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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 32/2021**

Precautionary Measure No. 216-21

**7 pregnant women of the Wichí ethnic group regarding Argentina**

April 16, 2021

Original: Spanish

**I. INTRODUCTION**

1. On March 12, 2021, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission,” or “the IACHR”) received a request for precautionary measures filed by Félix Díaz, from the Consultative and Participatory Council of Indigenous Peoples of the Argentine Republic, Santiago Canton and Lucas Gómez (“the applicants”), urging the Commission to require that the Argentine Republic (“the State” or “Argentina”) protect the rights of pregnant women of the Wichí ethnic group that are purportedly hiding in the wilderness of Formosa, in the town of El Potrillo, in precarious conditions due to the fear of being arbitrarily detained by the police and being taken to detention and confinement centers.

2. In accordance with Article 25.5 of its Rules of Procedure, the IACHR requested information from the State and additional information from the applicants on March 16, 2021. The applicants’ response was received that same day, and on March 19, the State submitted its own report. On March 22, the applicants submitted additional information, and on March 28, they sent their response to the State’s report. On March 29, the State responded to the additional information from the applicants. On April 8, both the applicants and the State provided updated information. On April 9, the applicants submitted additional information.

3. Upon analyzing the submissions of fact and law, the Commission considers, from the applicable *prima facie* standard, that 7 pregnant women are in a serious and urgent situation, since their rights to life, personal integrity, and health face a risk of irreparable harm. Consequently, the IACHR requests that the State of Argentina: a) adopt the necessary measures to protect the rights to life, personal integrity, and health of the beneficiaries. In particular, the State must adopt immediate measures to facilitate access to adequate medical care, according to the applicable international standards. These measures must be adopted with the beneficiaries’ free, informed and prior consent, with a perspective of cultural and linguistic relevance, integrating their indigenous worldview while implementing a gender approach; and b) agree on the measures to be adopted with the representatives and beneficiaries.

4. Additionally, the Commission considers it pertinent to request the following from the applicants: a) immediately provide, both to the Commission and the State of Argentina, all additional information in their possession and related to the risk faced by the 7 women beneficiaries of this precautionary measure; b) provide as soon as possible the available information about location or to identify the remaining 79 pregnant women who are reportedly at risk, and, thus, allow the State to exercise its international obligation of protection and avoid a greater risk for them; c) cooperate with the State in the implementation of the measures in favor of the beneficiary women.

**II. SUMMARY OF FACTS AND ARGUMENTS PROVIDED BY THE PARTIES**

**1. Information provided by the applicants**

5. The initial request sought the protection of the life, physical and mental integrity, and personal freedom of 86 pregnant women, their unborn children, and their forcibly abandoned children. The request includes information published in the media and interviews, and initially indicated that 86 pregnant women are hidden in the wilderness area of Formosa, in the town of El Potrillo, in extremely poor and precarious conditions, without public services or access to hospitals. These women allegedly live inside houses made of sticks and plastic, and their food consists of fruits from the wilderness and dry food found in the area, without access to drinking water.<sup>1</sup> They reported that many of these women belong to indigenous communities that are very isolated from urban centers, which is why they are unable to communicate in Spanish.

6. It was indicated that the decision to flee and hide is due to the fear of being arbitrarily detained by the Formosan police and transferred to detention and confinement centers, as has allegedly happened to “hundreds of women from their community.” In this regard, it was indicated that the Argentine provincial force has entered the native communities of El Potrillo with the aim of taking women at 3:00 or 4:00 a.m., with no warrant and without giving them any explanation. Once in these centers, the women are allegedly forced to give birth by cesarean section, they are deprived of their liberty. The babies are purportedly taken to Formosa and the mothers to Ingeniero Juárez, where they reportedly remain in isolation centers separated from their children.

7. According to the request, a leader of the Wichí community, Ericilia Agüero, made statements on alleged police abuses against the community and pregnant women which resulted in her being visited by the police on March 12, 2021, and being pressured to tell them where the women were but she did not reveal any information.

8. In addition to the indication that 86 women were hiding in the wilderness area of Formosa, the applicants provided individualized and identifiable information regarding 7 women. In this regard, the Commission was asked to keep their identity under “strict confidentiality.”

9. Regarding the remaining 79 unidentified pregnant women, the applicants in their initial report noted that it has been challenging to identify them by name as they are hidden in the forests of Formosa and afraid to reveal their identity but do want to be included and receive protection. The applicants further noted that they have sufficient elements to determine who they are. Additionally, the applicants identified 13 women and men who are allegedly protecting the pregnant women, also under strict confidentiality. Some of these individuals have reportedly been the target of threats from the Formosa Police.<sup>2</sup> The applicants considered that the potential issuance of precautionary measures is justified even without previously revealing the identity of the proposed beneficiaries, in reference to Article 44 of the American Convention on Human Rights, interpreting that “there are sufficient elements to determine who they are (and even to identify them at a later time), and therefore, they must be considered beneficiaries of the requested precautionary measures, in accordance with [the] case law [of the IACHR].”

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<sup>1</sup> In the interview, it is possible to see several women with their faces covered, while some make comments on the fear they currently live in. It is mentioned that there is a lot of persecution in their community and that they prefer to give birth in the wilderness area because they do not know if they will be able to return because “sometimes they perform a caesarean section on one.” Additionally, it was observed that they live in inadequate conditions with little food, without access to water and basic services. *TN Todo Noticias*: “HIDDEN AND TERRIFIED | The pregnant women in the forests of Formosa,” March 11, 2021, available on Facebook: <https://www.facebook.com/watch/?v=2903743573171599> [in Spanish].

<sup>2</sup> Y1, 51 years old; Y2, 53 years old; Y3, 60 years old; Y4, 30 years old; Y5, 53 years old; Y6, 35 years old; Y7, 30 years old; Y8, 30 years old; Y9, 61 years old; Y10, 51 years old; Y11, 50 years old; Y12, 35 years old; and Y13, 52 years old.

10. It was also reported that the context in Formosa purportedly reinforces the request as there is, according to the applicants, a pattern of aggression against pregnant women and their families; a pattern of lack of independence of the judiciary in the province of Formosa with restrictions on the exercise of rights during the years 2020 and 2021; lack of effectiveness of domestic judicial remedies; compulsive isolation of people with COVID-19 in centers without the minimum conditions of healthiness or hygiene; and the rejection of the “confinement” in such centers where people are deprived of their liberty in a similar manner to a criminal precautionary measure.

11. On March 16, 2021, additional information was received from the applicants, who indicated that three of the proposed beneficiaries were in labor and that they did not have the adequate medical care or sanitary conditions necessary to give birth. It was noted that delivery poses a high risk to one of the pregnant women as “she is in constant severe pain which worries her because of her health and that of her child.”

12. The applicants mentioned that, based on the media coverage of the 86 pregnant women’s situation, the government had launched an operation to locate them, and threatened the women caregivers of the indigenous community with imprisonment if they did not reveal the location of the pregnant women. The authorities reportedly went to the house of one of the proposed beneficiaries to ask about the location of the pregnant women, but she refused to answer for fear that they would perform a cesarean section and take their children away from them, the reason for which the police allegedly threatened to send her to prison.

