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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 50/2022**

Precautionary Measure No. 517-22

Members of the Guapoy's community of the *Guarani Kaiowá* Indigenous People regarding Brazil

October 2, 2022

Original: Spanish

**I. INTRODUCTION**

1. On June 29, 2022, 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 “Aty Guasu *Guarani Kaiowá*,” “Conectas – Direitos Humanos,” and the Articulation of the Indigenous Peoples of Brazil (APIB) (“the applicants”), urging the Commission to require the Republic of Brazil (“the State” or “Brazil”) to protect the rights to life and integrity of *Guarani Kaiowá* members of the Guapoy’s<sup>1</sup> and Tekohá Kurupi/São Lucas communities, located in the State of Mato Grosso do Sul. According to the request, such persons are at risk following acts of violence allegedly committed by the police and armed third parties in the context of land disputes in the region.
2. In accordance with Article 25.5 of its Rules of Procedure, the IACHR requested information from the applicants, who submitted the required information on July 13, 2022. It then requested information from the State, which submitted its reports on August 14 and 29, 2022. On August 16 and September 8 and 23, 2022, the applicant provided additional information.
3. Upon analyzing the submissions of fact and law offered by the parties, the Commission considers that the information presented shows *prima facie* that the members of the Guapoy’s community of the *Guarani Kaiowá* 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 Rules of Procedure, the Commission requests Brazil to: a) adopt the necessary and culturally appropriate measures to protect the rights to life and personal integrity of the members of the Guapoy’s community of the *Guarani Kaiowá Indigenous People*. Likewise, the State must ensure that state actors respect the beneficiaries’ rights in accordance with the standards established by international human rights law, and in relation to acts of risk attributable to third parties; b) consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and c) report on the actions taken to investigate the events that led to the adoption of the precautionary measures at hand, so as to prevent such events from reoccurring.

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

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<sup>1</sup> The applicants indicated as proposed beneficiaries the members of the *Guarani Kaiowá Guapoy’s* communities, located in the municipality of Amambai, as well as the *Guarani Kaiowá* members of the Tekohá Kurupi/São Lucas, located in the municipality of Naviraí.

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## A. Information provided by the applicants

4. The applicants indicated that the Guapoy's community of the *Guarani Kaiowá* Indigenous People would be composed of approximately 300 people, mostly children, youth, and women. They would be grouped in about 30 (thirty) tents located in an area bordering the Amambai Indigenous Reserve, municipality of Amambai, in the southern cone of the State of Mato Grosso do Sul. They point out that, for decades, the indigenous people of the Amambai region have sought the "definitive recovery" of the territories they consider to be their ancestral property. At the same time, they indicated that there are landowners who claim to have obtained ownership of these lands. According to the applicants, the situation is framed in the context of systematic violence against the *Guarani Kaiowá* people and that would have led to police actions that are not in accordance with legal protocols, on the grounds that there is impunity for such acts. It was reported that the Military Police had already acted at least 5 times against the *Guarani Kaiowá* since 2018, without any judicial pronouncements<sup>2</sup>.
5. In May 2022, members of the Guapoy's community reportedly began a "retaking movement."<sup>3</sup> According to an anthropological report submitted by the applicants, on May 24, 2022, a group of approximately 30 indigenous people from the Guapoy's community began the process of occupation of the territory where a private property adjacent to the Amambai Reserve, known as "Hacienda Borda da Mata," is currently located. On the morning of May 25, the indigenous people observed the approach of a drone and, later, of the Police Shock Battalion, who allegedly arrived with tear gas bombs and positioned themselves in blocks, until they managed to expel all the indigenous people. After the withdrawal of the indigenous people, they remained next to the reserve and held meetings with various authorities,<sup>4</sup> during which the indigenous people presented their demands for the demarcation of their lands, which were handed over to the Regional Coordinator of the National Indian Foundation (FUNAI). After 30 days without progress in their demands, the indigenous people resumed the retaking movement on June 24, 2022.
6. The applicants emphasize that, as of the date of the second occupation (June 24, 2022), the owners of the hacienda had already filed a lawsuit for reinstatement of possession against the indigenous people.<sup>5</sup> Continuing the judicial process under analysis and without an eviction order, the applicants reported that the Military Police entered the area on June 24, 2022, with a staff of 100 armed police members and a helicopter. It was alleged that there was no mediation process. The Military Police reportedly dealt with a complaint of crimes against property and life in the Borda da Mata farm and acted with the aim of evicting the indigenous people. The anthropological report of the Public Defender's Office of August 2022, an institution that represents indigenous people internally, details

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<sup>2</sup> Grande News: "Sem ordem judicial, PM já atuou ao menos 5 vezes contra indígenas desde 2018", June 25, 2022. <https://www.campograndenews.com.br/brasil/cidades/sem-ordem-judicial-pm-ja-atuou-ao-menos-5-vezes-contra-indigenas-desde-2018>.

<sup>3</sup> Written statement by the petitioners on September 23: "the process of reoccupation and recovery (jeike jey) of traditional territories (tekoha guasu)" is a movement organized by *Kaiowás and Guaraní* religious and political leaders, "articulated in a network (ñemoiru ha pytyvõ)" starting from the first articulations carried out in a large assembly (Jeroky ha Aty Guasu) in the mid-1970s in the south of the current state of Mato Grosso do Sul, until the present day, as a way of pressing for the identification and delimitation of territories (Benites, 2014).

