, E.N.; de Paula Batista, J.; Moreira dos Santos, T.; p. 26 and 28.

⁸ MPF, PR-AM-00018516/2020, April 22, 2020.

⁹ STF, ADPF 709 MC/DF.

¹⁰ STF, ADPF 709 MC/DF, para. 42.

¹¹ STF, ADPF 709 MC/DF, para. 44.

¹² STF, ADPF 709 MC/DF, para. 57.

for Indigenous Peoples,” and ordered that it be reformulated. To the date of receipt of the last communication from the parties, no new plan had been purportedly approved.

14. In August 2020, a preliminary judicial decision in a Public Civil Action (ACP by its Spanish acronym), the court determined emergency inspections against illegal mining in lands inhabited by the Munduruku People, especially in the Munduruku and Sai Cinza Indigenous Lands, and the preparation of a Work Plan for the removal of unauthorized third parties therefrom. The conclusion was that the fact that the presence of persons involved in illegal mining puts the indigenous peoples’ health at risk, particularly during the COVID-19 pandemic, is “uncontested.”¹³ The decision declared that it is understood that “[...] unlawful mineral exploration in indigenous lands, indicated in the present action, has intensified due to the unarticulated action of the bodies/entities responsible for the inspection and repression of environmental and mineral crimes in indigenous lands.” Further, the decision assessed specific inspections, such as “*pajé bravo II*,” which “did not have the expected results,” the Munduruku indigenous land was not inspected due to “lack of logistic support and limitations in aircrafts.”

15. In the above-mentioned ACP, it was allegedly already emphasized that, in May 2020, in the context of the COVID-19 pandemic, there was a demonstration by those involved in illegal mining in the municipality of Jacareacanga, which was even supported by an authority in the National Foundation for the Indigenous (FUNAI by its Spanish acronym), urging the end of an inspection called “Operation Green Brazil 2” in Muduruku lands. Said Operation was alleged performed on August 5, 2020. However, it suspended the following day. In addition, the applicants noted that, after the preliminary decision in the ACP was rendered, an action, still in the framework of “Operation Green Brazil 2,” called “Golden Calf” (phase 2), took place “with the purpose of repressing illegal mining in the Munduruku indigenous land,” which resulted in the location of at least 2000 illegal mining workers. The operation was allegedly ended without any indication as regards the ultimate measures to be adopted.

16. Moreover, the applicants provided information on alleged impacts to the health of the persons proposed as beneficiaries due to mercury contamination derived from illegal gold exploration. A research published on October 15, 2020,¹⁴ which assessed the levels of mercury contamination in the Sawre Muybu indigenous land, concluded that “all participants, including children, adults and elderly persons, men and women, without exception, showed levels of mercury in their hair samples. The levels of contamination vary between 1.4 to 23.9 µg Hg/g of hair, and approximately 6 out of 10 (57.9%) participants present with mercury levels above 6µg.g⁻¹.”¹⁵ Moreover, the study observed that more than 15% of the children showed problems in neurodevelopment tests and 70% of adolescents (between 10 and 19) presented with contamination rates greater than 6µg.g⁻¹.¹⁶ The research concluded: “what is known as dose-effect response was proven. That is, the more we advanced on regions more affected by mining, the greater was the contamination level observed;”¹⁷ and considering the effects of contamination during pregnancy: “[...] a whole generation of persons living in the Amazon region may be compromised if nothing is done by the Brazilian authorities.”¹⁸

2. Response from the State

¹³ Public Civil Action, 1000962-53.2020.4.01.3908 – Justiça Federal de Itaituba (PA), August 25, 2020.

¹⁴ Basta, P.C.; de Souza Hacon, S. (Coord.); Impacto do mercúrio em áreas protegidas e povos da floresta na Amazônia Oriental: Uma abordagem integrada saúde-ambiente: Aspectos Metodológicos e Resultados Preliminares, October 15, 2020, p.3.

¹⁵ The study considered “prevalence of contamination” in levels higher than 6µg.g⁻¹.

¹⁶ Basta, P.C.; de Souza Hacon, S., 2020, p. 3 and 44.

¹⁷ Basta, P.C.; de Souza Hacon, S., 2020, p. 44.

¹⁸ Basta, P.C.; de Souza Hacon, S., 2020, p. 44.

