REPORT No. 5/13
PETITION 273-05
ADMISSIBILITY
NAM QOM INDIGENOUS COMMUNITY OF THE QOM (TOBA) PEOPLE
ARGENTINA
March 19, 2013

I. SUMMARY

1. On March 1, 2005, the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission," "Commission," or "IACHR") received a complaint filed by the Nam Qom indigenous community of the Qom (Toba) people (hereinafter "Nam Qom indigenous community" or "community of Nam Qom"), represented by the Equipo Nacional de Pastoral Aborigen (ENDEPA) and the Centro de Estudios Legales y Sociales (CELS) (hereinafter "petitioners") against the Argentine State (hereinafter "Argentina" or "State") for the alleged violation of the human rights of the Nam Qom indigenous community and its members, as well as the rights of the attorney for the community, Roxana Silva (hereinafter "alleged victims").

2. The petitioners allege that the members of the community of Nam Qom were victims of illegal and arbitrary detentions; torture and other cruel, inhuman, and degrading treatment; rape; failure to provide assistance; and breaking and entering of their homes without judicial order. These acts were allegedly carried out by police agents of the province of Formosa and of the Special Rural Affairs Unit (UEAR: Unidad Especial de Asuntos Rurales) during an operation carried out on August 16 and 17, 2002, which is said to have been characterized by special cruelty motivated by their ethnic identity. They argue that these events were not investigated by the judicial authorities, and that their attorney, Roxana Silva, was subjected to illegal intelligence activities by police officers. They argue that the facts alleged constitute a violation of Articles 5, 7, 8, 11, 19, 24, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), in relation to Articles 1 and 2 of the same instrument. They also assert that the State is responsible for the violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "the Inter-American Convention against Torture").

3. The State did not expressly controvert the factual and legal arguments presented by the petitioners, but rather referred to the measures said to have been adopted subsequent to the facts alleged, and to the situation of the community of Nam Qom.

4. Without prejudging on the merits, after analyzing the parties' positions and in compliance with the requirements provided for at Articles 46 and 47 of the American Convention, the Commission decides to declare the petition admissible for the purposes of examining the alleged violation of rights enshrined in Articles 5, 7, 8, 11, 19, 24, and 25 of the American Convention in relation to Articles 1(1) and 2 of the same instrument; and of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. In addition, the IACHR decides to find the petition admissible as to the alleged violation of Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter the "Convention of Belém do Pará"), to the detriment of L.L. and María Magdalena García, both members of the community of Nam Qom. The Commission decides to give notice of this decision to the parties, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On March 1, 2005, the Commission received the petition and assigned it number 273-05. The IACHR received additional information from the petitioners by communication of December 19, 2005. On January 7, 2008, the IACHR forwarded the pertinent parts to the State, and asked that it submit its observations within two months. By note of March 13, 2008, the State of Argentina requested a one-month extension. The State's response was received April 2, 2009; it was duly forwarded to the petitioners.

– Friendly Settlement

6. On April 2, 2009, the State expressed its willingness to pursue a friendly settlement. On April 30, 2009, the IACHR placed itself at the disposal of the parties with a view to reaching a friendly settlement. In a note received May 29, 2009, the petitioners expressed their agreement with this offer, and asked to define an agenda and a timetable for work to specify the points of the negotiation. On that occasion the petitioners also asked to be informed with respect to the position of the province of Formosa regarding the possibility of a friendly settlement, "in light of the division of functions stemming from the federal form of government, and [in view of] the indifference of the autonomous state, [the federal state] lacks specific instructions to go forward in concrete negotiations."

7. In notes received on October 19, 2009, and September 28, 2010, the State reported that the National Government was in conversations with the authorities of the province of Formosa for the friendly settlement of the matter. On December 17, 2009, and on February 18, 2011, the petitioners communicated their decision not to continue with the process as they considered that the response of the State did not address their concern in relation to the position of the province of Formosa in the face of a possible friendly settlement process. On July 6, 2011, the IACHR asked the State to forward its observations on the admissibility of the petition; after it made two requests for extensions, the State did not subject any observations.