13. Moreover, it was noted that the Formosa patrol is allegedly patrolling the area day and night, as well as monitoring and conducting surveillance with drones. In relation to the alleged context of persecution, the pregnant women allegedly have to move constantly through the Formosan wilderness to hide, which reportedly results in great complications due to the advanced stage of several pregnancies. They further claim that their fear is not unfounded, “considering new cases that arise daily regarding women separated from their children at birth due to health protocols, who do not receive adequate care and are being forced away from their children.”<sup>3</sup>

14. The applicants indicated that they would lift the request for confidentiality and reveal the location of the proposed beneficiaries with their express authorization, once the precautionary measures have been granted and guarantees from the national government are provided.

15. On March 22, 2021, additional information was received from the applicants indicating that, on that same day, one of the pregnant women nicknamed “La China,” aged 20, allegedly died as a result of a cesarean section performed without her consent in the “Las Lomitas” hospital. The young woman was reportedly captured in the wilderness area during a search operation carried out by the Formosa police. According to the applicants, “the police are currently guarding the hospital and they do not allow their relatives to see her.”

16. Moreover, one of the women proposed as beneficiaries, without specifying her name, went into labor while she was hiding in the forests. Fearing that she would not receive medical attention, and because she could not bear the pain, she decided to go to a hospital for treatment, and left without telling anyone. At hospital, the delivery allegedly complicated, and she was transferred to the Eva Perón

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<sup>3</sup> In this regard, they provided the following journalistic note: Clarín, “Desperate mother Dramatic Formosa: they took her newborn son from her arms and returned him dead a day later.” March 15, 2021, available [in Spanish] at [https://www.clarin.com/society/formosa-dramatica-took-away-newborn-son-arms-delivered-dead-day-after\\_0\\_szotcrQ5Y.html](https://www.clarin.com/society/formosa-dramatica-took-away-newborn-son-arms-delivered-dead-day-after_0_szotcrQ5Y.html)

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hospital, and from there to “Las Lomitas,” where she reportedly underwent cesarean section and was given her dead baby without receiving any explanation.

17. The applicants allege that women who choose to go to the health system are “marked” by physicians as having been sheltered by the Wichí community leader. This fear is reportedly based on the discriminatory practices and obstetric violence that indigenous women have suffered in Formosa for years. They further allege that M.A., one of the proposed beneficiaries, went to the medical center due to diarrhea and was denied assistance because she is one of the women refugees in the woods. In support of the above, the applicants submitted a “medical prescription,” which contains four laboratory tests requested, a number in the upper corner and the signature in the lower corner, all in black ink. Also, the number “4s 630” can be seen on the left side of the note, as well as the phrase “Bº Belgrano together [with the name of the indigenous leader who is reportedly accompanying them].” The applicants indicate that this is proof that medical attention is being denied to indigenous women linked to the Wichí leader.

18. The applicants referred to the reported maternal mortality rate of Formosa and reiterated that the proposed beneficiaries are afraid of having pregnancy checks because someone might perform a caesarean section without their consent and take their babies to Formosa, adding that these actions comprise obstetric violence and have a disproportionate impact on indigenous women. They also noted that the women are being followed and threatened by the police for denouncing this situation.

19. On March 28, 2021, the applicants provided observations on the information provided by the State. They initially pointed out that in the province of Formosa there has been historical and structural discrimination against the indigenous peoples in that territory. In this sense, the applicants provided a report or statement from different organizations on the history of the province of Formosa and claims on various issues, made by various civil society organizations,<sup>4</sup> which were sent to the governor of Formosa. The report dated February 12, 2021 addresses in general terms the situation in the province of Formosa, with some information on the COVID-19 pandemic mainly related to isolation centers. With regard to pregnant women, the report indicates that the working teams in the west of the province of Formosa received an anguished request from families who did not know where their relatives were. It further mentions that the ill were separated from their companions, while husbands were separated from their pregnant wives who gave birth alone.

20. Regarding the report submitted by the State, they alleged that it did not specifically address the proposed beneficiaries’ serious and urgent situation, since it did not specifically refer to the measures it has adopted to address the situation of the victims, but simply used its response to the request for precautionary measures to publicize its public policies.

21. It was further noted that after the State sent its report, additional serious situations were reported: on March 22, 2021, the newborn baby of Ms. M.F., who had been admitted to the Ingeniero Juárez hospital and undergone a cesarean section, reportedly died after birth due to complications caused by the mother’s high blood pressure.

22. The applicants also stated that the proposed beneficiaries’ fear is not based on mere assumptions as noted by the State but is centered on specific deaths of women and children that have been reported. In addition, the applicants questioned the State’s account of the two cases of infants who

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<sup>4</sup> Association for the Promotion of Culture and Development. Las Lomitas; Diocesan Aboriginal Pastoral Team. Formosa; María de la Merced Parish: Ingeniero Juárez, Formosa; Fundación Manos de Hermanos: Formosa; and Enrique Angelelli Neighborhood Center: Ingeniero Juárez. Formosa

died, deeming such accounts as contradictory, incomplete and false in some respects. In one of the reported cases, a newborn was separated from their mother and transferred without notifying the parents. The child's whereabouts were allegedly unknown for 14 days. In the second case, the parents were reportedly denied information after the delivery and the mother was separated from her child for 6 days. The applicants affirmed that stories like these create fear in the proposed beneficiaries.

23. It was also indicated that the State's allegations mentioning that there is no record of the mentioned cases takes away all value from the testimony of indigenous women of the Wichí community "La Esperanza" and is only aimed at silencing them. Moreover, it was alleged that the State only denies the facts based on a woman's the testimony, in whose regard it "believes that the complaint is false," indicating that no certain evidence of the actions taken was provided. Therefore, the applicants consider that the State denies the facts based on assumptions and unsupported reports.

24. In relation to complaints, it was pointed out that it is worrying that the State has ignored those filed at the domestic level and that it claims that no records exist. It was reported that in January of this year, the Secretary for Human Rights of the Nation, Horacio Pietragalla, was informed about the situation of women and that, on February 12, 2021, several civil society associations filed a complaint before the Secretary of Human Rights<sup>5</sup> on the alleged cases of separation of mothers and children.

25. Finally, it was stated that the mere existence of health protocols and "house arrest" do not guarantee that the rights of the proposed beneficiaries will be respected, nor does it remedy the legal status of the case at hand. In addition, it was alleged that the State has not carried out relevant investigations impartially, has not gathered first-hand information, and has not visited the province or carried out a territorial deployment. Regarding the two legal cases that are reportedly underway, concerning the allegations in the report on the pregnant women's situation, it is noted that the legal case brought before federal courts has not had any progress, and that the one brought before the common courts has not been carried out in a serious manner, since its only intention is to allegedly deny the situation in order to avoid State responsibility.

26. On April 8, 2021, additional information was received from the applicants indicating that the proposed beneficiaries belong to La Esperanza and El Potrillo communities of the Wichí indigenous ethnic group,<sup>6</sup> in the western Province of Formosa,. Moreover, they reiterated that, of the 86 pregnant women indicated since their initial communication, the 7 ones initially identified agreed to be fully identified before the State only after the granting of precautionary measures, when the request for identity confidentiality would cease. Regarding the remaining proposed beneficiaries, the applicants stated that they would send their express consent so that they be included in the precautionary measures in the event they are granted. The applicants provided the information below on the proposed beneficiaries, alleging the following considerations:

- 1) X1 - She is 24 years old and 8 and a half months pregnant. She is currently hidden in El Potrillo, where she does not have adequate medical care or the minimum sanitary conditions to give birth. Nonetheless, she is afraid to go to the hospital and have a cesarean section and be separated from her baby. She is reportedly being threatened by the Police.