17. After detailing its domestic legislation related to indigenous peoples, the State acknowledged that gold mining in the relevant region in the present request for precautionary measures “[...] involves some conflicts in the area, which has demanded a constant effort by several state entities, especially the police force,” emphasizing that there are allegedly no legal permits for gold exploration in the Munduruku land. Nevertheless, it was alleged that there is no state omission in the protection of the persons proposed as beneficiaries. In fact, the FUNAI reportedly selected the Munduruku indigenous land as one of the priorities for the “inspection, planning, employment and control of deforestation in the Legal Amazon region.” In this sense, the State stressed the emergency operation “*Pajé Bravo II*” in the Munduruku and Sai Cinza lands on August 5, 2020, which allegedly succeeded in seizing or disabling, in one day of operation:

- 10 hydraulic excavators
- 01 skidder tractor
- 15 motor pumps
- 01 chainsaw
- 08 fuel storage tanks of 1000 liters
- 03 logistic support camps for the illegal activity
- 01 16-Calibre rifle

18. The State also informed about the “Golden Calf Operation,” carried out on August 6, which allegedly involved more than 30 police units, in compliance with 6 arrest warrants, and added that “although the action did not reach the central mining areas in the Munduruku [indigenous land], [...] it did reach up to now 50% of the mining fronts in the region, which occurred in less than 3 days of operation.” Furthermore, the State provided information about the illegal mining combat actions in indigenous lands in general, without clarification about whether they are related with the situation of the current request, and if so, which of them are.

19. The State further stated that the Ministry of Justice and Public Safety is preparing two action plans for the removal of unauthorized third parties from indigenous lands, one of them focused on safety, and the other, on social matters. The plans are allegedly related to actions developed to comply with domestic judicial decisions on the matter.¹⁹

20. Specifically in connection with measures to prevent the spread of COVID-19, the State initially provided general information as regards how to face the pandemic in Brazil and detailed its legislation related to healthcare of indigenous peoples. As regards prevention of the above-mentioned disease in indigenous peoples, the State indicated that a “National Contingency Plan for Human Infection due to the New Coronavirus in Indigenous Peoples” was created, as well as district plans at the level of the specific DSEIs. The State also reported that it produced documents, since January 2020, to inform the indigenous peoples about prevention and adequate handling of persons with a suspected diagnosis, as well as provided seminars and guidelines, and distributed that material through the Special Secretariat of Indigenous Health (*SESAI* by its Spanish acronym). Similarly, FUNAI reportedly adopted “territorial protection measures,” supporting 311 health barriers (without specifying whether these relate to the persons proposed as beneficiaries), in addition to having prohibited entrance of third parties to indigenous lands since March 17, 2020.²⁰

¹⁹ Public Civil Action No. 1000551-12.2017.4.01.4200, pending before Federal Civil and Criminal Court No. 1 of the Judicial Section in the State of Roraima; Public Civil Action No. 1015910-84.2020.4.01.0000, pending before Federal Civil and Criminal Court No. 4 of the Judicial Section in the State of Roraima; appeal of instrument No. 1015910- 84.2020.4.01.0000, pending before Federal Civil and Criminal Court No. 4 of the Judicial Section in the State of Roraima; precautionary measure in the allegation of violation of the fundamental precept No. 709/DF, pending before the Federal Supreme Court.

²⁰ Administrative Rule No. 419/PRES.

21. Particularly regarding the situation of the persons proposed as beneficiaries, the State noted that the DSEI-Tapajós teams, responsible for the healthcare of the persons proposed as beneficiaries, were allegedly guided to prioritize “the work of active home search of cases of Influenza Syndrome and Severe Acute Respiratory Syndrome, [...] preventing movement of people.” According to the information provided by the State, on August 22, 2020, the DSEI-Tapajós confirmed 1625 positive COVID-19 cases; and up to the last information received by the IACHR, 30.7% of the indigenous population had been tested. The State further provided charts with information about the number of healthcare actions performed by DSEI-Tapajós between January and June 2020, as well as the individual protection material, rapid tests and medications acquired, and stated that the transfer service for patients and professionals in urgent or emergency cases is working without interruption.

22. Additionally, the State stressed that almost all the budget was allegedly allocated to the DSEI Tapajós River in 2020, concluding that there was no damage caused to healthcare of the persons proposed as beneficiaries, “these persons were correctly cared for, and no increase in expenditure was necessary because government measures were adopted.” Additionally, the State asserted that Rapid Response Teams were hired, with eight nurses and seven nursing technicians, to reinforce healthcare during the pandemic. The information provided adds that 30 “Indigenous Primary Care Units” were implemented with the purpose of treating the indigenous persons in the villages. There was no clarification as regards whether those units benefit the persons proposed as beneficiaries or whether they are sufficient.