8. On October 25, 2011, a hearing was held, during the 143rd regular period of sessions of the IACHR. On that occasion the parties once again took up the possibility of pursuing a friendly settlement and the petitioners indicated that they would consult the community on the minimum conditions for reaching an agreement. Neither the petitioners nor the State subsequently formally expressed willingness to so proceed.

III. POSITION OF THE PARTIES

A. Position of the petitioners

9. The petitioners allege that on August 16 and 17, 2002, a police operation – allegedly illegitimate, violent, and without judicial authorization – was carried out in the Nam Qom indigenous community of the Toba people, located in the province of Formosa, which was characterized by special cruelty towards the community. They add that the events were not investigated by the judicial authorities, and that the criminal case was definitely concluded on August 25, 2004.

10. The petitioners argue that the acts were carried out in a context of the alleged systematic violation of human rights by the different parts of the government in the State, to the detriment of the indigenous peoples and communities who live in Argentine territory. They also assert that these acts are part of a practice of police brutality, allegedly carried out by the State, and which has enjoyed impunity due to the inefficiency or complicity of the judicial branch. They state that these police practices are directed at the most socially, economically, and culturally vulnerable groups.

11. Next, the petitioners describe the Qom (Toba) people, and the community of Nam Qom. In summary, they report that the territory the Qom people occupied ancestrally was a vast zone of the Gran Chaco; they were organized in extended families, and their sustenance was based on hunting, fishing, and gathering. They

provide information on the form of organization of the people and on the process of forced sedentarization to which they were subjected in the late 19th century. With respect to Nam Qom, they indicate that it is a community that arose from the settlement of several indigenous families from the interior of the provinces of Formosa and Chaco on lot 68 of the province of Formosa, 12 kilometers from the city of Formosa. They report that in 1984 the province recognized the indigenous peoples' right to exercise community property rights over the land (Law 426), and in 1995 lot 68 was transferred to the civil association (*Asociación Civil*) of the Nam Qom district. They assert that it is a peripheral urban neighborhood with a total area of approximately 20 square blocks, where some 3,000 persons live. They explain the community's deficient living conditions, which include overcrowding, and a large percentage of dwellings without drinking water or electricity, among others. They report that by virtue of the economic adjustment policies implemented in recent decades, the members of this indigenous people have been condemned to survive with what little they can obtain from the far-off forest, where they hunt small animals. They indicate that some 80 families had settled in a flood zone outside the lot titled to the association, without housing or state services.

12. Regarding the events that occurred in the community of Nam Qom in 2002, the petitioners note that on August 16 and 17, more than 100 police agents, some in civilian dress, violently entered the community of Nam Qom. The agents were supposedly looking for the persons responsible for the homicide of and injuries to two police agents, events said to have occurred on August 16, 2002, at noon, on a private rural property situated 20 kilometers from the community of Nam Qom.

13. They state that police officers massively and indiscriminately detained nearly 80 members of the community, including children, the elderly, and women, and describe both the acts of violence and individual and community-wide effects. They argue that the persons detained were subjected to threats, torture, sexual violence, failure to provide assistance, and other forms of particularly violent abusive treatment. They report that many of the dwellings were subjected to breaking and entering and destroyed. They argue that the alleged victims suffered especially violent and hostile treatment at the hands of the authorities of the State because of their ethnic origin. They indicate, for example, that as a sign of contempt for indigenous traditions, they cut the braid used in his hair by a member of community who was detained, and that police agents, on assaulting the members of the community, shouted expressions such as "stupid Indian woman" ("*india tonta*") and "dirty ... Indian man" ("*indio ... sucio*").

14. They adduce that, in addition to the police authorities, the Attorney General and Investigative and Correctional Judge No. 4 had witnessed and participated in the acts of violence committed against the community of Nam Qom. They noted that several of the denounced facts were covered up by the police agents, who burned the bloodied clothes of the alleged victims and collected the shells of the bullets they shot. They indicate that some of the alleged victims detained were examined by medical examiners in the presence of police agents and were said not to have made any documentary record of the injuries caused by the blows and acts of torture, nor did they provide medical care. They report that the alleged victims, to this day, suffer physical and mental after-effects of the acts described.

