

REPORT No. 63/10
PETITION 1119-03
ADMISSIBILITY
GARIFUNA COMMUNITY OF PUNTA PIEDRA AND ITS MEMBERS
HONDURAS
March 24, 2010

I. SUMMARY

1. On October 29, 2003, the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission" or the "IACHR") received a petition filed by the Organización Fraternal Negra Hondureña¹ (hereinafter "the petitioner" or "OFRANEH"), on behalf of the Garifuna Communities of Cayos Cochinos, Punta Piedra, and Triunfo de la Cruz, against the Republic of Honduras (hereinafter the "Honduran State," "Honduras," or the "State"). The petition argues that the State of Honduras is internationally responsible for alleged violations of the rights protected at Articles 8 (right to a fair trial), 21 (right to property), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention"), in relation to Article 1 of the same instrument, and Articles 13(1), 14, 15(1), 17, 18 and 19 of Convention 169 on Indigenous and Tribal Peoples in Independent Countries of the International Labor Organization (hereinafter "ILO Convention 169"), to the detriment of the communities and their members.

2. On December 19, 2003, the IACHR decided to separate the claims submitted by each Garifuna community, and to assign each one a number.² The petition of the Garifuna Community of Punta Piedra was identified as P-1119-03, which was reported to the petitioner and the State.

3. The petitioner alleges that the rights of the Garifuna Community of Punta Piedra and its members (hereinafter the "Community," the "Community of Punta Piedra," "Punta Piedra," or the "alleged victims") were violated, since the State failed to adopt the measures necessary, for the members of the Community could not fully exercise their rights to their territories given the limitations in their enjoyment due to the acts of third persons, without the proper measures of protection or a response by the State. As regards the admissibility of the petition, it states that domestic remedies have been duly exhausted.

4. For its part, the State argues that without prejudice to the rights of the Garifuna Community of Punta Piedra over its ancestral territories, recognized in the property titles issued to it, this petition is inadmissible due to the failure to exhaust domestic remedies.

5. After analyzing the petition, the Commission concludes in this report that the complaint is admissible pursuant to Articles 46 and 47 of the American Convention and Articles 30, 36, and related articles of its Rules of Procedure, in terms of the claims presented in relation to Articles 21 and 25 of the American Convention, in relation to Articles 1 and 2 of the same instrument. Finally, the Commission resolves to notify the parties, publicize this report, and include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

6. The IACHR received the petition on October 29, 2003, and identified it as petition P-1119-03. On January 30, 2004, it transmitted the pertinent parts to the State, asking that it submit its observations within two months. Honduras's response was received on March 29, 2004.

¹ By communication received January 21, 2009, the petitioner designated Professor Joseph P. Berra as its legal representative attorney.

² On March 14, 2006, the IACHR approved Admissibility Report 29/06, Petition 906-03, Garifuna Community of Triunfo de la Cruz and its members; and on July 24, 2007, it approved Admissibility Report 39/07, Petition 1118-03, Garifuna Community of Cayos Cochinos and its members.

7. Moreover, the IACHR received information from the petitioner on the following dates: May 11 and September 28, 2004; October 21, 2005; January 13, March 8, April 25, July 14, and October 31, 2006; March 26, May 9, June 14, June 20, and August 15, 2007; and January 21, 2009. Those communications were duly transmitted to the State.

8. The IACHR received observations from the State on the following dates: August 19 and October 28, 2004; April 6, July 28, and August 18, 2006; and April 23, April 30, June 27 and July 2, 2007. Those communications were duly transmitted to the petitioner.

9. During the processing of the case, a public hearing was held before the IACHR on March 7, 2006 (124th regular period of sessions), and two working meetings were held, on March 5, 2007 (127th regular period of sessions) and July 20, 2007 (128th regular period of sessions of the IACHR).

- **Friendly Settlement Procedure**

10. At the public hearing held March 7, 2006, the parties agreed to begin a friendly settlement process. On March 8, 2006, the IACHR received the proposed friendly settlement drawn up by the petitioner. On March 26, 2007, the petitioner expressed its interest in withdrawing from the effort to reach a friendly settlement and going forward with the processing of the petition, alleging a lack of political will by the State to carry out the commitments assumed during this process. At the working meeting of July 20, 2007, which was attended by both parties, the petitioner reiterated its decision.

- **Precautionary Measures 109-07**

11. On June 15, 2007, the petitioner requested the adoption of precautionary measures on behalf of the Garifuna Community of Punta Piedra and, in particular, one of its members, Marcos Bonifacio Castillo³, because he would have received death threats. On August 20, 2007, the IACHR granted precautionary measures on behalf of Marcos Bonifacio Castillo.⁴ On September 13, 2007, Honduras sent its response. The precautionary measures are in force.

III. POSITIONS OF THE PARTIES

A. The petitioner

12. The petitioner notes that the presence of the Garifuna people in Honduras dates back to 1797, and that it is a culturally differentiated people who maintain their own traditional way of life, cosmologies, uses and customs, forms of social organization, institutions, beliefs, values, dress, and language. It notes that for a long time the Garifuna communities, among them the Community of Punta Piedra⁵, called on the State to recognize their rights to the land they have ancestrally possessed.⁶

13. In this respect, it reports that as of the early 1900s a gradual and systematic dispossession of the ancestral lands of the Garifuna began, and that since that time efforts have been made vis-à-vis the State authorities to secure recognition of their ancestral territories.

³ The petitioner reiterated this request during the working meeting of July 20, 2007.

⁴ In particular, the Commission asked the Honduran State: (1) To adopt the measures necessary to guarantee the life and physical integrity of Mr. Marcos Bonifacio Castillo; (2) to coordinate the measures to be adopted with the beneficiary and the petitioners; and (3) to report on the actions taken to judicially clarify the facts that justify the adoption of precautionary measures.

⁵ The Community is made up of approximately 1,500 members.

⁶ The petitioner refers, among others, to the Garifuna Community of Triunfo de la Cruz. See IACHR, Report No 29/06, Petition 906-03, Admissibility, Garifuna Community of Triunfo de la Cruz and its members, paragraph 11.

14. As regards the Garifuna Community of Punta Piedra, petitioner argues that after years of struggle, they were able to have the State grant full title over the territories they possessed from time immemorial, and the titles were issued by the National Agrarian Institute (hereinafter "INA": Instituto Nacional Agrario) in 1993⁷ and 1999⁸, respectively.

15. It notes that during the process to obtain the property title for the Community of Punta Piedra, in 1992, peasant farmers belonging to what is known as the Community of Río Miel had occupied part of the Community's ancestral territory, especially areas set aside for the production of crops. It states that since then the Community has faced a permanent conflict with the peasants occupying that land, and a climate of violence and fear has taken hold in the area.

16. It argues that while the State awarded a property title to the Community of Punta Piedra over its ancestral lands, the members of the community have not been able to enjoy a large part of the territory, as it is occupied by the peasant community of Río Miel.

17. The petitioner reports that as regards this situation, the title that the INA granted to the Community in 1999 had a clause that established: "Excluded from the adjudication are those areas occupied and exploited by persons from outside the community, and the State reserves the right to dispose of them to adjudicate them to the occupants who meet the legal requirements." Nonetheless, the INA amended that clause on January 11, 2000, by means of a public instrument, stating for the record that the inclusion of that clause had been the result of an involuntary error, and it declared that the 1999 title had been eliminated and consequently has no value or effect.

18. It adds that in order to resolve the conflict with the peasant community of Río Miel, on December 13, 2001, a meeting was held with representatives of both communities (Punta Piedra and Río Miel), the INA, and representatives of OFRANEH and ODECO (Organización de Desarrollo Étnico Comunitario). On that occasion the parties signed an act of commitment in which the communities in conflict recognized the existence of a land tenure dispute, and of the problems that stemmed from that dispute, as a result of which the physical integrity of its members had come to be endangered.⁹ On that occasion the State, through the INA, would have undertaken to (a) clear up legal title to the lands, so as to vest it in the Community of Punta Piedra and (b) to compensate the members of the community of Río Miel for the improvements made on the Garifuna lands and relocate them.

19. The petitioner argues that the State has not carried out the commitments it acquired on December 13, 2001, despite the many efforts that the Community of Punta Piedra has made in order to cooperate with the State so as to fully implement the commitment.

20. In addition, petitioner holds that the signing of an act of commitment with a government agency, such as the INA, presupposes for the Garifuna peoples the just conclusion of a legal dispute, given the difficulty these communities face on attempting to gain access to a legal defense. To do so, according to the petitioner, it must confer on the agreement the same force as a judgment.

⁷ The petitioner cites the Final Property Title of Full Ownership (Título Definitivo de Propiedad en Dominio Pleno), of December 16, 1993, over land 800 hectares, 74 areas, and 8 centi-areas in extent. Granted by the National Agrarian Institute to the Garifuna Community of "Punta Piedra," Case File No. 25239.

⁸ The petitioner cites Final Property Title of Full Ownership (Título Definitivo de Propiedad en Dominio Pleno), of December 6, 1999, over land 1,513 hectares, 54 areas and 45.03 centi-areas in extent. Granted by the National Agrarian Institute to the Garifuna Community of "Punta Piedra", Case File No. 52147-10775. On January 11, 2000, a public deed of rectification (*escritura pública de rectificación*) was issued with respect to this title, granted to the "Punta Piedra Community." In said instrument, the Executive Director of the INA, making reference to the Final Property Title of Full Ownership granted to the Garifuna Community of Punta Piedra on December 6, 1999, certified that the inclusion of the clause that provides "Excluded from the adjudication are the areas occupied and exploited by persons from outside the community, the State reserving the right to dispose thereof to adjudicate them to the occupants who meet the requirements of law" had been the result of an involuntary error; in addition, that clause was eliminated by the deed of rectification of said title, and it no longer has any effect.

⁹ In the Act of Commitment of the Communities of Punta Piedra and Río Miel, signed December 13, 2001. Document provided by the petitioner.

21. Based on the foregoing, petitioner argues that the State has failed to adopt effective measures as would enable the members of the Garifuna Community of Punta Piedra to fully exercise the rights that correspond to them over their territories, given the limitations said to have been consummated through acts committed by third persons. This, it alleges, would presuppose a violation of the rights protected at Articles 8, 21, and 25 of the American Convention, in relation to Article 1 of the same treaty.

22. As regards the exhaustion of domestic remedies, it argues that the signing of the agreement entered into with the INA on December 13, 2001, presupposes the exhaustion of domestic remedies. In this regard, it argues that the failure to carry out the obligations assumed in agreements by government agencies is not susceptible of being alleged before the courts of justice. Accordingly, it indicates that given the lack of any judicial remedy that makes it possible to carry out those agreements, one should understand as exhausted the domestic remedies when, after a reasonable time, the State has not carried out the commitments assumed.

23. Finally, with respect to the position of the State that domestic remedies were not exhausted, it argues that the administrative procedure indicated by the State as pending is not a remedy to be exhausted because the consequence would be obtaining a title equal to what the Community of Punta Piedra already has. In addition, it argues that if the agreement signed with the INA were executive in nature, as the State indicates, it would represent the failure of the State to carry out the obligations assumed with the Garifuna Community.

B. The State

24. The State of Honduras stated that without prejudice to recognizing the rights that correspond to the Garifuna Community of Punta Piedra over its territories, the petition is inadmissible, as domestic remedies have yet to be exhausted.

25. The State reports that on December 26, 1922, the Community of Punta Piedra was granted a right of use and enjoyment over its territory by means of a community title (*título ejidal*).

26. With respect to the subject matter of the petition, the State argues that the problem alleged stems from the arrival of the first members of the Community of Río Miel in the Garifuna territory. It indicates that said territory, over which the Garifuna Community of Punta Piedra enjoys a right of full ownership (*de dominio pleno*), was determined through two concessions made by the INA. In this regard, it confirms the information provided by the petitioner to the effect that on December 16, 1993, that community was granted full ownership over 800.64 hectares; and that subsequently, on December 6, 1999, it was granted full ownership of a rural property that had been lands with national legal status of 1,513.54 hectares, thus expanding its territory. It specifies that the territory adjudicated by the second title included areas occupied by the residents of the Community of Río Miel.

27. According to the State, it was involved in seeking a peaceful solution to the conflict that affects the communities of Punta Piedra and Río Miel and that, in that context, it had sought to activate various governmental mechanisms. During the working meeting held before the IACHR on July 20, 2007, the State reported on the efforts it had been making to reach friendly settlements with the inhabitants of the Community of Río Miel and on the difficulties they faced, since those community members reject the possibility of being evicted from the lands where they live.

28. Finally, the State argues that the conflict was resolved by entering into an agreement signed on December 13, 2001, before an *ad hoc* Inter-institutional Commission¹⁰ whose members include, among others, the INA. It alleges that the agreement is in the nature of an out-of-court settlement.

¹⁰ The State indicates that the *ad hoc* Commission was made up of representatives of the Social Ministries of the Diocese of Trujillo, the INA, and the organizations ODECO and OFRANEH.

29. With regard to the obligations stemming from that agreement, it reported that the INA had performed the appraisal of the improvements made by community members of Río Miel in the territory of the Garifuna community, so as to proceed to clearing the lands of non-indigenous inhabitants (*saneamiento*). Nonetheless, it reports that the State did not have the economic resources necessary to continue this procedure, notwithstanding the budgetary efforts that were said to have been executed.

30. With respect to the exhaustion of domestic remedies, the State argues that the agreement signed by the parties does not presuppose any exhaustion of domestic remedies. In this regard, it notes that the alleged victims should have sought the payment of compensation through the administrative mechanisms that have been established by domestic legislation to guarantee the rights of private persons vis-à-vis the activity of the administration, and if that effort were not fruitful, then take recourse to judicial action.

31. Specifically, Honduras argues that the alleged victims should have filed an administrative claim prior to taking judicial action, as regulated in the Law on Administrative Procedures, which would constitute due process of law for the protection of the right allegedly violated. It argues that once said remedy is exhausted, the alleged victims could have filed the corresponding judicial action. Therefore, it concludes that domestic remedies have yet to be exhausted, and it asks that the petition be found inadmissible.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence of the Inter-American Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

32. The petitioner is authorized by Article 44 of the American Convention to submit petitions to the Commission. The petition identifies as alleged victims, to the Garifuna Community of Punta Piedra and its members who belong to the Garifunas indigenous people¹¹, whose rights, enshrined in the American Convention, the State had committed and undertaken to respect and protect. As regards the State, the Commission notes that Honduras has been a state party to the American Convention since September 8, 1977, when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to take cognizance of the petition because it alleges violations of rights protected by the American Convention that are said to have taken place in the territory of Honduras, a state party to that treaty.

33. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State as of the date of the facts alleged in the petition. Finally, the Commission is competent *ratione materiae*, because the petition alleges possible violations of the human rights protected by the American Convention.

34. With regard to what is raised by the petitioner in the complaint, to the effect that it seeks a finding that the State of Honduras violated ILO Convention 169, the Commission has no jurisdiction over

¹¹ The alleged victims belong to the Garifuna Community of Punta Piedra, with a population of approximately 1,500 members. This community is located in specific geographic areas and their individual members can be identified. In this regard, see I/A Court H.R., *Matter of The Communities of Jiguamiandó and Curbaradó regarding Colombia*. Judgment dated March 6, 2003, ninth clause; *Matter of the Peace Community of San José de Apartadó regarding Colombia*. Judgment dated June 18, 2002, eighth clause; *Matter of the Peace Community of San José de Apartadó regarding Colombia*. Judgment dated November 24, 2000, seventh clause; I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua Case*. Judgment of August 31, 2001. Series C No. 79, para. 149; *Matter of Pueblo indígena de Sarayaku regarding Ecuador*. Judgment dated July 6, 2004, para. 9. CIDH, Report No. 58/09, Kuna of Madungandí and Emberá of Bayano Indigenous Peoples and their Members (Panamá), para. 26; IACHR, Report No. 79/09, Ngobe Indigenous Communities and their members in the Changuilona River Valley (Panamá), para. 26.

the matter, without prejudice to which it can be used as a guide for interpreting the conventional obligations, in light of Article 29 of the American Convention.¹²

B. Exhaustion of domestic remedies

35. Article 46(1) of the American Convention establishes that in order for a petition submitted to the Inter-American Commission to be admissible pursuant to Article 44 of the Convention, one must have pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to examine alleged violations of a protected right, and, if appropriate, to resolve them before their consideration by an international authority.

36. Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies does not apply when: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

37. In the instant case, the State asks that the petition be declared inadmissible for failure to exhaust domestic remedies. It argues that the alleged victims should have sought payment of compensation through the administrative mechanisms established by the domestic legislation to guarantee the rights of private persons vis-à-vis the administration, and if that effort were not fruitful, only then could they have resorted to judicial action. In this respect, it notes that for the purposes of filing the corresponding judicial action, one must first have exhausted the administrative claim established in the Law on Administrative Procedures. It adds that the signing of the agreement on December 13, 2001, should not be understood as exhaustion of remedies because that agreement is in the nature of an out-of-court settlement.

38. The petitioner argues, on the other hand, that the signing of the agreement executed with the INA on December 13, 2001, presupposes the exhaustion of domestic remedies. It argues that the breach of obligations assumed by government agencies in agreements such as that mentioned is not susceptible to being alleged before the courts of justice.

39. With respect to the requirement of exhaustion of domestic remedies, the Commission observes that the facts alleged in the instant case are related to the effective protection of the right to collective property of a Garifuna community. In addition, it observes that the alleged victims are members of a Garifuna community that is culturally differentiated, with its own organization and authorities, and oral tradition, which for decades has been taking initiatives vis-à-vis the authorities of the State to secure recognition of their ancestral territory, first, and second, to be allowed the use and enjoyment of their rights.

40. In the instant case, there is no dispute with respect to the right to property of the Garifuna Community of Punta Piedra. The issue raised refers to the nature and scope of the obligation of the Honduran State to offer effective protection to that community's right to collective property. In this respect, the Inter-American Court of Human Rights (hereinafter the "Court" or the "Inter-American Court") has determined that the "protection of property under Article 21 of the Convention ... places upon States a positive obligation to adopt special measures that guarantee members of indigenous and tribal peoples the full and equal exercise of their right to the territories they have traditionally used and occupied."¹³

¹² Along the same lines, see IACHR, Report No. 29/06, Petition 906-03, Admissibility, Garifuna Community of Triunfo de la Cruz and its members, para. 39; and IACHR, Report No. 39/07, Petition 1118/03, Admissibility, Garifuna Community of Cayos Cochinos and its members, para. 49.

¹³ I/A Court H.R., *Case of the Saramaka People v. Suriname*. Judgment of November 28, 2007. Series C No. 172, para. 91.

41. Based on the analysis of the information and documents provided by the parties, it appears that the State granted the Community of Punta Piedra a community title (*título ejidal*) of use and enjoyment over their territory in 1922. In addition, it appears that the State, through the National Agrarian Institute, granted Property Title of Full Ownership to the Community in 1993 and 1999 for 800.64 hectares and 1,513.54 hectares, respectively. In addition, it appears that part of the territory of the Garifuna Community of Punta Piedra has been occupied by a peasant farmer community since approximately 1992, a situation that the State, through the INA, undertook to resolve, first in view of the nature of the property title of full ownership conveyed to the Garifuna Community in 1999 and, second, by means of the commitment acquired in the agreement signed on December 13, 2001, by the communities in conflict and the INA.

42. In addition, it appears that the representatives of the Garifuna Community of Punta Piedra, with a view to securing the clearing of the lands of non-indigenous inhabitants (*saneamiento*) have for almost two decades been making efforts vis-à-vis the State authorities, raising the central issues of this petition, and achieving the signing of said agreement on December 13, 2001. Based on the information provided by the parties, it appears that to date the commitments assumed by the State are pending implementation.

43. The Commission considers that the State has alleged the failure to exhaust an administrative remedy. In addition, one observes that it has not indicated to this Commission what the suitable judicial remedy would be offered by the domestic legislation, and, accordingly, the remedy that would have to be exhausted. The references to the judicial actions that would to have been brought by the alleged victims, once administrative remedies are exhausted, have been formulated in generic terms.

44. The IACHR also notes that the State argues that the conflict between the Garifuna Community of Punta Piedra and the members of the community of Río Miel “was resolved through the signing of an agreement on December 13, 2001, before an *ad hoc* Inter-institutional Commission” that includes the INA. With respect to the obligations that stem from said agreement, the State reported that the INA performed the appraisal of the improvements introduced by community members of Río Miel in the territory of the Garifuna community for the purposes of proceeding to clear the lands of non-indigenous people (*saneamiento*). The Commission observes that the State does not deny its commitment, but alleges that it does not have the economic resources to continue this procedure.

45. In consideration of the foregoing, the IACHR understands that the alleged victims do not want compensation, but call for substantive action on the part of the State to carry out the obligation acquired, first by recognizing their ancestral territory, and, second, by following through on the commitment acquired December 13, 2001 by the el INA, for the third persons who are living in their ancestral territory to be transferred elsewhere. Accordingly a contentious-administrative action or an action for damages so as to obtain compensation from the State is not a suitable remedy in this case.

46. The contentious-administrative action indicated by the State is not a suitable remedy in the face of these claims, given that the State already recognizes and has undertaken to protect the rights in question, such that they do not require a determination of their rights in this regard. Nor would an action for damages be suitable, given that the main claim is for the State to adopt measures within its competence to relocate third persons.

47. In consideration of the foregoing, the IACHR understands that the alleged victims requested the assistance of the State to protect their territory, but considers that they did not have adequate mechanisms for demanding from the State the territorial protection requested. In summary, the IACHR understands that Honduras did not make available to the alleged victims a remedy that would make it possible to protect the right alleged to have been violated, which in the terms of Article 46(2)(a) of the American Convention, constitutes one of the grounds for applying the exception to the rule of prior exhaustion of domestic remedies.

48. Finally, it should be noted that citing the exceptions to the rule of prior exhaustion of domestic remedies provided for at Article 46(2) of the Convention is closely related to the establishment of possible violations of rights enshrined therein, such as the rights to a fair trial and judicial protection. Nonetheless, Article 46(2), by its nature and purpose, is an autonomous provision, in contrast to the substantive provisions of the Convention. Therefore, a determination as to whether the exceptions to the rules of prior exhaustion of domestic remedies provided for therein are applicable in the case at hand must be made prior to and independently of the analysis of the merits, since the standard by which to assess this requirement is different from the one needed to establish a violation of Articles 8 or 25 of the Convention. It should be noted that the causes and effects that have prevented the exhaustion of domestic remedies in the instant case will be considered, to the extent that they are relevant, in any report on the merits adopted by the Commission to establish whether they do, in fact, constitute violations of the American Convention.

C. Timeliness of the petition

49. According to Article 46(1)(b) of the Convention, for a petition to be admitted it must be submitted within six months of the date on which the petitioner was notified of the final decision in the domestic jurisdiction. Nonetheless, as provided in Article 32(2) of the IACHR's Rules of Procedure, in those cases in which the exceptions to prior exhaustion rule apply, the petition must be submitted within a time Commission considers reasonable. To this end, the Commission should consider the date of the alleged violation of rights and the circumstances of each case.¹⁴

50. In the petition under study, the IACHR considers that the exception to the prior exhaustion requirement provided for at Article 46(2)(a) of the American Convention applies. Mindful of the date on which the dispute that led to this petition began, the time that has transpired since the signing of the agreement to which the State is one of the signatories, and the lack of progress in resolving the conflict alleged, the IACHR concludes that the petition, submitted on October 29, 2003, was submitted in a reasonable time, and, therefore, it considers that the requirement established at Article 46(1)(b) of the Convention has been satisfied.

D. Duplication of procedures and international *res judicata*

51. In order for a petition to be admissible, the American Convention requires, at Article 46(1)(c), "that the subject of the petition or communication is not pending in another international proceeding for settlement," and at Article 47(d) that it not reproduce the content of a petition already examined by this or any other international organization.

52. In this respect, the petitioner indicated that the petition under examination was not submitted to any other international organization, and no evidence to the contrary appears in the record. Therefore, the IACHR concludes that the requirement established at Article 46(1)(c) of the Convention has been met.

E. Characterization of the alleged facts

53. For purposes of admissibility, the Commission has to determine whether the facts alleged tend to establish a violation of rights enshrined in the American Convention, as required by Article 47(b), or whether the petition should be dismissed as "manifestly groundless" or obviously out of order, as per Article 47(c). The standard by which these requirements are assessed is different from the one needed to decide upon the merits of a petition; the Commission must perform a *prima facie* evaluation to determine whether the petition establishes the grounds for finding a possible or potential violation of a right protected by the Convention, but not to establish the existence of a violation of rights. This determination constitutes a primary analysis that does not imply any prejudging on the merits of the dispute.

54. The Commission will consider in the merits stage whether there exists or not a violation of the rights enshrined in Articles 21 and 25 of the American Convention, in conjunction with Articles 1 and 2 of the same instrument, taking into consideration the special relation between the indigenous communities with their ancestral lands, recognized both by the IACHR and the Inter-American Court¹⁵. Therefore, it concludes that the requirement established in Article 47(b) of the Convention has been satisfied.

¹⁴ IACHR, Report No. 15/09 (Admissibility) Petition 1-06, Massacre and Forced Displacement in Montes de María, Colombia, March 19, 2009, para. 62.

¹⁵ In this regard, consider Article 21 of the American Convention on Human Rights, in light of the provisions: I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua Case*. Judgment of August 31, 2001. Series C No. 79; I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125; I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay Case*. Judgment of March 29, 2006. Series C No. 146; I/A Court H.R., *Case of the Saramaka People v. Suriname Case*. Judgment of November 28, 2007. Series C No. 172; IACHR, Report N° 75/02, Mary y Carrie Dann (United States), December 27, 2002; IACHR, Report N° 40/04, Indigenous Mayan Communities of the Toledo District, Belize, October 12, 2004 and others that may be relevant.

V. CONCLUSIONS

55. The Commission concludes that it is competent to examine the complaint lodged by the petitioner, and that the petition is admissible pursuant to Articles 46 and 47 of the Convention, for the alleged violation of Articles 21 and 25 of the American Convention, in relation to Articles 1 and 2 of the same instrument.

56. With regard to what is raised by the petitioner in the complaint, to the effect that it seeks a finding that the State of Honduras violated ILO Convention 169, the Commission has no jurisdiction over the matter, without prejudice to which it can be used as a guide for interpreting the conventional obligations, in light of Article 29 of the American Convention.

57. Based on the arguments of fact and law set forth above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find this petition admissible, in relation to the alleged violations of the rights protected at Articles 21 and 25 in relation to Articles 1 and 2 of the American Convention.
2. To notify the parties of this decision.
3. To continue with the analysis on the merits.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on March 24th, 2010. (Signed: Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).