23. Also, the information provided by the State in a report dated September 3, 2020 indicated that the DSEI-Tapajós River is the second largest in incidence rate of the disease and that “the DSEIs Parintins, Alto Rio Negro, Tapajós River and Litoral Sul also stand out, with reproduction numbers greater than 1.5, which means a high risk of spread of the disease in the territory, since reproduction numbers of such magnitude mean that the disease is advancing more actively in these territories.”

24. In view of the above-mentioned, and considering the existence of relevant internal judicial proceedings, mainly ACP 1000962-53.2020.4.01.3908 and ADPF 709, the State claimed that the internal remedies have not yet been exhausted before filing the present request, and no State omission can be identified in this situation, since due to the subsidiary role of precautionary measures of the IACHR, these do not apply to the present case.

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

25. The precautionary measures mechanism is part of the Commission's function to overseeing compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general oversight functions are established in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR, while 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, and when these measures are necessary to avoid an irreparable harm to persons.

26. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that precautionary and provisional measures have a dual nature, one being precautionary and the other being protective. As regards the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding the precautionary nature, precautionary measures have the purpose of preserving legal situations being considered by the IACHR. Their precautionary nature aims to safeguard the rights at risk until the request under consideration in the Inter-American System is resolved. Their object and purpose

are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, implement the ordered reparations. Regarding the process of decision making and, according to Article 25(2) of the Rules of Procedure, the Commission considers that:

- a. “serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American System;
- b. “urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

27. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond a doubt. The information provided, for the purposes of identifying a serious and urgent situation, must be assessed from a *prima facie* standard.²¹ Furthermore, in connection with the claims made by the State regarding the alleged lack of exhaustion of domestic remedies, which is a cause for admissibility in a petition, the Commission recalls that the mechanism of precautionary measures is governed exclusively by Article 25 of its Rules of Procedure. In this sense, paragraph 6(a) sets forth only that: “in considering the request, the Commission shall take into account the context and the following elements: a. whether the situation has been brought to the attention of the pertinent authorities or the reasons why it would not have been possible to do so [...]”²²

28. In view of the foregoing, the Commission observes that the State has been aware of the present situation through different remedies, mainly of judicial nature, filed before the competent authorities, which also rendered specific decisions in favor of the persons proposed as beneficiaries. However, it is noted that the applicants have alleged that, despite those domestic actions and decisions, the risk of the persons proposed as beneficiaries continues. In this sense, the Commission shall proceed with the analysis of whether the procedural requirements of Article 25 of the Rules of Procedure are met. This analysis does not imply making determinations on the merits or rendering a decision on the international responsibility of the State, which corresponds to the analysis of a petition or case; rather, the analysis only aims to identify the requirements of seriousness, urgency and irreparable harm, which can be done without any determinations on the merits.²³

²¹ 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. Available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf

²² Article 46 of the American Convention, quoted by the State, refers to “a petition or communication lodged in accordance with Articles 44 or 45 [...]” which refer exclusively to the petitions and cases system. It is observed that Articles 44 and 45 of the American Convention refer to “denunciations or complaints of violations” of the Convention. The mechanism of precautionary measures is not intended to establish the existence or lack thereof of one or more violations (see Article 25(8) of the Commission’s Rules of Procedure), and the subsequent international responsibility of the State; rather, as expressed in Article 25 of the Commission’s Rules of Procedure, precautionary measures “[...] shall concern serious and urgent situations presenting a risk of irreparable harm to persons or to the subject matter of a pending petition or case before the organs of the inter-American system.”

²³ Further, in the present request for precautionary measures, the IACHR observes that the State has repeatedly alleged that there is no failure to act on its part. In this regard, it must be recalled that according to international law, in a situation that may place a person at risk, the protection measures adopted by a State must be those “necessary within the scope of its competence which, judged reasonably, could be expected to prevent

29. Before analyzing the present matter, the Inter-American Commission recalls as a precedent the matter *Members of the Yanomami and Ye'kwana Indigenous Peoples regarding Brazil*,²⁴ related to the situation of exposure to COVID-19 of indigenous peoples in Brazil. At that time, the IACHR took into consideration concomitant factors which, operating together in the context of the COVID-19 pandemic, exposed the beneficiaries' rights to a situation of imminent risk. In particular, the following was observed: the alleged deficiencies in adequate and timely access to medical attention; unintended contact with unauthorized third parties present in the indigenous land, who are reportedly potential vectors of the disease; and the purported immunological vulnerability of the indigenous peoples. The Commission observed that the information provided by the State expressed specific actions in certain villages, which are not sufficient in relation to the multiplicity of risk factors alleged, the complexity of the situation and the dimension of the indigenous people proposed as beneficiary.