(...) the retaking movement of the indigenous peoples is not limited to a land issue. Trata-se de uma retomada cultural, according to the Kaiowá de Laranjeira Nãnderu, ao retomarem o território tradicional, os indígenas podem voltar a praticar os seus respectivos rituais tradicionais e instalar as suas casas de acordo com a organização social da comunidade. (Souza, 2018, p. 52)

<sup>4</sup> According to the anthropological report submitted by the applicants on September 23, 2022, the meeting of May 25 took place with the mayor of Amambai, a councillor, a representative of the Shock Battalion and indigenous people of the retaking. On May 26, with representatives of the MPF, the Public Defender's Office of the State of Mato Grosso do Sul, the CTL-Amambai (FUNAI) and the Federal Police.

<sup>5</sup> Regional Federal Court of the Third Region - Second Federal Court of Ponta Porã. Case no. 5001262-33.2022.4.03.6005. [https://www.trf3.jus.br/documentos/acom/banner/Decisao\\_Ponta\\_Pora.pdf](https://www.trf3.jus.br/documentos/acom/banner/Decisao_Ponta_Pora.pdf), July 4, 2022. For public information, it is noted that the aforementioned lawsuit was filed on May 27, 2022.

the indigenous people's accounts of the police operation. It is alleged: ““that the Shock Troop arrived firing gas bombs and, subsequently, using lethal weapons, without even observing who and where they could hit and that the majority of the wounded did not participate in the retaking process, being 4 minors, an elderly woman and two adult men.” Additionally, it was alleged that: “the helicopter flew over both sides and approached the indigenous people, the helicopter police fired on the indigenous people, wounded several of them, a drone flew over the area, and at the same time, the police threw tear gas.”

7. According to the request, the position taken by the government to justify the violence is to describe the indigenous people as “delinquent farm invaders.” The operation resulted in 1 death and 10 proposed beneficiaries injured, including children and women. It was also reported that members of the communities who were hospitalized were being detained by the Civil Police. According to a report by the Public Defender's Office, it was alleged that an administrative process had been established to provide legal assistance to the *Guarani Kaiowa* people of the Guapoy's community. At least three indigenous persons were reportedly detained in the police unit in Amambai. The applicants add that these events are said to be common practice in the context of the “retaking sessions.”<sup>6</sup> The applicants alleged that the Military Police of Mato Grosso do Sul have a history of acting without a court order and without observing legal determinations, referring to documentation presented during the Parliamentary Commission of Inquiry (CPI) called “CPI of Genocide,” carried out by the Legislative Assembly of the State of Mato Grosso do Sul, in 2015.<sup>7</sup>
8. The applicants reported that the hostility of landowners against indigenous peoples continued to affect their traditional forms of culture and religiosity. They alleged that on June 27, 2022, the landowners did not let the indigenous people perform their funeral rites and referred to the victim killed in the aforementioned conflict. They argued that the actions of the Public Defender's Office and the Federal Public Prosecutor's Office (MPF) were necessary in order to do so.
9. The applicants indicated that the Federal Court of First Instance had denied the request for precautionary dispossession of the indigenous people in the lawsuit for reinstatement of possession. In the report of the Public Defender's Office submitted on September 7, 2022, it was reported that the landowners filed an appeal against this decision with the Federal Regional Court, which upheld the decision of the judge of first instance, determining the holding of a hearing on July 4, 2022. After the hearing, on July 4, 2022, the same judge of the second Federal Court of Ponta Porã decided to uphold the decision to reject the precautionary dispossession of the indigenous people and recognized “more than convincing elements on the relevance of the discussion promoted by the indigenous community, which justifies at least that they receive full protection and attention to their claims (...)”<sup>8</sup>
10. The applicants reported that on June 25, 2022, the MPF initiated an investigation procedure at the Prosecutor's Office of the Republic of Ponta Porã to verify the facts related to the conflict between indigenous people, police and landowners in the area “called “Retaking Guapoy's e Fazenda Borda da

<sup>6</sup> As background, the applicants' report of July 21, 2022 highlighted that on September 21, 2021, there was an attack on the Tekohá Avae'te, located in the Municipality of Dourados, Mato Grosso do Sul, where at least 3 houses of the *Guarani Kaiowá* people were allegedly burned by members of the private security body of the farms. On February 3, 2022, the *Guarani Kaiowá* of the Aratikuty Retomada also reportedly suffered attacks and threats from the private security personnel of the farmers in the region. On May 22, 2022, in the municipality of Coronel Sapucaia, a young *Guarani Kaiowá* was allegedly killed while collecting firewood near a farm. On 26 February 2022, the riot squad of the military police reportedly violently evicted *Guaraní* and *Kaiowá* indigenous people who had retaken territory claimed as part of Tekohá Laranjeira Nhanderu, leaving at least three people injured.

<sup>7</sup> As background, the report of the applicants of July 21, 2022 highlighted that in 2013 the Federal Court of Campo Grande ordered the suspension of the “Auction of Resistance” (leilão de Resistências), organized by peasants to raise funds to form a private militia; on June 14, 2016, there was the “Caarapó Massacre”, which led to the death of the indigenous *Guarani Kaiowá* Clodiode Aquileu de Souza, of the community health agent of the Caarapó Indigenous Reserve, allegedly carried out by landowners.