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<sup>5</sup> In this regard, a video was provided where representative (*diputado*) Eduardo Ramírez told the Secretary of Human Rights Pietragalla that women are separated from their babies in Formosa: "They took a baby 150 km away without telling their parents," providing information on the cases reported by the applicants.

<sup>6</sup> The applicants report that the Wichí ethnic group has approximately 20,000 members, distributed into around 120 communities, and the Wichí live in a very large territorial area with complex access.

- 2) X2 - She is 23 years old and is in her sixth month of pregnancy. She is hidden in El Potrillo, where she does not have adequate medical care or the minimum sanitary conditions to give birth. She is afraid to go to the hospital and have a cesarean section and be separated from her baby.
- 3) X3 - She is 25 years old and is in her sixth month of pregnancy. She was brought from the "Las Lomitas" Hospital and the Police have come to look for her to take her to the hospital again, but she does not want to be carried away. She is hidden and is very afraid.
- 4) X4 - She is 32 years old, unable to walk as she is in her ninth month of pregnancy.<sup>7</sup> She is currently hidden in El Potrillo, where she does not have adequate medical care or the minimum sanitary conditions to give birth. She is afraid to go to the hospital and have a cesarean section and be separated from her baby.
- 5) X5 - She is 25 years old and is in her sixth month of pregnancy. She is hidden in El Potrillo, where she does not have adequate medical care or the minimum sanitary conditions to give birth. She is afraid to go to the hospital and have a cesarean section and be separated from her baby. She is reportedly being threatened by the Police.
- 6) X6 - She is 23 years old, 8 months pregnant. She is hidden in El Potrillo, where she does not have adequate medical care or the minimum sanitary conditions to give birth. She is afraid to go to the hospital and have a cesarean section and be separated from her baby. She is reportedly being threatened by the Police.
- 7) X7 - She is 20 years old, nine months pregnant. She is hidden in El Potrillo, where she does not have adequate medical care or the minimum sanitary conditions to give birth. She is afraid to go to the hospital and have a cesarean section and be separated from her baby. She is reportedly being threatened by the Police.

27. The applicants indicated that the 7 women identified gave their express consent to be represented before the Commission by them and furnished videos showing women X3 and X7, who informed that they are afraid and being persecuted by the police, further asking for help. In addition, they provided a video of M.A., cousin of two proposed beneficiaries, who is not pregnant but indicated that she has medical problems and that the police are looking for her for "having simulated to be pregnant for the report" and, therefore, she cannot go to receive medical attention.

28. The applicants reported that the El Potrillo hospital does not have a neonatology service and that pregnant women are afraid of persecution by the police. It was mentioned that there is no intercultural vision in the State's actions in this specific case, and that the situation has worsened with the passage of time. In this regard, it was mentioned that Ms. M.A. and two other proposed beneficiaries are being pressured by the police to sign a document reading "a fake pregnant woman" and that they have pretended to be pregnant.

29. In this sense, the applicants reiterated the information on the 7 women identified as proposed beneficiaries (see *supra* para. 7), stressing that they are afraid of going to a hospital and, therefore, they do not have access to medical attention, that they are being threatened by the police and some of them purportedly indicate that they do not want to undergo a cesarean section.

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<sup>7</sup> This was explained by Ms. Ercilia Agüero. See testimony published by Radio "CADENA 3" of Córdoba on the website: [https://www.cadena3.com/noticia/resumen-3/mi-bebe-nacio-y-se-llevaron-sin-dar-ninguna-explicacion\\_28205](https://www.cadena3.com/noticia/resumen-3/mi-bebe-nacio-y-se-llevaron-sin-dar-ninguna-explicacion_28205)

30. In relation to the complaints filed, it was indicated that in January 2021, the Secretary of Human Rights was allegedly notified of the separation of mothers and had the obligation to report the situation but did not do so. On February 12, 2021, several NGOs allegedly submitted a document reporting cases of separation of mothers from their children, but there was purportedly no response. On January 29, 2021, a preventive and corrective writ of habeas corpus was filed concerning the situation of indigenous people housed in isolation centers under unsanitary conditions. Moreover, it was mentioned that the president of the Consultative and Participatory Council (the applicants) contacted the National Institute of Indigenous Affairs (INAI) requesting that a note be presented to the government of Formosa or that the necessary measures be articulated to stop the police persecution against the Wichí people in western Formosa in the context of the pandemic.

31. Regarding the new COVID-19 isolation protocols, it was reiterated that they lack an intercultural approach. It was mentioned that home isolation requires the approval of a report demanding a series of socio-environmental conditions that the proposed beneficiaries allegedly cannot meet due to their culture and living conditions. It was argued that the protocols aim at making isolation in quarantine centers more flexible, but not at solving obstetric violence against indigenous women.

32. The applicants indicated that the El Potrillo hospital does not have the necessary conditions, since it does not have a neonatology service; facilities to perform surgical interventions (caesarean sections) in safe conditions and to treat possible complications; nor the necessary personnel and facilities to perform deliveries that require stricter control.

33. On April 9, 2021, additional information was received from the applicants, indicating that the authorities of the Province of Formosa have not conducted a “real, objective and serious” investigation into the situation, given that it does not include the victims’ testimony and that it concludes that the whole situation was a “television montage,” that none of the women have a medical record of current prenatal check-ups, and that they have allegedly been paid to act in the report. Moreover, it was indicated that the journalists who made the report were guarded during their report, and that the eight police officers who accompanied them had not been summoned in the investigation. The applicants consider that the montage theory is “completely disproved” by a complaint made by the Aboriginal Pastoral in February 2021 before the National Secretariat of Human Rights.

34. Additionally, it was indicated that the Formosa police are looking for the women to sign papers reading that they simulated to be pregnant, indicating the case of Ms. M.A. The applicants reiterated that the request to keep the identity confidential will be lifted when the precautionary measures are granted.

## **2. Information provided by the State**

35. On March 19, 2021, the State’s initial report was received. In the first place, it indicated that there was no express agreement of any of the women in the request for precautionary measures or any explanation of why the consent is not known. In addition, there is purportedly no agreement between the statement that the collective of women requesting protection is “determinable” while a specific number of 86 women is presented.

36. In the second place, the State pointed out that the request purportedly only addresses generic allegations related to the fear based on “hundreds of women who have reportedly been arbitrarily detained” without providing a minimum of detail or information sufficient to identify specific facts from which a situation presenting a risk can be proven under the *prima facie* standard. It was indicated that

they only furnish information on the situation for two cases in the request, which are not current.<sup>8</sup> It was alleged that there is no record of the hundreds of cases reported, that there is no accurate and detailed information about what complaints were filed in favor of the proposed beneficiaries, and that no contact with provincial or federal authorities with jurisdiction in the areas of human rights, gender, health or indigenous affairs has been maintained. It was further noted that the request lacks any evidence to support it, added to the fact that the allegations related to the identity theft of girls and boys, as well as the violence exercised against women giving birth “recall particularly painful circumstances in the Republic of Argentina, which cannot be evoked lightly in violation of the principle of good faith.”

37. Third, it was mentioned that, given the pandemic caused by COVID-19, the Province of Formosa allegedly implemented various measures to prevent and control transmission. In Resolution 151/2021 of February 3, 2021, the new protocols approved included that pregnant women, families with minors and older people must comply with the sanitary measures of quarantine or isolation in their homes. Thus, pregnant women need not comply with compulsory isolation in preventive housing centers since the goal is to try and keep family groups always together, and young children with their parents at all times. Similarly, it was pointed out that the town of “El Potrillo” has a hospital that provides services that include medicine, obstetrics, ambulance, a radio communication network, and other services to provide medical attention to pregnant women. This hospital reportedly has three women “of the same ethnic group” who act as traditional midwives.

38. Fourth, the State alleged that the provincial government has adopted measures to investigate the claims contained in the request and, for this reason, two court cases regarding the situation of the proposed beneficiaries are currently underway, one at the common jurisdiction level and the other in the federal jurisdiction level. As a result of the complaints made in the journalistic report, the state authorities allegedly carried out an intense search in the neighborhoods and communities and conducted various interviews that concluded that the complaints were false. At the same time, the provincial Undersecretariat for Human Rights purportedly started an intervention to obtain more information on the victims and the place where the events are taking place.

39. Fifth, it was noted that meetings have been held between federal authorities and provincial authorities. On January 27 and 28, 2021, the Human Rights Secretary of the Nation reportedly held a meeting with the National Director for the Rights of Groups in Situation of Vulnerability and the Undersecretary of Protection and International Liaison on Human Rights in the Province of Formosa, and other working meetings are scheduled with the political authorities and the Governor of the province. During these meetings, three cases of newborn children who had been separated from their parents for a few days due to health problems were reported, but the Secretariat ensured family reunion in subsequent days in all cases.

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<sup>8</sup> The State informs on the case of a woman’s son who was born in the *Hospital de Las Lomitas* on January 14, 2021, due to natural childbirth, and who due to medical advice given his diagnosis (respiratory infection and pneumonia, resulting from his premature birth) had to be transferred to the *Hospital de la Madre y el Niño* in the city of Formosa for care. It was explained on that occasion that the mother had not been able to accompany the child to the hospital, because at that time she was COVID-positive (she completed quarantine on January 27). In addition, it was reported that the provincial authorities also made it known that the child was handed over to his father when he was discharged on January 24, 2021. In addition, it was explained that, although efforts to transfer the parent to the capital city to accompany the baby had been unsuccessful, at no time was the family unaware of the child’s whereabouts or situation.

In a different case presented, it was indicated that the baby was born in the town of El Potrillo on January 24, 2021, was transferred to the *Hospital de la Madre y el Niño* in the capital city because he presented with respiratory problems, and that later he was again transferred to El Potrillo, in order to continue with the prescribed treatment, under the care of his parents.

40. It was also mentioned that national bodies have constant dialogues with the province of Formosa as well as with the Ministry of Health of the Nation (MSN) and the Ministry of Women, Gender and Diversity of the Nation (MMGDN). On February 1, the Chief of the Cabinet of Ministers of the Nation held a meeting with several political and health authorities of the Nation and the Province of Formosa in order to achieve “a joint and coordinated territorial approach between the Ministry of Health of the Nation and that of the province of Formosa regarding the prevention protocols implemented in the province.”

41. It was indicated that there is allegedly no record of criminal complaints filed by the applicants. The National Institute of Indigenous Affairs (INAI) reported that there have been no records of complaints or requests for intervention regarding any situation involving detention or harassment of pregnant women.

42. It was reported that the Judiciary of the Province of Formosa and that of the Federal Government have intervened and adopted various resolutions in response to specific complaints in relation to human rights violations in the context of health policy in the province.

43. The State concluded its report by alleging that the information presented did not include the elements in relation to “well-founded fear,” which allegedly does not rule out that indigenous women may have fears, demands, concerns or worries based on the implementation of exceptional health measures due to the pandemic. It was indicated that challenges persist regarding the institutional approach to those measures for indigenous communities, and that, for this, there are courses of action underway led by federal and provincial agencies that seek to strengthen respect and protection of the rights of the indigenous women of Formosa, especially their sexual and reproductive health and family life.

44. On March 29, 2021, the State sent observations on the additional information provided by the applicants up to that point. It was indicated that the new information seeks to modify the scope of the precautionary protection that was originally requested, since it purportedly argues a well-founded fear of all indigenous women to go to the health system and not only the 86 women allegedly hidden in the forests. It was mentioned that there is no evidence of generalized cases of parental separation but only three specific events that reportedly occurred during December and January, and therefore, the hypotheses that support the “well-founded fear” do not demonstrate serious, urgent, or irreparable harm.

45. The State reiterated that no complaint has been filed by the applicants aimed at promoting the investigation of the facts and that it has not been contacted by national or provincial authorities. Regarding the specific cases provided by the applicants, it was pointed out that, in relation to Ms. J.M., this occurred at the opposite end of the province of Formosa, and therefore, she could not be considered one of the 86 women who require protection. Regarding the situation of the other two pregnant women who were allegedly taken to the Hospital Ingeniero Juárez by physicians, the State indicated that they had received immediate, exhaustive follow-ups and had been made aware of the community referents that raised their concerns. The entire scenario occurred in a matter of a few hours.

46. It was also indicated by the State that the lack of precise identification of cases makes it difficult to verify the complaints and/or explain them. In the case of Ms. M.A., who allegedly refused medical attention because she was part of the women hidden in the wilderness area, the State indicated that, in the medical prescription granted as evidence by the applicants, the note of the refusal of medical attention did not correspond to the original body of the prescription. It further indicated that it belongs

to different handwriting with another type of ink and that, according to the document number, it corresponds to a baby born on January 1, 2019. Similarly, it was indicated that the tests prescribed by the physician were carried out on the proposed beneficiary but that she was not even registered as pregnant, while her last consultation was in October 2020. In relation to the case of the woman known as “La China,” the Minister of Government, Justice, Security and Labor provided a report pointing to an extensive background and information survey that had been carried out and no record of deaths as the one reported or of any person with that nickname had been found. It was also reported that the nickname “la china” is generally used to refer to “indigenous women,” making identification difficult.

47. The State indicated that in addition to actions taken by local authorities, actions have been taken by the national government. In this regard, the Ministry of Women has actively intervened to make decisions that favor women, but for this it is purportedly necessary to specify the identity of the persons involved or, at least, their location. In addition, it was indicated that the National Committee for the Prevention of Torture carried out an inspection visit to the province between March 22 and 25, 2021, and reportedly visited the indigenous communities in the west of the Province to send a report with their final remarks at a later date.

48. Regarding the allegations of a structural nature referring to the perinatal and maternal health conditions of indigenous women in Formosa and throughout the country, it was reiterated that the indigenous communities have health centers and rural hospitals with permanent physicians, dentists, obstetricians, and all that is necessary to assess pregnant women’s health. It was further stated that the perinatal and maternal health situation in Formosa has been addressed through an Intercultural Health Program. In addition, it was emphasized that different interventions have been made regarding the general situation of the indigenous communities in Formosa, and that steps are being taken “to determine the general situation of indigenous women in the country, in order to design targeted and intercultural public policies aimed at the effective exercise of rights by the people who are part of this group.”

49. It was also noted that MGDN reported that there was a “certain deficit of a structural nature for an effective approach to health from an intercultural perspective,” and therefore a series of intercultural meetings were held to plan public policies focused on interculturality. It was reported that on March 25, a working meeting was held between different authorities of the National State and a group of social organizations that sent a document entitled “Indigenous communities: inequalities deepened during the pandemic” with a view to assessing the situation of indigenous communities in the north of the country and obtain direct information from people in the territory on the cases described in the request for precautionary measures. Moreover, it was emphasized that there are courses of action specifically aimed at institutionally addressing structural deficits, as well as concrete and specific situations or claims.

50. In turn, it was indicated that the Police is currently carrying out community integration actions based on a Police-Community joint program to strengthen ties that facilitate communication and a better response to issues in the Province of Formosa. It was highlighted that the situation regarding the structural conditions of perinatal and maternal health in Formosa are the object of constant concern and work by the state and national authorities. Therefore, it was highlighted that all actions implemented in the province of Formosa are aimed at protecting the human rights of women.

51. In light of the information and arguments presented, the State considered that there are still no elements that corroborate the “well-founded fear” indicated, and that, if it exists, there are national administrative and judicial authorities in charge of dealing with it when the situations are reported to

them. In this regard, the State argued that the following criteria of the Inter-American Court are relevant:

the precautionary claim is not suitable where the State has applied mechanisms or actions aimed at satisfying or discharging its general obligation of protection, (cf. “*Matter of Luis Uzcátegui*,” resolution dated February 20, 2003, para. 13). “In light of the principle of [complementarity and] subsidiarity that guides the Inter-American Human Rights System, an order to adopt or keep provisional measures in force is justified in situations [...] in which the ordinary guarantees in the State concerned are insufficient or ineffective, or when the domestic authorities are unable or unwilling to enforce them” (cf. I/A Court H.R., “*Internado Judicial Capital El Rodeo I y El Rodeo II*,” provisional measures, resolution dated February 8, 2008, para. 15).

52. Finally, the State expressed its willingness to work with the IACHR on the situation reported,<sup>9</sup> through its Rapporteurships and within the framework of its promotion and monitoring functions but stated that the precautionary measures mechanism does not apply.

53. On April 8, 2021, the State updated its information stating that, according to the reports received from the corresponding authorities, no maternal and/or perinatal deaths have been recorded at Ingeniero Juárez and Las Lomitas hospitals between March 2020 and March 29, 2021. In addition, it was indicated that at both hospitals a lower percentage of indigenous women gave birth by cesarean section compared to non-indigenous women: 48 % of the indigenous women at Ingeniero Juárez Hospital, and 47.02 % at Las Lomitas hospital. It was noted that “this means that the number of indigenous women who have undergone caesarean section has been substantially lower than that of creole women (sic).”

54. Similarly, it was indicated that indigenous health agents carry out prevention and health promotion activities from an integral and intercultural approach. It was noted that a sectorization program through which the territory is divided into sectors and a person responsible for each sector is designated for scheduled field visits was allegedly implemented.

55. The State indicated that between January 2 and January 14, 2021, the Ingeniero Juarez hospital had not been in operation due to sanitization and sterilization work, which was allegedly carried out because 21 health personnel were infected with COVID-19. That is why the patients, prior agreement, were allegedly referred to the city of Las Lomitas and/or Formosa according to the complexity of each case.

56. Moreover, the State indicated that the Provincial Intercultural Health Program allegedly provided virtual counseling and accompaniment in each program area of the native population with a view to continuing with its roles with an emphasis on epidemiological surveillance.

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

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<sup>9</sup> The State of Argentina is at the IACHR’s disposal through its country Rapporteurship or other bodies that the Commission may determine, in order to arrange work meetings and/or cooperation actions on the issue of perinatal and maternal health of indigenous women in the country. This, of course, within the framework of the promotion and monitoring functions of the international body, but not in the context of a precautionary measure, since the allegations of the applicants in this regard have no correlation with any of the information received from national or provincial authorities or civil society organizations, or with complaints or domestic proceedings undertaken by themselves.

57. Precautionary measures are one of the mechanisms of the Commission for the exercise of its function of overseeing compliance with human rights obligations, as established in Article 106 of the Charter of the Organization of American States. These general oversight functions are established in Article 18 (b) of the Statute of the IACHR, and the precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm.

58. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective. Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are being considered by the IACHR. Their precautionary nature aims to safeguard the rights at risk until the request pending before the Inter-American System is resolved. The object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*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, to implement the ordered reparations. For purposes of decision making, and in accordance with 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.

59. Before carrying out the analysis of the procedural requirements, the Commission shall examine four preliminary issues regarding this request for precautionary measures. First, around the nature of the precautionary measures procedure and the *prima facie* analysis. Second, on the universe of proposed beneficiaries. Third, on the consent of the proposed beneficiaries. And fourth, on the request for “strict confidentiality” and application of the provisions of paragraph 5 of Article 25 of the Rules of Procedure.

60. As a *first preliminary aspect*, the Commission wishes to clarify that, in accordance with paragraph 8 of Article 25 of its Rules of Procedure, it is unsuitable to establish through the mechanism of precautionary measures any international responsibility of the State of Argentina in relation to the alleged facts or to determine violations to the human rights of the proposed beneficiaries. When analyzing the requirements established in Article 25 of the Rules of Procedure, the Commission is only called upon to determine whether there is a serious and urgent situation of irreparable harm to the human rights of the proposed beneficiaries. Moreover, 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.<sup>10</sup>

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<sup>10</sup> See in this regard: I/A Court H.R. [Matter of Inhabitants of the communities of the Miskitu indigenous people of the North Caribbean Coast Region of Nicaragua](#). Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018, considerandum 13; I/A Court H.R. [Matter of Children and adolescents deprived of their liberty in the “Complexo do Tatuapé” of the Fundação CASA](#). Request for

61. In addition, the Commission in the framework of this procedure is not called upon to make any determinations on the existence or veracity of the cases other than those of the proposed beneficiaries nor on any potential allegations of a contextual nature, such as the existence of a pattern of forced caesarean sections, separation of mothers from their sons or daughters at birth, or access to adequate medical care for indigenous women in the province of Formosa, without prejudice to the particularly serious and delicate nature of those allegations. In this regard, the Commission values the extensive information provided by the State of Argentina and lacks the response on the part of the applicants to disprove the information, despite the various requests made.

62. Notwithstanding the foregoing, the Commission considers that it is not suitable in this proceeding to rule on the relevance of caesarean section processes or of any other process regarding the specific or general cases alleged in the information presented by both parties, understanding in turn that certain procedures are a response to a need, which requires technical knowledge in medicine, nursing and specialization in obstetrics or any other relevant specialty. However, the Commission reminds the State that in accordance with the obligations established in the Convention of Belem do Pará (*infra* paras. 65-66), all situations of abusive, disrespectful, negligent treatment or denial of treatment in the pre-pregnancy stage, during pregnancy and postpartum should be avoided.<sup>11</sup> This kind of violence can manifest itself at any time and in various ways such as forced or coerced medical interventions, forms of physical violence, invasive practices, among many other manifestations.<sup>12</sup>

63. Along the same lines, the Commission has widely developed inter-American standards related to the protection of the sexual and reproductive rights of women, girls, and adolescents, with special attention to those in vulnerable situations, such as indigenous women.<sup>13</sup> As guarantors of their culture, indigenous women possess an invaluable ancestral heritage and, therefore, violence against them has both individual and collective repercussions. In particular, the IACHR has indicated the duty to obtain free, prior, and fully informed consent before performing any medical procedure.<sup>14</sup> This duty requires that qualified medical personnel provide adequate, complete, reliable, understandable, and accessible information without threats, coercion, or incentives of any kind.<sup>15</sup> In the case of indigenous women, the information must be presented in their own language and in a culturally appropriate manner, respecting their traditions and beliefs.<sup>16</sup> In addition, the IACHR has observed the existence of cultural factors that can operate as barriers to accessing maternal health services, such as health services that are offered without taking into account the expectations, traditions, and beliefs of indigenous women.<sup>17</sup>

64. As a *second preliminary aspect*, the Commission notes that in this proceeding, international protection was initially requested for a total of 86 pregnant women who were hiding in the wilderness, plus a total of 13 persons who are reportedly protecting them. In this regard, despite the requests for

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extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

<sup>11</sup> IACHR. [Violence and discrimination against women and girls: best practices and challenges in Latin America and the Caribbean](#). OEA/Ser.L/V/II. Doc 233. November 14, 2019. Paras. 181-82; IACHR. [Indigenous women and their human rights in the Americas](#). OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017. Para. 80.

<sup>12</sup> IACHR. [Indigenous women and their human rights in the Americas](#). OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017. Para. 80.

<sup>13</sup> See in this regard: IACHR. [Violence and discrimination against women and girls: best practices and challenges in Latin America and the Caribbean](#). OEA/Ser.L/V/II. Doc 233. November 14, 2019.

<sup>14</sup> IACHR. [Violence and discrimination against women and girls: best practices and challenges in Latin America and the Caribbean](#). OEA/Ser.L/V/II. Doc 233. November 14, 2019. Para. 182.

<sup>15</sup> See in this regard: IACHR. Press Release No. 10/2019. [IACHR expresses its deep concern over the claims of forced sterilizations against indigenous women in Canada](#). January 18, 2019.

<sup>16</sup> IACHR. [Indigenous women and their human rights in the Americas](#). OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017. Paras. 203-04.

<sup>17</sup> IACHR. [Access to maternal health services from a human rights perspective](#). OEA/Ser.L/V/II. Doc. 69, June 7, 2010 para. 34

information made to the applicants, no information was provided that would allow the IACHR to identify or determine the remaining 79 pregnant women, whose names or other information were not provided, preventing the State concerned from identifying them in accordance with the provisions of Article 25, in its numerals 3, 4.a and 6.b of the Rules of Procedure of the Inter-American Commission. The Commission finds no basis to correct the issue in Article 44 of the American Convention, alleged by the applicants (*supra* para. 8). In this sense, as no elements have been provided, up to now, to determine or identify the group of persons concerned, such as their geographical location or some other element to learn more details related to their identification, the Commission at this time does not deem it relevant to take a decision on their situation. On the other hand, regarding the 13 persons who are reportedly protecting the pregnant women, the Commission considers that specific and sufficient information has not been provided either to be able to assess compliance with the procedural requirements, beyond their identification.

65. Considering the foregoing and taking into account the applicants' statements of April 8 and 9 with regard to the lifting of the confidentiality of the 7 duly identified women, whose identity has not been disclosed to the State, the Commission will limit the analysis of compliance with the requirements to their specific situation.

66. As a *third preliminary aspect*, in relation to Article 25, in its 6<sup>th</sup> section relative to the express consent of the potential beneficiaries, the Commission considers that this requirement is satisfied, as the videos provided on April 8, 2021 by the applicants indicate that contact has been made with the applicants, together with the express request for help in their statements.

67. Finally, as a *fourth preliminary aspect*, the Commission wishes to recall that in accordance with Article 25.5 of its Rules of Procedure, "prior to the adoption of precautionary measures, the Commission shall request relevant information from the State concerned, except where the immediacy of the threatened harm admits of no delay." In the matter at hand, the Commission observes that, although the State has had the opportunity to present three different reports on the general situation alleged, to date it has not had the opportunity to know the names of the 7 individualized proposed beneficiaries, due to the "strict confidentiality" requested by the applicants on this information. In this sense, given the nature of the alleged facts, upon receiving the request, the Commission has assessed that actions aimed at the protection of the women proposed as beneficiaries admit no delay, since the alleged risk places the women at a sustained risk and they could be affected by the lack of medical care, especially considering that some of them may give birth at any time due to the advanced stage of their pregnancy, which could pose a greater risk.

68. In this sense, given the refusal of the applicants to lift the strict confidentiality of the names of the 7 women identified until their letters sent on April 8 and 9, 2021, the Commission was not able to exercise the requested international protection before this, in light of what is indicated in paragraphs 26 and 34 of this resolution, since only then was it able to identify the persons whom the State is called upon to protect.

69. The Commission will now conduct an analysis of the procedural requirements. In relation to the requirement of *seriousness*, the alleged risk faced by the seven proposed beneficiaries is based on the existence of a fear of being the object of discrimination and/or violence against them due to their condition as indigenous, pregnant women who belong to the Wichí indigenous community, which, from the women's point of view, allegedly pushed them into hiding from the authorities, initially informing that they hid in the wilderness area of Formosa.

70. In principle, in relation to the proposed beneficiaries' fear of being discriminated against and/or the subject of violence, the Commission notes that it refers to situations that have been addressed by international human rights law and inter-American law. In this regard, fear is closely related to what is established in the Convention of Belém do Pará, to which the State of Argentina is a party, an instrument that indicates in Article 1 that "[...] violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere"<sup>18</sup> and includes in Article 2 those situations in which violence is perpetrated by any person and occurs in a health facility.

71. In accordance with the aforementioned Convention, States have the duty to adopt, by all appropriate means and without delay, policies aimed at preventing, punishing and eradicating such violence,<sup>19</sup> especially taking into account situations of vulnerability, such as their ethnicity, pregnancy or an unfavorable socioeconomic situation.<sup>20</sup> Moreover, the Commission emphasizes that the fear described is not based on random issues, but on specially serious situations when it comes to violence against women, which may even have a differentiated impact on the proposed beneficiaries due to their membership with the indigenous Wichí ethnic group.

72. However, regarding the existence of fear in the community and in the specific women proposed as beneficiaries, the Commission notes that although, as indicated above (*supra* paras. 58-59), it is not called upon to assess the existence of facts beyond the *prima facie* standard, this does not prevent the Commission from assessing the information on such situations that may have an effect on fear. In this regard, beyond the veracity or controversy of the various situations alleged by the applicants and addressed in a timely manner by the State of Argentina, the Commission notes that there is extensive disclosure of information alleging the existence of a context of discrimination and differential treatment against the Wichí community in the province of Formosa,<sup>21</sup> Argentina, as well as information circulating on cases that purportedly alarm the proposed beneficiaries. The Commission deems it reasonable that the receipt of this information adds to the proposed beneficiaries' feeling of fear, who saw no other alternative but to hide.

73. Thus, the State has provided specific information that would disprove, in principle, some of the specific situations; however, the Commission notes that the State has also recognized the existence of structural deficits from an intercultural perspective and of problems in the province of Formosa with respect to structural conditions of perinatal and maternal health, which are the object of constant concern and work on the part of state and national authorities (see *supra* paras 49 and 50). For the IACHR, the multiple actions reported by the State are positive as they seek to address these issues; however, the Commission notes the shortcomings recognized by the State itself in its report are part of the perceived risk of the seven Wichí pregnant women.

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<sup>18</sup> [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convencion of Belém do Pará."](#) Done in the City of Belém do Pará, Brazil, on June 9, 1994, Art. 1.

<sup>19</sup> Belém do Pará Convention, Art. 7.

<sup>20</sup> Belém do Pará Convention, Art. 9.

<sup>21</sup> See in this regard: Gran Chaco Foundation. Manual on the sexual and reproductive rights of Wichí Women; Fundapaz, Redes Chaco, Argentine Agrarian Federation and Fundación Plurales. [Shadow report for the Committee of the International Covenant on Economic, Social and Cultural Rights \(ICESCR\) - UN - Session 64. Situation of the economic, social and cultural rights of Argentine rural women of the Gran Chaco and Puna](#) [in Spanish]. 2017; ANDHES *et al.* [Evaluation of compliance with the Convention on the Elimination of all forms of Discrimination against Women \(CEDAW\) in the framework of the presentation of the fourth periodic report to the CEDAW Committee. Sixty-fifth sessions](#) [in Spanish]. October 2016; ODHPI *et al.* [Evaluation of the compliance with the International Covenant on the Elimination of all forms of Racial Discrimination within the framework of the XXI-XIII cycle of the presentation of Argentina's report before the CERD. Rights of indigenous peoples in Argentina.](#) November 2016; ANRed. [Violación of Human Rights to indigenous women in Formosa](#) [in Spanish]. March 15, 2021.

74. Regarding the isolation policy to combat COVID-19 implemented by the authorities of the province of Formosa at the beginning of the year, the Commission observes that although the State indicated that “through Resolution 151/21 of February 3, 2021” it was modified and isolation in state centers would no longer be mandatory (which has been disproved by the applicants, claiming requirements difficult to fulfill for the proposed beneficiaries), regardless of whether it is in force or not, the disclosure of its effects on pregnant women and especially on indigenous communities purportedly had a different impact on the creation of fear in the proposed beneficiaries. In this regard, the Commission notes that the information provided by the applicants appears to be consistent with information received by the IACHR and its REDESCA on the measures adopted during the COVID-19 pandemic by the authorities of the province of Formosa, which have been reportedly disproportionate, and may be contrary to inter-American human rights regulations and standards.<sup>22</sup>

75. In addition, the Commission considers that the information provided by the applicants is of particular concern (see *supra* para. 33) in the sense that the provincial authorities reportedly dismiss the risk faced by the proposed beneficiaries and seek to have them testify against the existence of the situation, going so far as to seek that investigations be launched against them. The Commission notes that the above is part of the proposed beneficiaries’ notion of the situation, just as they expressed in the videos provided. Without prejudice to the veracity of those statements and the compatibility of the procedures with the American Convention or other applicable instruments, which is not the subject matter of this proceeding, the Commission understands that these actions, under the conviction of the pregnant Wichí women who are in hiding, are having a negative effect on their confidence, generating an intimidating effect on the Wichí indigenous community in general, which prevents the women from approaching and seeking the state protection they require. This is particularly relevant in constituting and perpetuating the perception of fear of the seven women proposed as beneficiaries, which is evidenced by their own decision to hide.

76. The Commission considers that all the information that circulates in different media, when viewed from the indigenous worldview of women of the Wichí ethnic group, as well as in light of the importance of respecting their will and customs, makes it reasonable to consider that they perceive the existence of a threat against their life, integrity and health, as well as that of their unborn babies. The foregoing, closely related to the implications for their will on their pregnancies, which the applicants alleged could constitute obstetric violence. In relation to the above, even if the fear is “well founded,” in this case the Commission places special value on the impact that fear may have on the proposed beneficiaries, who purportedly rather left their communities as a way of self-protection, despite being very close to giving birth due to the advanced stage of their pregnancies. For the Commission, an essential conviction factor is the affirmation of the fear expressed by the beneficiaries X3 and X7 in the videos that were contributed by the applicants. In the same way, the Commission takes note of the State’s indication that “it would not possible to rule out that indigenous women may have fears, demands, inquiries or concerns based on the implementation of exceptional health measures due to the pandemic,” while warning that it also considers it foreseeable that these situations generate anxiety in the proposed beneficiaries.

77. Following this line, the Commission considers that the aforementioned fear, fueled as a whole by the different situations assessed, hinders the rapprochement of the women proposed as beneficiaries with the health authorities to receive the medical care they need or to report any situation of discrimination or violence against them. This conception is what has allegedly caused these women to initially take shelter in the forest, in order to avoid an involuntary intervention in their bodies and with

<sup>22</sup> Twitter. [CIDH-IACHR. February 6, 2021.](#)

respect to their pregnancies that puts them or their babies at risk, or that could separate them. In this regard, the Commission assesses the actions reported by the State regarding the establishment of a “police-community rapprochement” program that is reportedly underway (see *supra* para. 50), which could contribute to a better relationship between communities and authorities. However, it is noted that, despite such measures, a fear towards the authorities purportedly persists.

78. In light of the foregoing elements, the Commission notes that the proposed beneficiaries are at risk, either in the mountains, at their homes or where they have decided to take shelter, given the need for medical care to assist their pregnancies and, in the case of some of them, a very close labor. In addition to the above, the risk factors faced by the proposed beneficiaries acquire a particular dimension, as they are pregnant women who, therefore, require reinforced protection and more specialized care. Indeed, as the Inter-American Court has indicated, the Commission understands that “[...] sexual and reproductive health certainly constitutes an expression of health that has particular implications for women due to their biological capacity for pregnancy and childbirth.”<sup>23</sup> For the Commission, the condition of intersectional vulnerability of the proposed beneficiaries,<sup>24</sup> such as women, pregnant women, and belonging to the Wichí indigenous community, requires addressing the matter at hand as an exceptional situation. In this regard, these issues require that the Commission address the situation from a perspective that is in line with their condition, as well as the differentiated impact that the risk factors faced allegedly have on them, an assessment that the Commission makes when dealing with situations that require a differentiated analysis in view of the circumstances.<sup>25</sup> Furthermore, the IACHR has encouraged the States to take extreme measures to protect the human rights of indigenous peoples in the context of the COVID-19 pandemic, taking into consideration that they collectives have the right to receive culturally relevant health care.<sup>26</sup>

79. As the Commission has indicated, “[t]he right to personal integrity in the area of health is closely related to the right to health given that the provision of adequate and timely maternal health services is one of the principal ways to ensure women’s right to personal integrity.”<sup>27</sup> Along these lines, the IACHR pointed out that “[u]nder the inter-American system, barriers limiting access to maternal health services may amount to affecting the right of women to physical, mental and social integrity.”<sup>28</sup> In relation to the above, the IACHR recalls the instrumental nature of the right to access information for indigenous women in the area of reproductive health, which consists of their access to reliable, complete, timely and accessible information that allows them to exercise their rights or satisfy their needs.<sup>29</sup> Similarly, the Commission stresses the importance of the information being adapted “to the language of the person requesting or requiring it.”<sup>30</sup>

80. Furthermore, the Commission takes note of the allegations regarding the existence of a situation of alleged lack of access to drinking water, adequate food, basic services, and adequate shelter. In this sense, if so, if under normal conditions they would put any person at risk, these conditions could

<sup>23</sup> I/A Court H.R. [Case I.V. v. Bolivia](#). Preliminary objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, para. 157.

<sup>24</sup> IACHR. [Human Rights of Indigenous Women in the Americas](#). OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017. para. 76.

<sup>25</sup> As an example, the Commission has considered the differentiated risk that boys, girls, and adolescents would face within the framework of their best interests, as well as the migrant or displaced population, and persons with disabilities.

<sup>26</sup> IACHR, Resolution 1/20 - Pandemic and Human Rights, April 10, 2020, para. 56.

<sup>27</sup> IACHR. Access to maternal health services from a human rights perspective. OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 23.

<sup>28</sup> IACHR. Access to maternal health services from a human rights perspective. OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 39.

<sup>29</sup> IACHR. Access to maternal health services from a human rights perspective. OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 26; IACHR. [Human Rights of Indigenous Women in the Americas](#). OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017, para. 204.

<sup>30</sup> IACHR. Access to maternal health services from a human rights perspective. OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 57.

disproportionately affect the women proposed as beneficiaries due to their condition as pregnant women.

81. Taking these elements as a whole into account, the Commission deems it necessary to emphasize that, when determining the situation presenting a risk to the health, life and personal integrity of the women proposed as beneficiaries, it should not only be analyzed in itself, but also adding the dimension of the differentiated impact, thus allowing a comprehensive assessment. Indeed, according to the Convention of Belém do Pará, this involves recognizing that the serious barriers to accessing adequate and timely medical treatment represent another form of violence against women, characterized by the differentiated impact that precisely occurs based on their gender or their sole condition as a woman, a reflection of the discrimination to which they have been historically subjected. Indeed, the IACHR has considered that the lack of measures to guarantee both accessibility to maternal health services, as well as to guarantee all the characteristics of the right to health, may also affect the principle of equality and non-discrimination, which permeate the inter-American system.<sup>31</sup>

82. In the matter at hand, the Commission notes that the proposed beneficiaries are at risk because they are in precarious conditions, most of them in advanced stages of pregnancy, without proper maternal care and with the fear of being forced to give birth by cesarean section, which could affect their life, integrity, and health, as well as that of their babies. The above, because they are hidden and afraid of approaching the authorities due to their belief that they might be subjected to discriminatory or violent treatment, added to alleged threats of being arbitrarily detained by the police. Moreover, the proposed beneficiaries have indicated in their videos that they are afraid given the surveillance and threats received by the police against the women who have reported the situation, which is allegedly also public knowledge.<sup>32</sup> Although, according to the information provided by the State, the measures are aimed at addressing the situation of the proposed beneficiaries after the report was published, it is important to reiterate the breach of trust regarding the authorities and remember that the indicated actions that reportedly dismiss their public complaints and seek to launch investigations against them do not add to the generation of trust between the community and the authorities.

83. In relation to the foregoing, the Commission acknowledges the extensive and detailed information provided by the State regarding the measures adopted by the provincial government aimed at investigating the allegations contained in the request, as well as that the provincial Undersecretariat for Human Rights would initiate an intervention to obtain more information about the victims and the place where the events are allegedly taking place. Similarly, the IACHR appreciates the efforts of the National Government, as well as the work meetings held between various state entities to address the situation through focused and intercultural public policies, aimed at the effective exercise of rights by the persons who make up this group.

84. Consequently, based on the previous determinations, the Commission concludes that it is sufficiently established, from the applicable *prima facie* standard, the existence of a situation of serious risk to the rights to life, personal integrity, and health of the proposed beneficiaries.

85. Regarding the urgency requirement, the Commission considers that it has been met, to the extent that the passage of time, in these circumstances, is liable to affect the rights to life, personal

<sup>31</sup> Belém do Pará Convention. Art. 76.

<sup>32</sup> Infobae. [More complaints about human rights violations in Formosa: the national government requested reports from Gildo Insfrán on the mistreatment of women from the Wichí community](#). March 17, 2021; Infobae. [Obstetric violence against pregnant women cannot be hidden: in Formosa the fear of women is not health](#), March 21, 2021; Clarion. [Wichí babies separated from their mothers. Pregnant women in Formosa: they denounce that the Government of Gildo Insfrán is extorting them to change their testimony](#). April 9, 2021.

integrity, and health of the 7 pregnant women. In this sense, their condition as pregnant women requires constant medical care, generating a continuous risk, coupled with the fact that several women are reportedly in advanced stages of pregnancy and close to going into labor. The Commission considers that, although the State reported various actions seeking to find the location of the women after the disclosure of the report, given their willingness to remain hidden and the ongoing alleged actions by the provincial authorities that purportedly generate a feeling of threat in them, it has not been possible to exercise the protection of the State over them and mitigate the alleged risk. In addition to the foregoing, the argument of the applicants becomes relevant in the sense that the investigations of the province currently allegedly dismiss the situation and the proposed beneficiaries consider that there exist threats to opening investigations against them, which complicates the generation of trust and cooperation to care for the women who are allegedly at risk.

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

87. In making this determination, as has been indicated, the Commission considers as an exceptional situation the differentiated impact that the situation raised has on the beneficiaries, who may be affected from an intersectional perspective.

#### **IV. BENEFICIARIES**

88. The Commission declares that the beneficiaries of this precautionary measure are X1, X2, X3, X4, X5, X6 and X7, who have been duly identified before the State at the time of notifying this resolution.

#### **V. DECISION**

89. The Inter-American Commission on Human Rights considers that this matter meets *prima facie* the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, it requests that Argentina:

- a) adopt the necessary measures to protect the rights to life, personal integrity, and health of the beneficiaries. In particular, the State must adopt immediate measures to facilitate access to adequate medical care, according to the applicable international standards. These measures must be adopted with the beneficiaries' free, informed and prior consent, with a perspective of cultural and linguistic relevance, integrating their indigenous worldview while implementing a gender approach; and
- b) agree on the measures to be adopted with the representatives and beneficiaries.

90. Additionally, considering the applicants' refusal to provide certain information throughout the processing of this request, the Commission considers it pertinent to request that the applicants:

- a) immediately provide, both to the Commission and the State of Argentina, all additional information in their possession and related to the risk faced by the 7 women beneficiaries of this precautionary measure;

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- b) provide as soon as possible the available information about location or to identify the remaining 79 pregnant women who are reportedly at risk and, thus, allow the State to exercise its international obligation of protection and avoid a greater risk for them;
  - c) cooperate with the State in the implementation of the measures in favor of the beneficiary women.

91. The Commission requests that the State of Argentina report, within 15 days as from the date of this resolution, on the adoption of the precautionary measures requested and to update that information periodically.

92. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment on any violation of the rights protected in the American Convention or other applicable instruments.

93. In accordance with Article 25(5) of the Rules of Procedure, the Commission will review the relevance of keeping this precautionary measure in force, or proceed to lift it, at its next session. To this end, the Commission will take into account the information provided by the State and the applicants on the current situation of the proposed women beneficiaries.

94. The Commission instructs the Executive Secretariat of the IACHR to notify this resolution to the State of Argentina and the applicants.

95. Approved on April 16, 2021, by Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice-President; Flavia Piovesan, Second Vice-President; Margarete May Macaulay, Esmeralda Arosemena de Troitiño, and Stuardo Ralón, members of the IACHR.

María Claudia Pulido  
Acting Executive Secretary