30. In analyzing this matter, the Commission also takes into consideration as contextual element that "historically, indigenous and tribal peoples have been subjected to exclusion and discrimination conditions," which is why the IACHR reiterates that "according to international law in general, and to inter-American law in particular, special protection is required so that indigenous peoples can exercise their rights fully and equitably in comparison with the rest of the population. In addition, it may be necessary to establish special protection measures for indigenous peoples in order to ensure their physical and cultural survival—a right protected in several international documents and conventions."²⁵

31. As regards the requirement of seriousness, the Commission also observes that the present matter occurs within a particular and exceptional context characterized by the COVID-19 pandemic and its spread among the persons proposed as beneficiaries in the 7 geographical areas inhabited by the Munduruku People in Brazil. In this specific matter, the Commission notes that the proposed beneficiaries are allegedly exposed to the spread of COVID-19, according to the applicants, as a consequence of forced contact with unauthorized third parties present in the above-mentioned indigenous lands and other areas, who serve as potential vectors for the virus due to their constant passing between indigenous lands and urban communities.

32. It is crucial to take into account, as regards the serious impact that the rights to life and personal integrity of the proposed beneficiaries face as a consequence of the multiplication of unintended contact, that controlling these factors is beyond the scope of the proposed beneficiaries. That contact reportedly has a special impact in the situation of those indigenous peoples who are in isolation.

33. Indeed, the applicants provided relevant information indicating an increase in illegal exploration within indigenous lands. The Commission observes, for instance, that 2019 presented an increase of 177% in deforestation as compared with 2018, with the highest level in the last 10 years (see *supra* para. 9). According to the applicants, this increase is connected with the alleged reduction or insufficiency of state inspections. Regarding this, in accordance with the judicial decision rendered by the Federal Supreme Court on July 8, 2020, "[...] there is no doubt that the removal [of unauthorized third parties] is imperative and

or avoid that risk." In this sense, the measures adopted must be suitable and effective, that is, due to their own nature, they must face the risk and produce the expected results so as to end that risk, respectively. See: I/A Court. H.R., Case Velásquez Paiz *et al.* v. Guatemala (Preliminary Exceptions, Merits, Reparations and Costs), November 15, 2015, para. 123; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, 2011, paras. 521-522. Available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>

²⁴ IACHR, *Members of the Yanomami and Ye'kwana Indigenous Peoples regarding Brazil* (PM 563-20), Resolution 35/20, July 17, 2020. Available (in Spanish) at: www.oas.org/es/cidh/decisiones/pdf/2020/35-20MC563-20-BR.pdf.

²⁵ IACHR, *Compendium on Equality and Non-Discrimination: Inter-American Standards*, OEA/Ser.L/V/II.171, Doc. 31, February 12, p. 103-106. Available at: <https://www.oas.org/en/iachr/reports/pdfs/Compendium-EqualityNonDiscrimination.pdf>.

the presence of those groups in indigenous lands constitutes a violation to the right of those peoples to their land and their culture and threatens their life and health.”²⁶

34. In addition to the foregoing, according to the applicants, the DSEI-Tapajós River, the entity responsible for the healthcare of the persons proposed as beneficiaries, is classified as at a “critical level of vulnerability.” In this regard, it is observed that the information provided by the State does not permit the identification of specific measures having been adopted to ensure timely health care in the particular context of the pandemic, since the State did not inform about, *inter alia*, the effectiveness of the above mentioned “National Contingency Plan for Human Infection due to the New Coronavirus in Indigenous Peoples.” In fact, it is noted that a large part of the information sent by the State is general (see *supra* para. 20), without specification of which of the reported measures were in fact implemented in favor of the persons proposed as beneficiaries (for instance, health barriers, “Rapid Response Teams,” “Indigenous Primary Care Units”). Even in connection with the allegation that DSEI - Tapajós River was guided to perform an “active search” of cases of Influenza Syndrome and Severe Acute Respiratory Syndrome, upon being questioned by the applicants (see *supra* para. 5), there are no sufficient elements to allow for an indication of whether the measure was duly implemented.