<sup>8</sup> Regional Federal Court of the Third Region - Second Federal Court of Ponta Porã. Case No. 5001262-33.2022.4.03.6005. [https://www.trf3.jus.br/documentos/acom/banner/Decisao\\_Ponta\\_Pora.pdf](https://www.trf3.jus.br/documentos/acom/banner/Decisao_Ponta_Pora.pdf), July 4, 2022.

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Mata.”<sup>9</sup> The MPF also ordered the registration of anthropological expertise that served as the basis for the judicial analysis of the case.

11. The applicants reported the establishment of proceedings before the state and federal courts to investigate the events that occurred on June 24, 2022. They stated that there is a trend of criminalization of indigenous people, as well as a discrediting of the movement to fight for their lands. The Ombudsman's Office reported not having access to the status of the investigations and having requested information from the MPF related to the “Guapoy’s” retaking action (expert reports, awards or certificates). It was indicated that access had been denied. In addition, the applicants reported that the National Human Rights Council issued Recommendation No. 27/2022, of July 7, 2022, for public bodies to act effectively to protect and assist the *Guarani Kaiowá* indigenous peoples of the State of Mato Grosso do Sul. However, they report that, to date, no measures have been adopted in this regard.
12. In a report dated July 21, 2022, the applicants reported that, despite a judicial decision not to dispossess the indigenous people of the Borda da Mata Farm, the situation of violence continues to leave victims. They reported that, on July 14, 2022, Márcio Moreira, *Guarani Kaiowá* leader of the Guapoy’s community and one of the indigenous people who had participated in the movement to “retake” the Borda da Mata farm, reportedly lost his life after being ambushed and shot with a firearm. This allegedly occurred a few hours after the visit of the legal coordinator of the Articulation of Indigenous Peoples of Brazil (APIB) to the region, one of the requesting organizations in the request at hand, who collected testimony regarding the events of June 24, 2022.
13. On August 16, 2002, the applicants reported that the indigenous leader Vitorino Sanches Kaiowá suffered an attack on his life on August 1, 2022, when he entered the Guapoy’s indigenous community to bring donations and food for the families. The car that was driven by Mr. Vitorino received more than 10 shots, among which, 3 would have impacted the proposed beneficiary. He was taken to the hospital in serious condition. In a report dated September 23, 2022, the requesting party stated that on September 13, the same indigenous leader Vitorino Sanches, supporter of the Guapoy’s “retaking”, suffered a new attack with a firearm (35 shots) that led to his death. The applicants stress that the death would be related to the context of violence that began on June 24, 2022.
14. The applicants responded to the State's communication of August 14, 2022, in which it was indicated that on June 27, 2022, the head of the Local Technical Coordination (CTL) of the FUNAI of Amambai was reportedly deprived of his liberty by the indigenous people, withholding his cell phone and the official vehicle of the FUNAI. In this regard, the applicants added that they were using the FUNAI vehicle for the transport of wounded and food for the community and that the FUNAI official had been released after the arrival of the Federal Police.
15. As for the *Guarani Kaiowá* of the *Tekohá Kurupi/São Lucas* Community, the applicants reported that they are 28 families, including boys and girls, who are located in the Dourados-Amambai Pegua II indigenous territory, in the municipality of Naviraí, in the southern cone of the State of Mato Grosso do Sul, in camps (called Tekohás in Guarani) awaiting the demarcation of their territories. In addition, he reported that on June 23, 2022, an armed attack allegedly led by police and “gunmen” took place, with the attempt to strip them of the region called “Fazenda Tejuí”, 14 kilometers from the municipality of Naviraí. As a result, three indigenous persons had been missing for 24 hours, including two women and a seven-year-old child. The requesting party indicated that, on June 30 and

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<sup>9</sup> In this regard, among the measures adopted, the MPF sent notes to the Secretary of Justice and Public Security of the state of Mato Grosso do Sul, to the Military and Civil Police of Amambai, to the Public Prosecutor’s Office of Amambai, to the Regional Hospital of Amambai, to the CASAI of Amambai, to the Legal Medical Institute of Amambai, to the Regional Coordination of FUNAI in Ponta Porã, to the Federal Police of Ponta Porã and to the Chief Prosecutor of Ponta Porã to request information on the events of June 24, 2022

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July 1, 2022, cars and pickup trucks allegedly surrounded the territory of the Tekohá Kurupi community, and fired firearms and aggressive shouts aimed at intimidating indigenous people.<sup>10</sup>

16. Finally, the applicants point out that there are no security measures in force in favor of any leader or the proposed beneficiary communities, beyond the court order to maintain possession, which can be modified at any time, given its precautionary nature. They allege that in the Brazilian justice system there is no collective protection program for human rights defenders that provides for the protection of threatened communities. Additionally, it was reported that the requesting lawyer of this request was present in the area of the Guapoy's "retaking" on September 17, 2022, an opportunity on which he was able to verify the absence of any police force in the region, indicating that the indigenous people proposed as beneficiaries do not have effective protection measures to safeguard their lives.