15. They describe the situation suffered by a small number of persons since many of those affected had refused to recount what had happened in Argentina for fear of reprisals by police officials, the executive branch, and the judicial branch. In particular, they present detailed information on the acts committed against 29 members of the indigenous community during the police operation indicating the date, place, and description of the alleged act of violence; the family group to which each belongs; when possible, identification of the state agents; and medical reports of members of the community who were prosecuted.

16. They argue that after the operation in the community, nine of its members were accused of committing the crime of attempted homicide, in the case filed as number 18,421, before Investigative and Correctional Judge No. 4, and Prosecutor No. 2. When submitting the initial petition, they reported that nine members of the community were detained for six months, and that three were brought to trial.

17. The petitioners alleged that by virtue of the events of August 16 and 17, 2002, on September 18, 2002, eight members of the community of Nam Qom filed a criminal complaint against the Attorney General, Investigative and Correctional Judge No. 4, the Deputy Chief of Police for the province of Formosa, the Chief of the UEAR, the Chief of Regional Unit One, the Director of Special Corps and Special Services, the Second Chief of Regional Unit One, an expert in criminalistics, and a police agent, all of whom alleged to have participated in the operation. That complaint, filed as Case No. 3036/02, was heard by Investigative and Correctional Court No. 4, and Prosecutorial Office No. 2. They report that the criminal proceeding was plagued by several irregularities, and that it concluded with the dismissal of charges in relation to all of the accused, without any serious and effective investigation of the facts reported by the community.

18. Specifically, they state that they did not have the guarantee of an independent and impartial judge or court, as the proceeding was entrusted to the same judge accused of participating in the criminal conduct. They report Public Ministry did not request his recusal, but the complainants did. They indicate that this request was denied by the principal judge of Investigative and Correctional Court No. 4, who instead excused himself from hearing the case, adducing "moral violence," and the proceeding was removed to Investigative and Correctional Court No. 1.

19. They argue that in some of the statements made by the alleged victims there was no interpreter of the Toba Qom language, and that judicial officials had threatened indigenous witnesses to keep them from testifying or to attenuate the contents of their testimony. In addition, they adduce that the alleged victims, complainants in the proceeding, were afforded very limited participation because the criminal procedure legislation of the province of Formosa does not provide for the institution of private accuser (*querellante particular*) in the cases of crime that must be prosecuted at the initiative of the authorities; rather, it allows the private person who has suffered an offense to appear as a civil actor (*actor civil*) which they argue only affords him or her the possibility of seeking civil damages. They allege that as a result, their legal representative had not been authorized to be present in the hearings, and was not able to put questions to witnesses or to present interrogatories.

20. They further adduce that the facts were not duly investigated by the prosecutorial or judicial authorities. In particular, they indicate that without performing any investigative or evidence-gathering activity, Prosecutor No. 2 decided to dismiss the complaint in relation to the Attorney General and Investigative and Correctional Judge No. 4. They also argue that the complaint was dismissed without foundation with respect to the highest ranking police officials in charge of the operation. They adduce that in June 2004, two years after the complaint was filed, the Office of the Prosecutor requested dismissal of the charges in respect of all the other police agents involved. They report that on August 25, 2004, Investigative and Correctional Judge No. 1 resolved to dismiss the criminal proceeding. They indicate that this decision exhausted domestic remedies, as they were legally impeded from questioning that ruling, considering that Article 79 of the Code of Criminal Procedure of the province of Formosa establishes that "the civil actor has no remedy as against the order of dismissal [*el auto de sobreseimiento*] or a judgment of acquittal."

21. The petitioners also assert that Ms. Roxana Silva, attorney with the Equipo Nacional de Pastoral Aborigen, an advocate for the human rights of indigenous peoples in the province of Formosa, and legal representative of the community of Nam Qom in that criminal proceeding, was subjected to intelligence activities by police agents. They report that because of those events, on December 15, 2003, a writ of *habeas corpus* was filed before Investigative and Correctional Court No. 4, case 21,806, which was allegedly rejected by resolution of December 16, 2003.

22. As regards the exhaustion of domestic remedies, the petitioners allege that the exceptions contained in Article 46(2) of the American Convention are applicable, since under the Code of Criminal Procedure of the province of Formosa, in their capacity as "civil actors" they did not have standing to call into question the dismissal decreed by the courts of justice in criminal case No. 3036/02 against the persons purportedly responsible for the facts alleged.

23. In view of all the foregoing, they argue that the State is responsible for the violation of Articles 5, 7, 8, 11, 19, 24, and 25 of the American Convention, in relation to Articles 1 and 2 of the same instrument, to the detriment of the alleged victims. In addition, they allege that the State is responsible for violating Articles 1, 6, and 8 of the Inter-American Convention against Torture.

B. The State

24. The State did not expressly controvert the factual and legal arguments put forth by the petitioners. In the hearing held on October 25, 2011, during the 143rd regular period of sessions of the Commission, the State referred to the measures that were said to have been adopted after the facts alleged in the petition, and to the situation said to prevail in the community of Nam Qom.

25. In terms of legislation, it indicated that in 2003 an amendment was made to the Constitution of the province of Formosa in order to incorporate recognition of the rights of the indigenous peoples. In addition, it reported that on April 6, 2006, the legislative branch of the province of Formosa adopted Law 1487, which provided for persons to become "private accuser" ("*querellante particular*") in criminal proceedings in the Code of Criminal Procedure. Similarly, it said that Decree 656 of July 26, 2005 was created by the Office of the Undersecretary for Human Rights, under the Ministry of the General Secretariat of the Executive Branch.

26. In relation to the provincial police, the State indicated that the Supreme Court of Justice of Formosa, by Act 2418 of August 10, 2005, made recommendations to investigative judges and appellate judges with respect to situations in which members of the Provincial Police are involved in alleged criminal conduct, indicating that in these scenarios the police agents should be removed from the investigation and that the corresponding judge should review the facts. Similarly, it indicated that in 2008 a new curriculum for police training was approved in which the subject of human rights would be featured prominently.

27. As for the community of Nam Qom specifically, the State indicated that as of 2003, a series of public works have been carried out to benefit its members. In particular, it referred to the improvements in drinking water supply, infrastructure works in the primary and secondary schools, and the construction of a health center in the community. Finally, it indicated that since 1984 a process of recognition of the property rights of the community has been under way, and that hectares of lands had been titled to their members and that housing had been built.

IV. ANALYSIS OF ADMISSIBILITY

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

28. The petitioners are authorized by Article 44 of the American Convention to file petitions before the IACHR. The petitioners indicate as the alleged victim the indigenous community of Nam Qom of the Toba people and its members[1] and they individually name 29 members of the community and attorney Roxana Silva[2],

[1] The Nam Qom indigenous community of the Qom (Toba) people is a community that is socially and politically organized, located in a specific geographic location, whose members can be individually named and identified. In this respect see: I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of August 31, 2001. Series C No. 79, para. 149; IACHR, Report No. 62/04, Kichwa Indigenous People of Sarayaku (Ecuador), para. 47; IACHR, Report No. 58/09, Kuna of Madungandí and Emberá of Bayano Indigenous Peoples and their Members (Panama), para. 26; IACHR, Report No. 79/09, Ngöbe Indigenous Communities and their members in the Changuinola River Valley (Panama), para. 26.

[2] The petition was presented for the alleged violation of human rights to the detriment of the Nam Qom indigenous community of the Toba people. The complaint indicates that "beyond the facts of the case causing harm to many persons," "in this petition, we identify as victims" the following persons: Ángel Peña, Miguel Saravia, Macario Dañacón, Ricardo López, L.L., Santiago López, Mariela Haydee López, Bonita Ocampo, Juana Ocampo, Joana Ocampo, Susana Ocampo, Celías Ocampo, Mauricio Ocampo, Amado Ocampo, Oscar Mendoza, Ananías Mendoza, Jonathan Mendoza, Jorge Luis Justo, María Magdalena García, Raúl García, Liliana Alegre, Lucía Alejandra Vega, Omar Torales Vega, Mario Vega, Lucio Vega, Hilario Vega, Hipólito Torrent, Calos Ovidio Torrent and Diosnel Torales, all members of the Nam Qom indigenous

with respect to whom the State of Argentina undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Argentina has been a state party to the American Convention since September 5, 1984, the date on which it deposited the instrument of ratification of the Convention. Therefore, the Commission is competent *ratione personae* to examine the petition.

29. The Commission is competent *ratione loci* to consider the petition, since it alleges violations of rights protected by the American Convention said to have occurred in the territory of a state party to said Convention. The IACHR is competent *ratione temporis* since the obligation to respect and ensure the rights protected in the American Convention was in force for the State as of the date of the violations of rights alleged in the petition. Finally, the Commission is competent *ratione materiae* because the petition adduces violations of human rights protected by the American Convention.

30. The IACHR is also competent to rule on violations of rights enshrined in the Inter-American Convention to Prevent and Punish Torture, insofar as the facts alleged are said to have occurred after March 31, 1989, the date on which Argentina deposited its instrument of ratification of that instrument. In addition, the IACHR is competent to analyze the petitioners' arguments with respect to the alleged violations of the Convention of Belém do Pará, insofar as the facts occurred after the ratification of that international instrument, deposited on July 5, 1996.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

31. Article 46(1)(a) of the American Convention provides that in order for a petition presented to the Inter-American Commission to be admissible, it is necessary that domestic remedies be pursued and exhausted, in keeping with generally recognized principles of international law. This requirement has the purpose of enabling the national authorities to review of the alleged violation of a protected right, and, as the case may be, to have the opportunity to resolve it before it comes before an international mechanism.

32. Article 46(2) of the Convention provides that the requirement of 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; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

33. The jurisprudence of the Commission establishes that whenever a crime is committed that must be prosecuted at the initiative of the authorities, the state has the obligation to promote and pursue to the criminal proceeding and that in those cases such a proceeding is the suitable means to clarify the facts, prosecute the responsible persons and establish the corresponding criminal sanctions, and making possible other pecuniary modes of reparation.[3] The Commission considers that the facts alleged by the petitioners in the instant case involve the alleged violation of rights that translates in the domestic legislation into crimes that must be prosecuted at the initiative of the authorities, and that therefore it is this criminal proceeding, brought by the State itself, that should be considered for the purposes of determining the admissibility of the claim.

34. In the instant case, it has been shown that the alleged victims filed a complaint on September 18, 2002, which led to the opening of criminal case 3036/02. Prosecutorial Office No. 2, assigned to the case, moved to dismiss the complaint in relation to the Attorney General, Investigative and Correctional Judge No. 4, and the high-

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community. They also present as a victim the attorney for the community, Roxana Silva. The petition adds that "we reserve the right to present, in future submissions, other victims who may be identified at a later date."

[3] IACHR, Report No. 52/97 (Merits), Case 11,218, *Arges Sequeira Mangas*, Nicaragua, February 18, 1998, paras. 96 and 97. See also Report No. 55/04, para. 25; Report No. 16/06, para. 35; Report No. 32/06, para. 30.

ranking officials of the Provincial Police of Formosa and the UEAR, who were said to be in charge of the operation. At the request of the Public Ministry, the criminal case culminated with the dismissal of all the police authorities and officials named in the complaint filed by the alleged victims, a decision adopted by Investigative and Correctional Court No. 1, dated August 25, 2004. As regards pursuing remedies against the order of dismissal, the petitioners stated that according to the criminal legislation in force at that time in the province of Formosa, they did not have standing to pursue any remedy; accordingly they argued the exception to the exhaustion of domestic remedies established at Article 46(2) of the Convention. The State did not controvert that argument.

35. As regards the facts alleged in relation to Roxana Silva, attorney with the Equipo Nacional de Pastoral Aborigen and legal representative of the community of Nam Qom in that criminal proceeding, the petitioners argued that in light of the intelligence activities to which she had been subjected, on December 15, 2003, a writ of *habeas corpus* was filed with Investigative and Correctional Court No. 4 (Case 21,806), which was said to have been rejected by order of December 16, 2003.

36. This Commission has already stated as follows: "In terms of the burden of proof with respect to the requirements of Article 46, it should be noted that, when a petitioner alleges that he or she is unable to prove exhaustion, Article 31 of the Commission's Rules of Procedure establishes that the burden then shifts to the State to demonstrate which specific domestic remedies remain to be exhausted and offer effective relief for the harm alleged. Where the State then makes a showing that a certain remedy should have been used, the burden shifts back to the petitioner to show that it was exhausted or that one of the exceptions under Article 46 applies."[4]

37. The Commission observes that the State has not clarified what remedies may be invoked and developed effectively under the legislation applicable at the time in the province of Formosa. To the contrary, the IACHR notes that the laws on criminal procedure in force at that time allowed the affected part to come before the court as a "civil actor," and in particular, Article 79 of the Code of Criminal Procedure of the Province of Formosa stated at the relevant part: "The civil actor lacks remedies against an order of dismissal and a judgment of acquittal, without prejudice to the actions he or she may have in the civil jurisdiction."

38. Given that the criminal procedure provisions in force at the time of the events in the province of Formosa denied standing to challenge the decision to dismiss in the criminal case, and that the facts alleged in relation to attorney Roxana Silva had been reported but not duly investigated, the Commission considers, as it has on prior occasions, that the admissibility of the petition cannot be subordinated to the exhaustion of domestic remedies that were ineffective because the petitioners were procedurally impeded from pursuing them.[5] Based on the foregoing considerations, the Commission concludes that the exceptions provided for at Article 46(2)(b) of the American Convention are applicable in the instant case.

39. Finally, the Commission wishes to clarify, as it has done on previous occasions, that the application of the exceptions provided for in Article 46 of the Convention to determine the admissibility of a petition does not imply prejudging on the merits of the petition. The Commission's analysis of the petition in the admissibility stage is preliminary. Accordingly, while the Commission concludes that the information in the case supports its admissibility, the causes and effects that impeded the exhaustion of domestic remedies will be analyzed, as relevant, during the procedure on the merits, to determine whether they constitute violations of the American Convention.

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[4] IACHR, Report No. 72/01 (Admissibility), Case 11,804, Juan Ángel Greco, Argentina, October 10, 2001, para. 46. See also, for example, I/A Court H.R., Case of Velásquez Rodríguez, Judgment of July 29, 1988, Series C No. 4, paras. 60 and 64.

[5] IACHR, Report No. 5/02 (Admissibility), Case 12,080, Sergio Schiavini and María Teresa Schnack de Schiavini. February 27, 2002, para. 52; IACHR Report No. 72/03 (Admissibility), Case 12,159, Gabriel Egisto Santillan, October 22, 2003, para. 57.

2. Time for filing the petition

40. According to Article 46(1)(b) of the Convention, in order for a petition to be admitted, it must be filed within six months from the date on which the petitioner was notified of the final decision in the domestic legal system. The six-month rule guarantees legal certainty and stability once a decision has been adopted. Nonetheless, under Article 32(2) of the IACHR's Rules of Procedure, in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition must be filed within a time the Commission deems reasonable. To that end, the Commission should consider the date on which the alleged violation of rights has occurred and the circumstances of each case.

41. In the petition under consideration, the IACHR has determined that the exception to the prior exhaustion rule provided for at Article 46(2)(b) of the American Convention applies. Bearing in mind that the facts alleged occurred in August 2002, that the investigation against the persons allegedly responsible for the facts alleged was dismissed in August 2004 and that the respective writ of *habeas corpus* was rejected, the IACHR concludes that the petition was filed within a reasonable time and, therefore, considers that the requirement established in Article 46(1)(b) of the Convention has been met.

3. Duplication of procedures and international *res judicata*

42. For the purposes of declaring a petition admissible, the Convention requires at Article 46(1)(c) that the subject matter not be pending before another international procedure for settlement, and at Article 47(d), that it not reproduce the content of a petition already examined by this or another international organization. Based on the information provided by the petitioners, the IACHR notes that the facts alleged in the petition were made known to international organizations for the protection of human rights, which sent communications to the Argentine State. Specifically, on October 3, 2002 the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, and the Special Rapporteur on the question of torture, Theo Van Boven, sent a joint communication to the State, asking for detailed information on the facts and the adoption of measures to avoid the repetition of similar facts and to make compensation to the victims.[6] In addition, on September 12, 2002 the Rapporteur on the question of torture, Theo Van Boven, sent an urgent appeal in relation to the facts alleged in the petition.[7]

43. In this respect, one should note that in order for the ground of inadmissibility provided for in Article 47(d) of the Convention on duplicity of international procedures to apply, in addition to identity of persons, purpose, and claim, the petition must be under consideration or already decided by an international organization that has jurisdiction to adopt decisions on the specific facts contained in the petition, and measures aimed at effectively resolving the dispute in question.[8] The Commission finds that the United Nations special rapporteurs, on making observations and requesting information on a particular situation, did not adopt decisions and measures aimed at resolving disputes such as the one now before us. The Commission thus considers that the requirements for determining the inadmissibility of the petition are not present, based on Articles 46(1)(c) and 47(d) of the Convention and Article 33 of the IACHR's Rules of Procedure.

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[6] UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen. E/CN.4/2003/90/Add. 1, January 21, 2003, paragraphs 5-6; and Rapporteur on the question of torture, Theo Van Boven, E/CN.4/2003/68/Add.1, February 27, 2003, paras. 116-122. Annex 8 to the petitioners' initial petition of March 1, 2005.

[7] UN Rapporteur on the question of torture, Theo Van Boven, E/CN.4/2003/68/Add.1, February 27, 2003, paragraph 123. Annex 8 to the petitioners' initial petition of March 1, 2005.

[8] IACHR, Report No. 96/98 (Admissibility), Petition 11,827, *Peter Blaine*, December 17 1998, para. 42; and IACHR, Report No. 01/09 (Admissibility), Petition 1491-05, *Benito Antonio Barrios et al.*, January 17, 2009, para. 66.

4. Characterization of the facts alleged

44. The Commission considers that it is not appropriate at this stage of the procedure to decide whether the alleged violations occurred to the detriment of the alleged victims. For purposes of admissibility, the IACHR must rule at this time only as to whether facts are stated which, if proven, would tend to establish violations of the American Convention, as stipulated in Article 47(b), and whether the petition is "manifestly groundless " or "obviously out of order," as per Article 47(c). The criterion of appreciation of these rules is different from that required to rule on the merits of a petition. The IACHR must make a *prima facie* evaluation and determine whether the petition states facts that tend to establish the apparent or potential violation of a right guaranteed by the American Convention, but not whether such a violation actually occurred.[9] At this stage, one must make a summary analysis that does not imply any prejudgment or preliminary opinion on the merits. The Rules of Procedure of the Inter-American Commission, on establishing an admissibility phase and a merits phase, reflects this distinction between the evaluation the Inter-American Commission is called on to perform in order to find a petition admissible, and that required to establish whether a violation imputable to the State has been committed.[10]

45. In addition, neither the American Convention nor the Rules of Procedure of the IACHR require that the petitioner identify the specific rights alleged to be violated by the State in the matter submitted to the Commission, though the petitioner may do so. It is up to the Commission, based on the jurisprudence of the system, to determine in its admissibility reports which provisions of the relevant inter-American instruments apply and whose violation could be established if the facts alleged are proven by sufficient information and evidence.

46. The petitioners allege that the community of Nam Qom of the Qom (Toba) indigenous peoples and its members were victims of illegal and arbitrary detentions; torture and other cruel, inhuman, and degrading treatment; rape; failure to provide assistance; and breaking and entering and destruction of homes without a judicial order, all of which are acts alleged to have been carried out by police agents of the Argentine State. They assert that the police operation was characterized by particular cruelty by reason of their ethnic origin, which was manifested in offensive expressions and actions directed at the community and its members. According to the information provided by the petitioners, five of the 29 persons individually named were under 15 years of age at the time, including a 3-month baby girl. Based on the narration of the facts it appears that, in addition to the people individually named in the petition, other members of the community were also affected by the alleged facts, including children.

47. The petitioners adduce that the persons responsible for those acts were not punished because the criminal proceeding initiated by the complaint lodged by the community members ended with the dismissal of the case against the alleged perpetrators. They indicate that due process guarantees were violated in that proceeding. They also argue that Roxana Silva, the community's attorney, was the victim of illegal intelligence activities by police officers and that the writ of *habeas corpus* filed on her behalf was rejected.

48. The Inter-American Commission observes that if the petitioners' allegations in relation to the violations alleged are proven, they could constitute violations of Articles 5, 7, 8, 11, 19, 24, and 25 of the American Convention on Human Rights, in relation to Articles 1 and 2 of the same instrument, to the detriment of the victims. In addition, the IACHR considers that the facts alleged tend to establish violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. In addition, the IACHR considers that the arguments that refer to the alleged rape of L.L., and to the assault allegedly suffered by María Magdalena García while pregnant, without receiving any immediate assistance, tend to establish a violation of Article 7 of the convention

[9] See IACHR, Report No. 128/01, Case 12,367, *Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of "La Nación" Newspaper* (Costa Rica), December 3, 2001, para. 50; Report No. 4/04, Petition 12,324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Report No. 32/07, Petition 429-05, *Juan Patricio Marileo Saravia et al.* (Chile), April 23, 2007, para. 54.

[10] See IACHR, Report No. 31/03, Case 12,195, *Mario Alberto Jara Oñate et al.* (Chile), March 7, 2003, para. 41; Report No. 4/04, Petition 12,324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Petition 429-05, *Juan Patricio Marileo Saravia et al.* (Chile), April 23, 2007, para. 54; Petition 581-05, *Víctor Manuel Ancalaf Laupe* (Chile), May 2, 2007, para. 46.

of Belém do Pará. On the alleged violation of Article 2 of the Convention, the petitioners based their argument on the fact that the law on criminal procedure of the province of Formosa in force when the petition was filed did not provide for the institution of "private accuser" ("*querellante particular*") in cases that are to be prosecuted at the initiative of the authorities, and therefore impeded any challenges to orders dismissing criminal charges. In addition, the State reported on the relevant legislative changes, which came after the events of August 2002 in the community of Nam Qom. Accordingly, in the merits phase the IACHR will analyze the petitioners' arguments in light of the information presented by the State. Therefore, the Commission considers that the requirements established in Article 47(b) and (c) of the American Convention have been met.

V. CONCLUSION

49. The Commission concludes that it is competent to hear the complaint filed by the petitioners and that the petition is admissible, as per Articles 46 and 47 of the Convention, for the alleged violation of Articles 5, 7, 8, 11, 19, 24, 25 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of that treaty; and Articles 1, 6, and 8 of the Inter-American Convention against Torture. In addition, the IACHR decides to find the petition admissible in relation to the alleged violation of Article 7 of the Convention of Belém do Pará, to the detriment of L.L. and María Magdalena García.

50. Based on the foregoing arguments of fact and law, and without it constituting a prejudgment on the merits,

THE INTER-AMERICAN COMMISSOIN ON HUMAN RIGHTS,

DECIDES:

1. To find the petition admissible in relation to the alleged violations of the rights recognized in Articles 5, 7, 8, 11, 19, 24, and 25 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of the same instrument, to the detriment of the alleged victims.

2. To find the petition admissible in relation to the alleged violations of Articles 1, 6, and 8 of the Inter-American Convention against Torture, to the detriment of the alleged victims.

3. To find this petition admissible in relation to the alleged violations of Article 7 of the Convention of Belém do Pará, to the detriment of L.L. and María Magdalena García.

4. To notify the parties of this decision.

5. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 19th day of March 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Felipe González, Dinah Shelton and Rodrigo Escobar Gil, Commissioners.