35. Further, the Commission has no elements that allow for an indication that specific measures have been adopted in favor of the protection of the peoples in voluntary isolation in the context of the present matter, even upon their particular vulnerability. The IACHR recalls that, in the case of indigenous peoples in voluntary isolation, “[...] States have ‘the duty to prevent the occurrence of these comprehensive situations of human rights violations, so as to preserve the life and physical integrity of the members of indigenous and tribal peoples, through the adoption of the public health preventive measures which are pertinent in each case. These safeguards are particularly important for indigenous peoples in voluntary isolation or initial contact’.”²⁷

36. In this sense, the Commission does not have enough elements that indicate that state actions have been sufficient and effective to protect the members of the Munduruku People against the alleged risks, particularly taking into consideration that indigenous peoples in Brazil, as it is claimed, have historically presented with immunological vulnerability as regards respiratory infections.²⁸ In fact, according to the information provided by both parties, there are allegedly between 12 and 20 confirmed deaths due to COVID-19 in a scenario where the disease is advancing. Pursuant to the information provided by the very State, until August 22, 2020, more than 10% of the Munduruku People had already been diagnosed with COVID-19 (1625 positive cases); and in September 2020, DSEI-Tapajós River was allegedly classified as second as regards incidence rates of the disease, with “[...] reproduction numbers greater than 1.5, which implies a high risk of spread of the disease in the territory, since reproduction numbers of such magnitude mean that the disease is advancing more actively in these territories (see *supra* para. 23).

37. For its part, the State emphasized the implementation of actions to face illegal mining in the lands inhabited by the Munduruku People, alleging that there was no omission by the State on the subject. Although the Commission takes notice of the mentioned actions, it can be observed, according to the judicial decision ACP 1000962-53.2020.4.01.3908, that “[...] unlawful mineral exploration in indigenous lands, indicated in the present action, has intensified due to the unarticulated action of the bodies/entities

²⁶ STF, ADPF 709 MC/DF, para. 42.

²⁷ IACHR, Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, 2013, para. 116.

²⁸ See: Brazil, National Contingency Plan for Human Infection due to the New Coronavirus in Indigenous Peoples, March 2020. Available (in Portuguese) at: <https://www.gov.br/pt-br/noticias/saude-e-vigilancia-sanitaria/2020/04/coronavirus-ministerio-da-saude-lanca-medidas-prevencao-em-povos-indigenas>.

responsible for the inspection and repression of environmental and mineral crimes in indigenous lands.”²⁹ In this sense, the STF, in the context of ADPF 709, determined the elaboration of a plan to “isolate” the invaders of indigenous communities and reinforced that it is a state duty to create a plan providing for the prevention of entry,³⁰ acknowledging “the risk in the delay, since there is an imminent risk of contagion if containment mechanisms as regards the entry to those lands are not created.”³¹ Irrespective of the referred domestic judicial decisions, on October 21, 2020, the STF rejected the second version of a “General Plan to Face and Control COVID-19 for Indigenous Peoples,” and ordered that it be reformulated. Considering the last communications from the parties, there is no information about the measures adopted to reformulate that plan.

38. Additionally, the Commission notes with concern that the applicants observed, without the State disproving it, that the presence of mining allegedly affects the health of the persons proposed as beneficiaries, especially due to mercury contamination. According to an investigation published on October 15, 2020,³² levels of mercury were identified in all participants, and the contamination values in almost 60% of them were greater than $6\mu\text{g.g}^{-1}$. The study concluded that “what is known as dose-effect response was proven. That is, the more we advanced on regions more affected by mining, the greater was the contamination level observed.”³³ Considering the effects of contamination in pregnancy, it was determined that “[...] a whole generation of persons living in the Amazon region may be compromised, if nothing is done by the Brazilian authorities” (see *supra* para. 16). In this sense, although the Commission does not have sufficient information to reach the same determination in connection with alleged environmental contamination and the impact on the health of the persons proposed as beneficiaries in all the 7 geographical areas, it is considered important to remember that exposure to mercury, according to the World Health Organization, “(even in small amounts) can cause serious health problems and is a threat to the development of the child in utero and early in life.”³⁴ In any case, the Commission notes with special seriousness the impacts identified in childhood within the Sawre Muybu indigenous land (see *supra* para. 16).

39. In view of the foregoing, and considering the current context of the COVID-19 pandemic, that the persons proposed as beneficiaries are allegedly in frequent contact with unauthorized third parties, who are potential vectors of the disease, in the lands they inhabit, in addition to the lack of sufficient and effective healthcare measures in their favor, and recalling the special situation of historic vulnerability of indigenous peoples, mainly the peoples in voluntary isolation, the Commission considers that, from the *prima facie* standard applicable to the precautionary measures mechanism, the rights to life, personal integrity and health of the members of the Munduruku Indigenous People, are at serious risk.