## **B. Response from the State**

17. On August 14, 2022, the State submitted information on the following: i) the land demarcation process in the region; ii) the events of June 23 and 24, 2022, in the Tekohá Kurupi/São Lucas and Guapoy's communities; iii) the status of the investigations; and v) the events of July 14 and August 1, 2022. It also alleged that in the instant case there are adequate domestic remedies for the protection of the rights alleged to have been violated and that these have not been exhausted, based on the principle of subsidiarity; and that the investigations are still ongoing.
18. Regarding the recognition of the ancestral property of these communities, it was noted that the Supreme Federal Court of Brazil (STF) determined on May 9, 2020 the suspension of all judicial processes of reinstatement of possession concerning the indigenous peoples until the judgment of the extraordinary appeal with general impact, under the terms of Brazilian legislation. It was also reported that the procedure is pending and that there is no foreseeable trial, so that the public administration could not be blamed for the delay in the process of demarcation of indigenous lands.
19. Regarding the events that occurred on May 24, 2022, in the Guapoy's community, the State reported, first, that it had requested a meeting with the Guapoy's, a representative of the Federal Public Prosecutor's Office, and the Local Technical Coordinator (FUNAI) of Amambai, which was held on May 25, 2022. In this regard, it was reported that FUNAI would have guided the indigenous people to remain camped on the perimeter of the Amambai Reserve, without entering the neighboring property, thus avoiding further problems, given the climate of tension there and the lack of security in that place.
20. With respect to the events of June 24, 2022, the State provided documents sent by the Secretariat of State for Justice and Public Security and by the Military Police. In these documents, it was reported that the Military Police had received a call for territorial invasion. After risk analysis, support was requested from the Shock Battalion in the operation. The Ministry of Public Security reported that the police operation involved 65 military police, 16 vehicles and a helicopter. It was reported that the hostile action of the indigenous people, with gunfire, had provoked a reaction on the part of the police, initiating an armed confrontation, which resulted in some indigenous people and police officers being wounded, who were rescued. Afterwards, some of the invaders fled towards the village of Amambai. However, the police requested air support because another party was still in conflict. As the shooting intensified, one of the suspects was injured and, after being rescued by a military police vehicle, he died in the local hospital.

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<sup>10</sup> The applicants did not submit information on new risk events related to Tekohá Kurupi community members in the August 16 and September 8, 2022 reports.

21. Subsequently, the federal delegate was called, who attempted a dialogue with the indigenous peoples, the agents of the Special Secretariat for Indigenous Health (SESAI) to provide assistance to the wounded indigenous people, and FUNAI. In this regard, they reiterate that the confrontation did not take place on indigenous territory, but on invaded private property. In addition, it was added that the actions and proceedings reported were carried out with the intention of preventing and curbing the practice of crimes of a serious nature that had occurred in the region, as well as in reaction to alleged acts of violence committed by the indigenous people. In this regard, it was added that on June 27, 2022, the head of the Local Technical Coordination of Amambai was allegedly held in a private prison by the indigenous people who were at the camp, who also retained the cell phone of the public official and the official vehicle of FUNAI, so they called the Federal Police to rescue him.
22. The State indicated that preliminary investigations indicate that the facts reported in this request are not related to the issue of land demarcation, but rather to internal disputes over leadership in the Amambai Reserve. The State then reported on the opening of investigative proceedings before the Civil Police and the Federal Police, in order to investigate the actions of the police and the events that occurred in the “Guapoy’s Retaking,” as well as the establishment of preparatory proceedings before the Prosecutor’s Office of the Republic of Ponta Porã, to monitor the events involving the conflict between indigenous people, police and landowners in the “Guapoy’s Retaking.” In this regard, it was stressed the issuance of official letters to various bodies, especially the request for an anthropological expert opinion in the area, which was annexed to the process of reintegration of possession. Finally, it was emphasized that a complaint report was filed with the Military Police to investigate the alleged crimes of threats against a public official and attempted murder, in which six police officers were recorded as victims. In addition, investigations are being carried out into the crimes of housebreaking, damage, resistance, irregular possession of firearms of permitted use, illegal possession of firearms of permitted use, homicide resulting from opposition to police intervention,<sup>11</sup> bodily injury resulting from opposition to police intervention, allegedly committed by civilians and indigenous people in the conflict.
23. Regarding protection actions, the State also reported that the National Human Rights Council issued a Recommendation on July 7, 2022, for the protection and assistance of the *Guarani Kaiowá* indigenous people in the State of Mato Grosso do Sul. In particular, it requested the Federal Police to investigate the facts, the Ministry of Women, Family and Human Rights to include leaders in protection programs, and the STF to resume the trial of the extraordinary appeal. It was then highlighted that the MPF has been monitoring the situation and requesting support from the police for patrols and preventive patrols in the region, and that the Public Defender’s Office of the Union is working to defend and promote the rights of indigenous people. Furthermore, in order to guarantee the preservation of public order, life and security of the proposed beneficiaries, on July 27, 2022, the use of the National Public Security Force was authorized, in support of the Federal Police, in the indigenous villages of the municipalities of Amambai, Naviraí and Caarapó, in the State of Mato Grosso do Sul, until December 31, 2022.<sup>12</sup> Regarding the events of July 14 and August 1, 2022, the State emphasized that the situation continues to be monitored by the competent domestic authorities and that preliminary investigations have indicated that the deaths that occurred are not related to the main allegations. The facts are being investigated by the Federal Police and are being monitored by the MPF and FUNAI.
24. With regard to the *Tekohá Kurupi/São Lucas* community, it was reported that it is a “retaking” area composed of 27 families and that the events of June 23, 2022, did not mobilize all members of the community. Regarding accounts of disappearances of indigenous people, it was reported that, following the police action, some indigenous people tried to escape during the night, possibly by

11 Violation of domicile, damage, irregular possession of a firearm of permitted use, illegal possession of a firearm of permitted use, homicide due to opposition to police intervention, bodily injury due to opposition to police intervention.

12 Ministry of Justice. MJSP Order No. 136, <https://dspace.mj.gov.br/handle/1/7265>, July 27, 2022.

dispersing. Thus, it is possible that the initial reports of disappearances may have occurred before they were all found again, as such accounts were not confirmed by FUNAI officials who were on the premises. Subsequently, it was reported that FUNAI officials received reports of threats to indigenous people in the region and gunfire from the farm's headquarters. In this regard, it was reported that the Head of the Local Technical Coordination (CTL) of Caarapó would be trying to keep in contact with the indigenous people and with representatives of the MPF and the Federal Police in Naviraí, to follow up on the case. In addition, he reported that lawsuits for reinstatement of possession have been pending in the 1st Federal Court of Naviraí since 2014, as well as a demand for food security for delivery of basic food baskets and humanitarian aid in the region, which has been complied with by the CTL of Dourados.

25. On 28 August 2002, it was reported that the Federal Police and the State Military Police carried out patrols for the election of the head of the indigenous village of Amambai, which took place on 31 July 2022, with fixed and mobile teams throughout the indigenous territory. They also emphasize that the outbreak of the conflict is allegedly linked to the alleged discontent of opponents seeking to maintain their influence in the village and that the Federal Police and the National Public Security Force have acted, in accordance with their powers, to curb conflicts in the region and investigate the latest events.
26. In that connection, the State reported that the situation was being resolved at the domestic level and that the State was taking all possible measures to seek a peaceful solution that respected people's fundamental rights.

### **III. ANALYSIS OF THE ELEMENTS OF GRAVITY, URGENCY AND IRREPARABILITY**

27. The precautionary measures mechanism is part of the Commission's function of 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 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 that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm.
28. The Inter-American Commission and the Inter-American Court of Human Rights ("the Inter-American Court" or "I/A Court H.R.") have repeatedly established that precautionary and provisional measures have a dual nature, protective and precautionary.<sup>13</sup> Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights<sup>14</sup>. To this end, an assessment must be made of the problem posed, the effectiveness of the State's actions in the situation described, and the degree of vulnerability in which the persons for whom measures

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13 See in this regard: I/A Court H.R. Matter of the Yare I and Yare II Capital Region Penitentiary Center. Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. Case of Carpio Nicolle et al. v. Guatemala. Provisional Measures. Order of July 6, 2009, considerandum 16.

14 See in this regard: I/A Court H.R. Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center. Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. Case of Bámaca Velásquez. Provisional Measures regarding Guatemala. Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. Matter of Fernández Ortega et al. Provisional Measures regarding Mexico. Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. Matter of Milagro Sala. Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish].

are requested would be left unprotected in the event that they are not adopted<sup>15</sup>. With respect to the precautionary nature, these measures have the purpose of preserving legal situations while under the consideration of the IACHR. The purpose of precautionary measures is to preserve the rights that may be at risk until the petition before the Inter-American system is resolved. Its 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 a final decision and, if necessary, to comply with the reparations ordered<sup>16</sup>. For the purposes of making a decision, according to Article 25(2) of its 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.
29. In analyzing those requirements, the Commission reiterates that the facts that motivate 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>17</sup> Also, with regard to the State's statement regarding the alleged failure to exhaust domestic remedies, which is a case of admissibility of a petition, the Commission recalls that the mechanism of precautionary measures is governed exclusively by the provisions of Article 25 of its Rules of Procedure. In this regard, subparagraph 6.a establishes only that: “[i]n considering the request, the Commission shall take into account its context and the following elements: a. whether the situation of risk has been reported to the relevant authorities, or the reasons why it could not have been reported [...]”.<sup>18</sup>
30. Before proceeding with the analysis of the procedural requirements, the Commission allows itself to make preliminary questions regarding the present request for precautionary measures, particularly regarding the nature of the precautionary measures procedure and the *prima facie* analysis.
31. In this regard, the Commission clarifies that, in accordance with Article 25(8) of its Rules of Procedure, through the mechanism of precautionary measures, it is not appropriate to determine

15 See in this regard: Inter-American Court of Human Rights. Milagro Sala Case. Request for Provisional Measures against Argentina. Resolution of the Inter-American Court of Human Rights of November 23, 2017, Whereas 5; Inter-American Court of Human Rights. El Rodeo I and El Rodeo II Capital Judicial Prison Case.. Provisional Measures with respect to Venezuela. Judgment of the Court of February 8, 2008, Whereas 9; I/A Court H.R., Case of the Plácido de Plácido Penal Institute of Venezuela. Case of the Plácido de Sá Carvalho Criminal Institute. Provisional Measures with respect to Brazil. Resolution of the Inter-American Court of Human Rights of February 13, 2017, Whereas 6.

16 See in this regard: I/A Court H.R., Case of El Rodeo I and El Rodeo II Capital Judicial Prison. Case of the Internado Judicial Capital El Rodeo I and El Rodeo II. Provisional Measures regarding Venezuela. Judgment of the Court of February 8, 2008, Whereas 7; I/A Court H.R., Case of “El Nacional” and “Así es Noticia” Newspapers. Case of “El Nacional” and “Así es la Noticia” Newspapers. Provisional Measures with respect to Venezuela. Order of the Court of November 25, 2008, Whereas 23; I/A Court H.R., Case of Luis Uzcátegui. Case of Luis Uzcátegui. Provisional Measures with respect to Venezuela. Order of the Court of January 27, 2009, para. 19.

18 Article 46 of the American Convention, cited by the State, refers to “petition or communication presented in accordance with Articles 44 and 45 [...]” which refer exclusively to the petition and case system. It is noted that Articles 44 and 45 of the American Convention refer to “denunciations or complaints of violation” of the Convention. The function of the precautionary measures mechanism is not to establish the existence or not of one or more violations (see Article 25.8 of the Commission’s Rules of Procedure), and the consequent international responsibility of the State; rather, according to Article 25 of the Commission’s Rules of Procedure, the precautionary measures “[...] shall relate to serious and urgent situations that present a risk of irreparable harm to persons or to the subject matter of a petition or case pending before the organs of the Inter-American system.”

whether the State of Brazil is internationally responsible in relation to the alleged facts, nor to evaluate the versions provided by the parties as to the origin and development of the conflict. It is also pertinent to clarify that, in accordance with its mandate, the Commission is not responsible for determining individual responsibilities.

32. The Commission also considers it pertinent to clarify that it is not called upon to pronounce, through the mechanism of precautionary measures, on the compatibility of the proceedings being processed in the domestic sphere in light of the American Convention and international standards. In that sense, it is not for the Commission in this proceeding to determine who are the owners of the lands in dispute, or whether the proceedings initiated in this matter comply with the guarantees of the American Convention. Such claims, by their very nature, require substantive determinations that would be appropriate for analysis in a petition or case.
33. In 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 beneficiary community. Likewise, the facts that motivate a request for precautionary measures do not need to be fully proven, but rather the information provided must be assessed from a *prima facie perspective* that makes it possible to identify a serious and urgent situation.
34. Therefore, the Commission's analysis below relates exclusively to the requirements of seriousness, urgency and risk of irreparable harm established in Article 25 of its Rules of Procedure, which can be resolved without making determinations on the merits, and considering the foregoing issues.
  - *Situation of the members of the Guapoy's Community of the Guarani Kaiowá Indigenous People located in the municipality of Amambai, southern cone of the State of Mato Grosso do Sul.*
35. In analyzing the request at hand with respect to the proposed beneficiaries, the Commission takes into account the context in which the alleged facts are set. First, the Commission recalls that, in the case of indigenous peoples, the lack of access to land and natural resources can lead to conditions of misery for the indigenous communities concerned, since the lack of possession of and access to their territories prevents them from using and enjoying the natural resources they need to provide themselves with the goods necessary for their subsistence<sup>19</sup>. The foregoing impacts on the conditions for a dignified life, given that for indigenous peoples, the lack of access to their ancestral territory causes them suffering, and damages the preservation of their ways of life, customs and language.<sup>20</sup>
36. Secondly, following its visit to the country in 2018 and in its 2021 Report on the Situation of Human Rights in Brazil,<sup>21</sup> the Commission recalls that it noted the "serious humanitarian situation" of the *Guaraní* and *Kaiowá* peoples due to the situation of their territorial rights.<sup>22</sup> On that occasion, the Commission was informed of armed attacks on indigenous people, as well as deaths and disappearances.<sup>23</sup> The Commission was also informed of police operations that did not respect international human rights standards.<sup>24</sup>
37. Third, and most recently, in July 2022, the IACHR and the Regional Officer of the United Nations High Commissioner for Human Rights, referring to a series of attacks, threats and intimidation reported

<sup>19</sup> IACHR. Rights of indigenous and tribal peoples over their ancestral lands and natural resources. OEA/Ser.L/V/II. Doc. 56, 09 December 30, 2009, para. 57.

<sup>20</sup> Ibidem

<sup>21</sup> IACHR. Situation of Human Rights in Brazil. OEA/Ser.L/V/II. Doc. 9, 12 February 2021, para. 34.

<sup>22</sup> IACHR. Situation of Human Rights in Brazil; OEA/Ser.L/V/II. Doc. 9, 12 February 2021, para. 69.

<sup>23</sup> Ibidem

<sup>24</sup> Ibidem

by several indigenous peoples in Brazil, noted with concern the involvement of police forces in several cases of violence against indigenous peoples in Brazil, and therefore urged the State to eradicate racial discrimination and profiling by security forces.<sup>25</sup> They also called for prompt investigations into allegations that police officers are working alongside private landowners against indigenous peoples claiming ancestral lands.<sup>26</sup>

38. Recalling the context in which this request is framed, the Commission proceeds to analyze whether the requirements of seriousness, urgency, and irreparable harm of Article 25 of the IACHR Rules of Procedure are met, in relation to the members of the Guapoy's community of the *Guarani Kaiowá* peoples.
39. With regard to the requirement of *seriousness*, the Commission notes that, according to the applicants, the proposed beneficiaries are *Guarani Kaiowá* indigenous people who live in tents near the Amambai Indigenous Reserve in the municipality of Amambai in Mato Grosso do Sul (see *supra* para. 4) and claim as ancestral property those lands of the "Borda da Mata Farm," which is adjacent to the Amambai Reserve (see *supra* para. 5). The information available from the parties indicates that this farm would have owners and would be under private ownership (see *supra* paras. 5 and 19). According to the applicants, the proposed beneficiaries allegedly participated in a "retaking movement" of certain areas of the aforementioned farm, which led to an initial situation of tension in May 2022, and a series of meetings with state authorities regarding the demand of the proposed beneficiaries that their lands be demarcated (see *supra* para. 5). In this regard, the State referred to the existing "climate of tension" and the lack of security in the area (see *supra* para. 19).
40. Following this situation, on June 24, 2022, the applicants continued with the "retaking movement" of the farm, which allegedly required the presence of the security forces in response to complaints lodged by the owners of the farm (see *supra* para. 6). In this regard, the parties have presented facts that contradict each other regarding what allegedly occurred on that date when the conflict broke out. In particular, with regard to allegations concerning the use of force by the security forces (see *supra* paras. 6 and 7) and the actions taken by the members of the Guapoy's community in the development of the conflict at the farm (see *supra* paras. 20 and 22).
41. The Commission recalls that, given the nature of the allegations made by the parties regarding what happened on June 24, 2022, it is the duty of the State to carry out the corresponding investigations, clarify the facts, and determine the relevant responsibilities for the events that occurred that day, taking into account the guarantees of the American Convention and applicable international standards. Notwithstanding, the Commission notes that the confrontation that arose on that day reflects the existence of a context of conflict and tension over territorial claims that have not been resolved to date. The Commission understands that this situation will continue according to the information provided by the State, given that the indigenous land demarcation processes have been suspended following a decision of the Supreme Federal Court of Brazil in May 2020 (see *supra* para. 18).
42. With regard to the situation of conflict in the area, the Commission notes that the seriousness of what happened is reflected in the number of wounded and the death of one person. From the information provided by the applicants, it was reported that 1 person was killed and 10 members of the Guapoy's community were wounded, including children and women (see *supra* para. 7). On the part of the State, it was reported that indigenous people and police officers were wounded, and one person died (see *supra* para. 20). Among those affected, according to the State, would be 6 police officers and 1

<sup>25</sup> IACHR. Press release "CIDH y ONU Derechos Humanos piden proteger de la violencia a los pueblos indígenas en Brasil" ["IACHR and UN Human Rights call for protection of indigenous peoples in Brazil from violence]," July 15, 2022. Available at: <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/161.asp>

<sup>26</sup> *Ibidem*

federal civil servant (see *supra* para. 22). In this regard, the Commission appreciates the opening of investigative proceedings for the events of June 24, 2022, before the competent entities (see *supra* paras. 10, 11, 22, 24, and 25), which was confirmed by the parties in the course of these proceedings.

43. Following the events of June 24, 2022, the Commission identifies that, on July 4, 2022, the situation of the indigenous people in the “Borda da Mata” farm was assessed by the competent judicial body, which decided to maintain the proposed beneficiaries in the area under occupation on the aforementioned farm (see *supra* para. 9). As indicated by the applicants, the judge indicated that they should be given “full protection” and “attention to their claims” (see *supra* para. 9). Similarly, on July 7, 2022, the National Human Rights Council issued a recommendation to public bodies to act “effectively” to protect” and assist the *Guarani Kaiowá* indigenous peoples of the State of Mato Grosso do Sul (see *supra* paras. 11 and 23). Considering the foregoing, the Commission understands that the Judiciary and a national human rights body called for the effective protection of the rights of the proposed beneficiaries, particularly after the events of June 24, 2022.
44. In response to the request for information made to the State in terms of Article 25 of the Rules of Procedure, the Commission notes that the State reported on the following measures implemented in response to the alleged situation: assistance to the proposed beneficiaries from FUNAI (see *supra* para. 21); the MPF’s monitoring of the situation and police support for patrols and preventive patrolling in the region (see *supra* para. 23); defense and promotion of the rights of indigenous peoples through the Federal Public Defender’s Office (see *supra* para. 23); authorization for the use of the National Public Security Force, in support of the Federal Police, in the indigenous villages of the municipalities of Amambai, Naviraí and Caarapó, in the State of Mato Grosso do Sul from July 27, 2022 to December 31, 2022 (see *supra* para. 23); development of investigations into the alleged facts (see *supra* paras. 24 and 25).
45. In this regard, the Commission notes that, although such measures have been adopted by the State, the applicants have reported the occurrence of the following events, even after the judicial decision and recommendation of the national human rights body, both of July 2022. Thus, the following are identified (see *supra* paras. 12 and 13):
  - a. On July 14, 2022, the indigenous *Guarani Kaiowá* Marcio Moreira was killed with gunshots;
  - b. On August 1, 2022, the indigenous *Guarani Kaiowá* Vitorino Sanches was attacked with 10 shots as he entered the Guapoy’s community for donations. The car that was driven by Mr. Vitorino received more than 10 shots, 3 of which hit the proposed beneficiary. He was taken to hospital in serious condition;
  - c. On September 13, 2022, the indigenous Vitorino Sánchez was again attacked with gunfire, which led to his death.
46. The Commission notes that between July 14 and September 13, 2022, two indigenous people from the universe of proposed beneficiaries have been murdered. It was reported that the indigenous *Guarani Kaiowá* Marcio Moreira, killed on July 14, 2022, was one of the members of the “retaking” movement. Similarly, the *Guarani Kaiowá indigenous man* Vitorino Sanches, killed on September 13, 2022, was indicated by the applicants as a person who provided support to the community, and had already suffered an armed attack on August 1, 2022, when he entered the Guapoy’s community. From these events, the Commission understands that the alleged facts, and understood as a whole, make it possible to identify the existence of events of violence that have increased over time, impacting the life and integrity of the members of the proposed beneficiary community. It also notes that, following the judicial decision of July 4, 2022, two indigenous people were murdered in a short period of time, and one of them was preceded by armed attacks. In this regard, the Commission verifies that both indigenous persons were involved in the events of June 24, 2022.

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47. In view of the above, the Commission notes that, following the transfers of information between the parties, the existence of concrete and effective security measures in favor of the proposed beneficiaries is not identified. Although the State reported the presence of public forces in the area, the armed attack on a community leader, as well as the occurrence of two murders, make it clear that insufficient security measures are being implemented in relation to the proposed beneficiaries, and that risk factors are materializing. The Commission does not have additional elements of assessment to indicate that the protection measures are in fact being implemented. It also does not have additional elements regarding the way they are being implemented.
48. In sum, taking into account the alleged background and the context indicated, assessed as a whole, the Commission considers that the requirement of seriousness is met and that *prima facie* the rights to life and personal integrity of the members of the Guapoy's community are at serious risk. In making this consideration, the Commission takes into account: i) the context in which the alleged situation occurs; ii) the information that indicates that the risk factors are present and are currently materializing, having reported the murder of two proposed beneficiaries; and iii) the absence of effective protection measures to address the identified situation presenting a risk.
49. As for the requirement of *urgency*, the Commission considers that it has been met, in view of the ongoing acts of violence, which suggest that the members of the Guapoy's community of the *Guarani Kaiowá* Indigenous People could be exposed to new events of risk against them at any time, the situation having already materialized in two murders in the last three months. In this regard, the Commission takes into account that the facts presented are indicators of the need to adopt urgent measures to adopt and strengthen, through immediate measures, both the necessary individual protection details, and those of a collective nature in favor of the proposed beneficiaries, as well as adopting the corresponding consultation measures. The Commission also takes into consideration that the risk events have materialized despite the existence of a judicial decision in favor of the proposed beneficiaries that calls for their effective protection and a recommendation of the National Human Rights Council.
50. With respect to the requirement of *irreparable harm*, the Commission considers that it has been met, since the possible impact on the rights to life and personal integrity, by their very nature, constitute the maximum situation of irreparability.
51. With regard to the State's arguments in relation to the principle of complementarity, the Commission considers it pertinent to recall that this principle informs the inter-American system across the board, insofar as the nature of international jurisdiction is "auxiliary" or "complementary," without replacing it.<sup>27</sup> The Commission considers, however, that the invocation of the principle of complementarity as grounds for considering that the adoption of precautionary measures is not appropriate, presupposes that the State concerned satisfies the burden of demonstrating that the applicants are not in the situation established in Article 25 of the Rules of Procedure, in view of the fact that the measures adopted by the State itself have had a substantive impact on the reduction or mitigation of the situation of risk, in such a way that it is not possible to assess a situation that meets the requirement of seriousness and urgency that precisely require international intervention to prevent irreparable harm.<sup>28</sup>
52. In this matter, although the Commission takes into account and assesses the actions taken by the State to protect the rights of the proposed beneficiaries, upon analyzing the situation, it deems the

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<sup>28</sup> Ibid

requirements set forth in Article 25 of the Rules of Procedure met, and therefore considers that the adoption of precautionary measures is appropriate.

- *Situation of the members of the Tekohá Kurupi/São Lucas Community of the Guarani Kaiowá Indigenous People in the municipality of Naviraí, southern cone of the State of Mato Grosso do Sul*

53. Finally, with regard to the members of the Tekohá Kurupi/São Lucas communities, the Commission identifies that the applicants referred to a situation of violence that occurred in June and July 2022 (see *supra para.* 15). For its part, the State referred to the actions taken and the status of the processing of a decision and judicial proceedings (see *supra para.* 24). However, the Commission considers that it does not have sufficient information to analyze, at this time, the specific situation of these proposed beneficiaries. Should new facts arise with respect to the members of the Tekohá Kurupi community, the applicants may submit a new request for precautionary measures, which will be analyzed in the terms of Article 25 of the Rules of Procedure. Notwithstanding this decision, all the State's international obligations remain in force in light of the American Convention and applicable international standards, such as those referring to the duty to protect persons at risk.

## **V. BENEFICIARIES**

54. The Commission declares that the beneficiaries of this precautionary measure are the members of the Guapoy's community of the Guarani Kaiowá Indigenous People, who are identifiable in the terms of Article 25.6.b of the IACHR Rules of Procedure.

## **VI- DECISION**

55. The Inter-American Commission considers that this matter meets, *prima facie*, the requirements of seriousness, urgency, and irreparable harm set forth in Article 25 of its Rules of Procedure. Consequently, Brazil is requested to:

(a) adopt the necessary and culturally appropriate measures to protect the rights to life and personal integrity of the members of the Guapoy's community of the Guarani Kaiowá Indigenous People. Likewise, the State must ensure that the rights of the beneficiaries are respected in accordance with the standards established by international human rights law, both by state actors and in relation to acts of risk attributable to third parties;

(b) agrees on the measures to be taken with the beneficiaries and/or their representatives; and

c) report on the actions implemented to investigate the facts that gave rise to the adoption of the present precautionary measure and thus, so as to prevent them from reoccurring.

56. The Commission requests the State of Brazil to report, within 15 days from the day following notification of this resolution, on the adoption of the required precautionary measures and to update that information periodically.

57. 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 under the applicable instruments.

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

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59. Approved on October 2, 2022, by Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice-President; Esmeralda Arosemena de Troitiño; Joel Hernández García; Roberta Clarke; and Carlos Bernal Pulido, members of the IACHR.

Tania Reneaum Panszi  
Executive Secretary