40. Regarding the requirement of urgency, the Commission considers that it is met, taking into account the context of the COVID-19 pandemic, the information available on the advance of the spread of the virus, the confirmed positive cases and deaths, as well as the special immunological vulnerability of the indigenous peoples of recent contact or isolated. All the above, added to the continuous presence of unauthorized third parties in the territories and the reported lack of adequate measures on prevention and healthcare. In these circumstances the adoption of urgent measures to protect the rights to life, personal

²⁹ STF, ADPF 709 MC/DF, para. 44.

³⁰ STF, ADPF 709 MC/DF, para. 44.

³¹ STF, ADPF 709 MC/DF, para. 28.

³² Basta, P.C.; de Souza Hacon, S., 2020.

³³ Basta, P.C.; de Souza Hacon, S., 2020, p. 44.

³⁴ “Elemental and methylmercury are toxic to the central and peripheral nervous systems. The inhalation of mercury vapor can produce harmful effects on the nervous, digestive and immune systems, lungs and kidneys, and may be fatal. The inorganic salts of mercury are corrosive to the skin, eyes and gastrointestinal tract, and may induce kidney toxicity if ingested.” WHO, Mercury and health, March 31, 2017. Available at: <https://www.who.int/es/news-room/fact-sheets/detail/mercury-and-health>

integrity and health of the persons proposed as beneficiaries is justified, to further ensure access to an adequate and timely medical treatment in accordance with the applicable international standards.

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

42. Lastly, 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.³⁵ The Commission notes, however, that invoking the principle of complementarity to support that the adoption of precautionary measures is unwarranted requires that the State concerned satisfy the burden of proving that the proposed beneficiaries are no longer in a serious and urgent situation pursuant to Article 25 of the Rules of Procedure, in the sense that the measures adopted by the State have had a substantive impact in reducing or mitigating the risk, so that compliance with the procedural requirements is no longer fulfilled and therefore international intervention to prevent irreparable harm is no longer required.³⁶

43. In this sense, in the present matter, the Commission has verified that the situation in question, in light of Article 25 of the Rules of Procedure, complies with the regulatory requirements and that the adoption of precautionary measures to safeguard their rights is subsequently adequate.

IV. BENEFICIARIES

44. The Commission declares that the beneficiaries of the present precautionary measure are the members of the Munduruku Indigenous People, living in the Munduruku, Sai Cinza, Kayabi, Reservas Praia do Índio e Praia do Mangue, Sawre Muybu and Sawre Bapin indigenous lands. These persons are sufficiently identifiable in terms of Article 25(6)(b) of the IACHR’s Rules of Procedure.

V. DECISION

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

- a) adopt the measures necessary to protect the rights to health, life and personal integrity of the members of the Munduruku Indigenous People, implementing, with a culturally adequate approach, prevention measures as regards the spread of COVID-19, as well as providing them adequate medical attention in terms of availability, accessibility, acceptability and quality, in accordance with the applicable international standards;
- b) consult and agree upon the measures to be implemented with the persons proposed as beneficiaries and their representatives; and

³⁵ See *inter alia*: IACHR, Francisco Javier Barraza Gómez regarding Mexico (PM-209-14), Resolution dated August 15, 2017, para. 22. Available at: <http://www.oas.org/es/cidh/decisiones/cautelares.asp>; IACHR, Paulina Mateo Chic regarding Guatemala (PM 782-17), Resolution dated December 1, 2017, para. 34; Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf>; and IACHR, Santiago Maldonado regarding Argentina (PM 564-2017), Resolution dated August 22, 2017, para. 16. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/32-17MC564-17-AR.pdf>

³⁶ Ibidem.

- c) report on the measures adopted in order to investigate the facts that led to the adoption of this precautionary measure, so as to prevent such events from reoccurring.

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

47. The Commission emphasizes that, in accordance with Article 25 (8) of the Commission's Rules of Procedure, the granting of precautionary measures and the adoption of those measures by the State do not constitute a prejudgment on the possible violation of the rights protected in the American Convention on Human Rights and other applicable instruments.

48. The Commission instructs its Executive Secretariats to notify the present Resolution to the State of Brazil and to the applicants.

49. Approved on December 11, 2020 by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice-President; Margarete May Macaulay; Esmeralda Arosemena de Troitiño, Julissa Mantilla Falcón, Edgar Stuardo Ralón Orellana, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary