REPORT No. 89/13
ADMISSIBILITY
PETITION 879-07
LONI EDMONDS AND CHILDREN
CANADA
November 4, 2013

I. SUMMARY

1. On June 9, 2007, the Inter-American Commission on Human Rights (the "Inter-American Commission" or the "IACHR") received a petition from Loni Edmonds and the International Human Rights Association of American Minorities (IHRAAM) (the "petitioners") against Canada (the "State"). On September 30, 2011, Stanley J. Stumpe, Chairman of the Chilcotin National Congress and Jackie MukSamma Timothy, on behalf of the James La Saw Thimothy Tishsosum Nation, asked to be included as co-petitioners in support of Mrs. Edmonds.

2. The petitioners claim that Mrs. Edmonds, member of the Lil-Wat Nation, has been deprived of her six children by Canadian authorities, through different administrative and judicial processes in which her rights and the rights of her children have been violated. Among the claims, they allege that she hasn't had access to a fair trial that respected her indigenous nationality and culture, and that her family has been separated without any indication or allegation of abuse on her part. They argue that this has also violated the rights of her children. Moreover, petitioners claim that there is no effective remedy for Mrs. Edmonds within the Canadian system to pursue the lack of implementation of human rights treaties that would recognize the right of the Lil-Wat Nation to self determination.

3. In summary, they denounce that Canada has violated the following rights as set forth in the American Declaration on the Rights and Duties of Man: to equality before the law (Article II); the right to protection of honor, personal reputation, and private and family life (Article V); to a family and to protection thereof (Article VI); to protection for mothers and children (Article VII); to residence and movement (Article VIII); to inviolability of the home (Article IX); to the preservation of health and well being (Article XI); to the benefits of culture (article XIII); to a fair trial (Article XVIII); to nationality (Article XIX); of petition (Article XXIV); to due process of law (Article XXVI); as well as the scope of the rights of man (Article XXVIII) and duties toward children and parents (Article XXX). In addition, in their petition they argue that the facts described above amount to violations of Articles 1, 2 and 24 of the American Convention on Human Rights and of Articles 3(2), 4, 7 and 17 of the UN Convention on the Rights of the Child.

4. The State argues that Mrs. Edmonds has not exhausted domestic remedies. Furthermore, Canada alleges that the mere fact that the petitioner disagrees with the courts' decisions does not amount to any violation of her or her children's human rights. The State argues that the petition is manifestly groundless. In this regard, the State argues that Mrs. Edmonds' children were removed from her care because of chronic neglect over time, and that it is Canada's duty to protect the rights of children. The State asks the Commission to declare the petition inadmissible.

5. As set forth in this report, having examined the information and arguments provided by the parties on the question of admissibility, and without prejudicing the merits of the matter, the Inter-American Commission decides to declare the petition admissible with respect to the following rights as

set forth in the American Declaration of the Rights and Duties of Man: to equality before the law (Article II); to protection of honor, personal reputation, and private and family life (Article V); to a family and to protection thereof (Article VI); to protection for mothers and children (Article VII); to residence and movement (Article VIII); to inviolability of the home (Article IX); to the preservation of health and well being (Article XI); to the benefits of culture (Article XIII); to a fair trial (Article XVIII); of petition (Article XXIV) and to due process of law (Article XXVI). Consequently, the Inter-American Commission will notify the parties of the report, continue with the analysis of the merits of the case, publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

6. Following receipt of the petition on July 9, 2007, the Inter-American Commission transmitted the pertinent parts of the complaint and additional information provided by the petitioners to the State by means of a note dated August 22, 2011, with a request for observations within two months in accordance with Article 30(3) of the Commission's Rules of Procedure. Petitioners transmitted additional information on September 2 and October 3, 2011. On December 15 2011, the Commission received the State's response. Petitioners sent additional information on February 9 and March 31, 2012. The State responded on April 20 and June 8, 2012. Petitioners sent additional information on June 21, 2012. The State responded on July 31, 2012. Petitioners sent new information on September 2, 2012. All of the above-mentioned communications were transmitted accordingly. The Commission requested information from the petitioners on July 18, 2013 and petitioners responded on August 18, 2013. The above-mentioned information was transmitted to the State.

Precautionary measures

7. On September 10, 2011, the IACHR received a request for precautionary measures on behalf of Mrs. Loni Edmonds. The Commission requested additional information from both the petitioners and the State of Canada on November 21, 2011. On March 22, 2012, after receiving the requested information, IACHR notified the parties that the record in the request for precautionary measures had been closed.

III. POSITION OF THE PARTIES

A. Position of the petitioners

8. Petitioners allege that Loni Edmonds, a member of the Lil'Wat Nation, is the biological mother of six children, and that all of them are in the care of the Ministry of Children and Family Development (MCDF) of the Province of British Columbia, under a continued-custody order which terminated Mrs. Edmonds' rights as a parent. They state that she herself was removed from the care of her mother as a child, as was her mother from that of her grandmother. They argue that the Canadian authorities have never made the claim that she abused her children or that they were subject to any kind of violence, and that the State removed them from her care mainly because of discrimination against indigenous peoples, and the continuation of a policy of taking indigenous peoples' children from their parents, as a means of forced assimilation of indigenous children.

9. The petitioners denounce that, in 2004, community members allegedly brought Mrs. Edmonds' situation to the attention of the MCDF. They state that the reports of the community members turned out to be false accusations, but the Ministry continued the check-ups, until an "Interim

Order (supervision of the Director) without removal" was placed on Mrs. Edmonds on December 12, 2006. At the time she had four children: FR, born June 6, 2000; DR, born December 12, 2001; CER, born on September 1, 2004 and KP, born February 15, 2006, only nine months old at that time.

10. The petitioners state that during the period of supervision, Mrs. Edmonds was required to receive a social worker at any time without previous notice; take her children to the doctor's appointments as directed by him; register the two older children in school; and not leave the reserve without permission. Mrs. Edmonds alleges that she felt terrified that the Ministry would take away her children and that nobody in the reservation wanted to help her because they were also afraid that their situation might be investigated by the Ministry and their children taken away. In this regard, petitioners allege that the mere fact that Mrs. Edmonds had been in foster care was a signal for the Ministry and thus they would follow-up on her situation. Therefore, she was afraid of opening the door every time the social worker came to her house. The petitioners further allege that Mrs. Edmonds took the children to the communal doctor, but she said he was directly reporting to the Ministry and not to her. For this reason she decided on another doctor she trusted, and she also decided to home school her children until they were ready for school. The petitioners indicate that Mrs. Edmonds later heard rumors that the Ministry would take her children from her, so she left the reserve and went to her father's house.

11. Petitioners inform the Commission that Mrs. Edmonds was found by the police near her father's house and the children were removed from her care on April 25, 2007. They had been placed under an interim custody order on January 25, 2007. The information provided by the petitioners indicates that for a period of time, the children were allowed to have overnight visits with their mother at her home every week and were placed in a foster home within the community, under the supervision of the Mount Currie Indian Band. A report for care presented by the Ministry of Children and Family Development to the court indicated that Mrs. Edmonds was to be assessed in her parenting capacities; that the children should be taken to the doctor and to the dentist; and that the older children should be sent to school. Petitioners maintain that although the removal from Mrs. Edmonds' care was due to lack of adequate housing and possible neglect, a report issued by the Children's Hospital doctor at the request of the MCDF, 7 days after they were removed from her care to a foster home, showed that they didn't have any major health issues that would justify the measure.[1] The petitioners argue that these requirements were a severe restriction of Mrs. Edmonds' private life, and that they impose a different culture on her, since there were different factors that were not considered in the Ministry's decision, such as the participation of extended family in the care of the children, as is customary for her Nation.

12. Mrs. Edmonds participated during that supervision time in a special parenting program for 2 months. She completed all the courses and attended all mediation sessions at the MCDF to accommodate visitation rights, which after some time were held for one hour at the offices of the Ministry in Pembleton, far from the reserve. In this regard, she had an evaluation performed by a psychologist that concluded, in May 2009, that "with support, other people with her capabilities could take care of children." In addition, the report stated that she had trust issues; she had a tendency to hide away and an inability to ask for help. The psychologist made recommendations that were followed

[1] In this regard, they note that FE, 6 years and 10 months old was at the 50th percentile in weight and height, and that his teeth had had extensive dental work and he needed more; DE, 5 years and 8 months old was at the 50th percentile in weight and 10% in height, he had speech difficulties and he needed dental work. He also showed a scar that was healing well; CE 2 years and 8 months old, was at the 90th percentile in height and 75th percentile in weight and he needed dental work; KE 14 months old was at the 75th and 95th percentiles. The doctor stressed that all children had a bad odor and were wearing dirty clothes. He recommended a further visit to the pediatrician, dentist and speech therapist for DE.

by Mrs. Edmonds: improving her social network, participating in activities and building up trust with the social worker. Petitioners add that she was encouraged by the perspective of improved visitation rights with her four children and of eventually getting them back.

13. Petitioners add that on November 5, 2009, Mrs. Edmonds went to the Ministry's office, where a visit was scheduled with her four children. Mrs. Edmonds states that the children were not there, and that Ministry officials took her six-month old baby daughter J.E, born on April 27, 2009, from her, without any court order or explanation. She was not allowed to continue to breast feed her. From that moment on, she reportedly felt discouraged from participating in any more plans or getting help from the Ministry or the social worker, as she felt she could not trust them.

14. On April 1, 2010, Mrs. Edmonds' four eldest children were placed in the continuing custody of the Director of Child, Family and Community Service by order of the Pemberton Provincial Court of British Columbia. This effectively terminated her parental rights and opened the possibility for adoption at the discretion of the Director. On June 10, 2010, Mrs. Edmonds' fifth child was placed under continuing custody of the Director by the same court, with her consent. Petitioners allege that although there was a lawyer representing her, he was assigned by the State and had never spoken to her before the hearings. They further argue that he never asked her opinion and that the judge only heard the social workers who described a 2009 report, although it was a year old and did not relate to Mrs. Edmonds' fifth daughter. Her lawyer did not intervene. The petitioners allege that Mrs. Edmonds was informed that if she consented to the order, she would have improved visitation rights with her four eldest children, and so she consented.

15. Petitioners state that this did not improve her visitation rights and that it became increasingly difficult for Mrs. Edmonds to commute to the Ministry's office to visit her children since her phone was disconnected, and said visits were frequently cancelled. They state that because she was evicted from her house after she left with her children to go to her father's house, she lives on $235 dollars she receives from the government every month and only relies on a cellular phone which has limited minutes. They add that this is the case even though the foster home where the four oldest children live, as well as the home of her fifth child and sixth child are inside the reserve. Petitioners state that Mrs. Edmonds was advised not to speak to her son if she were to come across him on the reserve.

16. Petitioners allege that an "afterhours alert" was sent out to the court on May 18, 2010, by the Ministry, to remove Mrs. Edmonds' sixth child at birth. They add that this order was not informed or notified to Mrs. Edmonds "due to risk of flight." The reasons for the removal order were the psychologist's 2009 report and the fact that her five older children had been placed under the continuing custody of the Director. Accordingly, on July 17, 2010, hospital staff removed the baby from Mrs. Edmonds, one day after birth. (A was born on July 16). Both JE and A were placed in the home of one of their father's relatives. The social workers' recommendations were that both parents could have semi-supervised visitation. Mrs. Edmonds consented to this order, allegedly because she was informed that this would mean better visitation rights with respect to all her children. A temporary custody order was ruled upon on September, 2010. According to the petitioners, this means that the seizure of this child took place before a hearing and despite the fact that all documents and reports concerning her visitation with her children were positive.

17. Mrs. Edmonds lost the financial help she was getting from the Mount Currie Band and was left homeless on August 2011; after that she has been living in different friends' and relatives'

houses. In this situation, especially in the context of "an entrapped indigenous community existing on lower than subsistence income and with no job expectancies," and "considering that aid is mainly given to foster families once the children are removed from their parents," petitioners state that "it is impossible for Mrs. Edmonds to live up to non-indigenous standards and get her children back."

18. Petitioners argue that courts and Ministry officials have biases against the structure and functioning of First Nation families and their child-rearing practices and that they have no legal basis to take cultural differences and traditional solutions into consideration. As an example, they allege that traditionally, the whole family takes care in the raising and education of a child, each member having a specific role. But, according to Canadian law, only individual solutions are considered and thus a grandparent or a sister moving in to live and help with children is not considered as a valid alternative to removal. Petitioners argue that for an indigenous woman, the fact that she is accused of not being able to take care of her children is especially serious and for her community it is a sign that she is not a worthy person. The petitioners submit that this whole situation has had very ill effects on Mrs. Edmonds' self-esteem and on her health. In addition, they argue that it has had terrible effects on her children: they are in two different foster care homes and her eldest one, now 11 years old has loss of hearing in both ears, presumably as a result of head beatings, her 9 year old still wears diapers (as she left him) and she has heard that her now 4 year old J has been hospitalized because "her bum was ripped," raising concern she is being sexually molested.

19. On November 3, 2011, Mrs. Edmonds attended a pretrial and mediation hearing and confirmed she disagreed with the continuing custody order of her sixth child. Petitioners state that her State-appointed lawyer never explained to her the purpose of the hearing and that she left completely discouraged. Petitioners add that this was an example of a very complicated process, including several mediations and family conference processes, in which different lawyers participate and judges decide based on written documents and evaluations made by social workers, without hearing the parents, who often have never spoken to their lawyers. They consider that this results in discouragement and helplessness of the biological parents. They add that the Lil-Wat are of an oral culture, and for them, not being able to speak completely bars them from the process. In this particular case, she had wanted to explain that by registering the baby as a Lil-Wat citizen, she had the support of her Nation in bringing him up.

20. On December 8, petitioners allege that after a 15 minute hearing, and based on the social worker's report that cited a summary –not the whole- 2009 psychological report assessing Mrs. Edmonds' capabilities, and the fact that 5 of her children were under the continuing custody of the Director, J, her sixth child was also placed under the continuing custody of the Director, and it was made clear that a return to the mother would not be considered in the future. Petitioners state that Mrs. Edmonds was not present (as she could not hear another judge state that she was not a capable mother) and her State-appointed lawyer didn't say anything.

21. Petitioners argue that the children's interests were only represented by the Ministry (the same social worker that analized Mrs. Edmonds' situation and produced the report and suggested removal) and that they were not heard.

22. They argue that the focus of the Canadian government has been on assimilation of First Nations through different policies, such as the restriction on the right to vote until 1948, or the requirement that indigenous peoples become legally non-Indian to be able to pursue a higher education (in accordance with the 1880 version of the Indian Act). They argue that this assimilation effort was

particularly focused on aboriginal children, the most egregious manifestation of which was the residential schools program begun in 1849. These schools, which continued until the 1960's were generally entrusted to the administration of Christian religious denominations. The practice was to forcibly remove children from their homes and take them to schools far from home, in which aboriginal languages and customs were often violently repressed. This practice was ended through a settlement dated November 20, 2005, after several class actions. In the settlement, the Government and the Catholic entities accepted responsibility for "physical and sexual assault, forcible confinement or the intentional infliction of mental suffering" within the schools. Petitioners argue that Canadian First Nations placement in foster care is three times the level of Residential School Placements at their peak.

23. In addition, the petitioners allege that their traditional political structure was dismantled, creating smaller territories (or reserves) under the rule of Band Councils (or elected officials) that have limited administrative power, and that depend on financing from the provincial and federal government under the supervision of both authorities, ultimately under the Department of Indian and Northern Affairs Canada (the main political organ that administers Indian affairs, and designs the programs directed to them). In particular, petitioners allege that since 1985, Federal trust programs such as Indian child welfare, education, social services and health have been transferred to the provinces. In the opinion of the petitioners, this amounts to intent of transforming them from the Lil'wat nation, to a Municipality within the Province of British Columbia, without their consent.

24. Petitioners state that the Lil'Wat is a sovereign nation, that has not signed a treaty with Canada, and that there is no direct application of international law in Canadian courts that would enable them to retain jurisdiction over the care, development and future orientation of their children, and not be subject to another round of forced assimilation.

25. The petitioners allege that there are over 9500 children in foster care in British Columbia, and more than half of them are First Nation children, although they constitute only 8% of the population. According to them family and child welfare falls under the jurisdiction of the provincial government but their programs, when they relate to first nations, are funded by the Federal government through the Indian and Northern Affairs Canada (INAC). According to the petitioners, the formula used to calculate funding is based on a fixed percentage of First Nation children in care. In addition, they state that INAC has not adjusted funding to the inflation rate, and as a result, children on reserves receive 22% less funding that their counterparts off reserve. They allege that First Nations have not been permitted to participate in the decision- making process.

26. They state that after the removal of a child -which, due to the federal approach, is the only way to receive funding to improve the situation of the child- the Director of the Ministry of Child and Family Development in British Columbia has three options: the return of the child to his or her family or the application at court for a temporary or a continued custody order. The continued custody order means the Director has the power to consent to an adoption. They state that removal of First Nation children predominantly happens because of situations of neglect, with inadequate housing conditions, poverty and parental substance abuse. As a result, and due to living conditions on reserves First Nation Families live in constant fear of their children being taken away, due to their greater likelihood of being investigated because of their poverty levels. And it means that parents won't be able to get their children back, since it is not under their control to access adequate housing or overcome poverty. They argue that this amounts to a violation of the Convention on the Rights of the Child, which clearly states that a child is only to be removed from his/her family in exceptional circumstances.

27. Petitioners argue that Band Councils don't constitute a legitimate authority and don't replace the traditional family head governing system and that it has been acknowledged by the Canadian Human Rights Commission that the statutorily created Band Council is a federal board with less power than a provincial municipality.

28. The petitioners allege that an estimated 67,000 children are placed in out-of-home care across Canada, of which 27,500 are First Nations children. One out of every ten First Nation children grows up in institutions or with foster parents, as compared to one in two hundred in the non native population. They add that even though First Nations are only 8% of the total population in British Columbia, they are twice as likely to be investigated by child welfare agents.

29. Petitioners state that Mrs. Edmonds has been homeless since 2007. She also owes the Mount Currie Band $1,092 dollars for "clean up and rental." She has to pay the charges to be able to apply for a house, and even then, she has a 10 year waiting list if she wants to live on the reserve. She survives on $235 dollars a month she receives as food aid for a single person. Petitioners srgue that Mrs. Edmonds "faces a catch 22 situation:" she cannot get a house because she doesn't have enough money since her children were taken from her, and she can't get her children back because she doesn't have a house. Further, they argue that even though the children live on the reserve she can't see them and that they are at great risk and considered now as "special needs" children.

30. Petitioners state that the rulings that established the continuing custody orders are not subject to review, and that the only options Mrs. Edmonds would have would be to pursue remedies before the Ministry of Children and Family Development to improve or challenge her visitation schedule, which until October 2011 consisted of one hour on Thursdays for her four eldest children and one hour on Tuesdays for her youngest children in the offices of the Ministry and under supervision of the social worker. They argue that she has presented many requests to have visitation rights, orally and by formal requests made to the MCFD but that she has had no access to them since 2011. They further argue that she has pursued and complied with all the procedures set forth by the Ministry and social workers and lawyers, even though she suffers from extreme poverty and lacks access to adequate counselling. In this regard, the petitioners argue that she has had several lawyers during the past years, but that when contacted by the petitioners, they argued that they could not release information to Mrs. Edmonds, only to the present counsel, who in turn said he couldn't release it to her either. Therefore, they argue that she has exhausted all available remedies to her.

31. The petitioners contend that the fact that Canada does not recognize the Lil Wat Nation's sovereignty and the fact that the State removed Mrs. Edmonds' six children, and the lack of appropriate and accessible remedies for her to seek their return amount to a violation of her and her children's human rights as set for the in the American Declaration on the Rights and Duties of Man: to equality before the law (Article II); to protection of honor, personal reputation, and private and family life (Article V); a family and to protection thereof (Article VI); protection for mothers and children (Article VII); residence and movement (Article VIII) inviolability of the home (Article IX); the preservation of health and well-being (Article XI); the benefits of culture (Article XIII); a fair trial (Article XVIII); nationality (Article XIX); of petition (Article XXIV); to due process of law (Article XXVI); scope of the rights of man (Article XXVIII) and duties toward children and parents (Article XXX). In addition, in their petition they argue that the facts described above, amount to violations of Articles 1, 2, 24 of the American Convention and of Articles 3(2), 4 7 and 17 of the UN Convention on the Rights of the Child.

B. Position of the State

32. The State submits that the Mrs. Edmonds' children were removed from her care and control due to serious neglect by her, and that in doing so, the laws and processes that govern child protection in British Columbia were followed. The State holds that not only was the petitioner represented by legal counsel during judicial child protection hearings, but she consented to the orders of the court on several occasions. Canada also submits that Mrs. Edmonds is not acting as a representative of her community, but is arguing on her own behalf when she claims that the relevant laws and the Canadian Courts do not respect the rights and status of that community. The State argues that Mrs. Edmonds' larger community has signed agreements with the Province of British Columbia in which the province and the First Nation have agreed to cooperate in child-protection matters. Canada also submits that the allegations of violations of the American Convention on Human Rights are inadmissible *ratione materiae*. Canada further submits that the petition is inadmissible because the petitioner has failed to exhaust domestic remedies available to her in respect of both her allegations of lack of procedural fairness and violations of her right to equality under the Canadian Charter of Rights and Freedoms.

33. The State also submits that this petition is inadmissible because the facts and arguments presented disclose no *prima facie* violation of the American Declaration of the Rights and Duties of Man.

34. Firstly, the State argues that, in relation to the alleged failure of Canadian courts to recognize the asserted right to self-determination of the Lil-Wat nation of which Mrs. Edmonds and her children are members, the petitioner has no authority to speak of law-making on behalf of the St'at'imc people, to which the Lil-Wat Nation belongs.

35. With regard to the child protection system in British Columbia, the State informs the Commission that Canada has a federal constitutional system with a federal government and ten provincial governments, one of which is British Columbia and three provinces. While the federal government has jurisdiction over "Indians and lands reserved for the Indians" the provinces have jurisdiction over property and civil rights in the province. The Supreme Court of Canada has held that the provision of child and family services is a matter within provincial jurisdiction. The Legislature of British Columbia has exercised its authority to enact laws that apply to child and family services, including child protection, in the Child, Family and Community Service Act (CFCSA). The State describes that the CFCSA includes specific consideration for the involvement of Aboriginal communities in the placement of Aboriginal children; and procedures and processes that balance the rights and interests of Aboriginal children and their caregivers, including robust procedural protections.

36. The State alleges that the Lil-Wat are also a party to a variety of service agreements with the Ministry of Children and Family Development (MCFD) pursuant to which the Lil-Wat are contracted by the Ministry to provide family and child welfare services to members of the Lil-Wat Nation. The preferred option for placement of children is within the community. In this case, all of the petitioner's children reside in foster homes with members of the Lil-Wat Nation on the reserve. The four eldest children reside with one family and the two youngest with a different family.

37. The State argues that the CFCSA provides for the rights of children to be protected from abuse and neglect, including special considerations for Aboriginal children. Section 29.1 of the Act permits the director (whose authority is delegated by the Minister in each province) to apply to the court for an order that the director supervise a child's care if the director has reasonable grounds to

believe that the child needs protection and that a supervision order would be adequate to protect the child. Under this order, the child remains with the parent or caregiver but is subject to conditions and supervision by MCFD. The director has to attend court for a presentation hearing no later than ten days after applying for a supervision order. The State further indicates that the interim supervision order for Mrs. Edmonds' four eldest children was made following a presentation hearing on December 7, 2006, and that the Lil'Wat Band (Mount Currie) had a designated representative for child protection matters. As provided for by the Act, the order had a duration of up to six months; consequently, the interim supervision order regarding the four eldest children was followed by a further supervision order dated January 25, 2007, with the consent of the petitioner.

38. Canada explains that if the director has reason to believe that the order no longer protects the child or that a person has not complied with the order, he/she must remove the child. In Mrs. Edmonds' case, the removal took place on April 25, 2007. A presentation hearing must take place no longer than seven days after the removal, with previous notice to the parent and if possible to the Aboriginal organization. At the conclusion of the hearing the court can decide to return the children to the parent or place an interim custody order. In this case, the four children were placed under an interim order with Mrs. Edmonds' consent, on May 17, 2007. The plan was to return the children to their mother, with social services provided for by the Mount Courrie Indian Band (Mount Courrie Health Centre). After that, the State informs that several interim orders were made in relation to the children, with Mrs. Edmonds' consent. On April 1, 2010, the Provincial Court of British Columbia granted an application by the Director of Child, Family and Community Service for a continuing custody order for the four oldest children, because of chronic neglect over time. They argue that Mrs. Edmonds was represented by counsel and attended the hearing.

39. Additional information provided by the State indicates that the decision was based on a Parenting Capacity report prepared on May 15, 2009, that indicated that Mrs. Edmonds did not have the psychological capacity to consistently and appropriately parent her four children despite loving them. The concerns on behalf of the children generally over the years have centered around the social workers' difficulty in accessing Mrs. Edmonds; the house being extremely filthy on a regular basis; the failure of Mrs. Edmonds to immunize her children; Mrs. Edmonds' failure to regularly take the children to the doctor and to the dentist as needed; the presence of garbage and trash everywhere; inadequate or no supervision of very young children; older children not taken regularly to school; missed appointments; children kept inside and Mrs. Edmonds' inability to potty train her five year old. The court order provided by the state indicates that the children were not been heard.

40. The State informs the Commission that, on June 10, 2010, the Provincial Court of British Columbia ordered that the second youngest child (JE), be placed in continuing custody of the Director, because of Mrs. Edmonds' inability to care for her. The State argues that Mrs. Edmonds was present and represented at the hearing. She consented, as did the father. The State argues that the making of an order to which Mrs. Edmonds consented with the advice of legal counsel does not represent a violation of her rights to due process.

41. The State claims that in accordance with Article 31 of the Commission's Rules of Procedure, local remedies must be exhausted before a remedy is sought from an international body. This requirement allows the State to resolve the problem before being confronted by an international proceeding. The State alleges that the petitioner has neither pursued nor exhausted domestic remedies available to her.

42. In relation to the administrative remedies, the State indicates that Mrs. Edmonds could have used the formal complaint review process before the Mount Courrie Band. If not satisfied with that, she could have contacted the Office of the Ombudsperson or the Representative for Children and Youth; however, she didn't use any of the mechanisms. The State holds that Mrs. Edmonds could also have requested an administrative review from the Director, and didn't do it.

43. In relation to judicial remedies, the State explains that orders of the Provincial Court made under the CFCSA may be appealed to the Supreme Court of British Columbia. Mrs. Edmonds could have appealed the April 1 order and didn't do so. In relation to the order dated June 10, she does not have the availability to appeal because Mrs. Edmonds consented to the order. The CFCSA also provides for further appeals under certain conditions to the British Columbia Court of Appeal and, ultimately, to the Supreme Court of Canada.

44. In addition, the State argues that if the circumstances that caused the court to make the continuing order have changed significantly, the Act provides a process for the cancellation of the order. Mrs. Edmonds could also apply for access to the children under s. 56 of the CFCSA.

45. The State also argues that Mrs. Edmonds has never challenged the jurisdiction of the courts of British Columbia to make any of the orders that have been made regarding her children, nor has she challenged the constitutionality of the CFCSA.

46. Furthermore, the State indicates that the petition is manifestly groundless, because Mrs. Edmonds has not indicated any information to support her allegations with respect to either a violation of the right to petition or the right to equality before the law. The State alleges that contrary to Mrs. Edmonds' assertion, Canada has implemented the Convention on the Rights of the Child. In this regard, the State argues that it has taken all the necessary steps to protect the children from serious neglect. Not doing so would be to abdicate the responsibility taken by Canada under both the UN Convention on the Rights of the Child and the American Declaration.

47. With respect to the right to a fair trial, the State argues that Canadian courts have not agreed with the petitioner, which does not mean that she has been denied procedural guarantees, and there is no proof that any remedy has been denied to her.

48. The State submits that although the continuing custody orders effectively terminate any parental rights and that usually they are followed by a permanent arrangement, in the case of the petitioner's children and given that the Mount Currie Band opposes adoption of their children, the MCFD has made extraordinary efforts to secure visitation with Mrs. Edmonds, but that she has failed to participate on many occasions resulting in harm to the children. In relation to her housing situation, the State argues that Mrs. Edmonds has failed to apply to any of the available programs managed by the Mount Currie Band.

49. The State argues that, at the admissibility stage, the Commission must decide on whether there is exhaustion of domestic remedies and whether there is any evidence of procedural unfairness. They add that the subjective perception declared by Mrs. Edmonds that the remedies won't be effective, does not excuse her from the obligation to pursue all available domestic remedies before taking the dispute to an international level. The State believes that the petitioners are attempting to shift the focus of the complaint from Mrs. Edmonds and her children's situation to that of the relationship of the Lil-Wat people with Canada. Therefore, the State requests the Commission find the

petition inadmissible and that if it decides to proceed with its consideration, that it clearly indicate which provisions of the American Declaration it wishes to examine.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Commission's Competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

50. The petitioners are entitled, under Article 23 of the IACHR's Rules of Procedure, to lodge complaints with the IACHR. The petition names, as its alleged victims, individuals whose rights are protected under the American Declaration. The State is bound to respect the provisions of the American Declaration, and the Inter-American Commission is competent to receive petitions alleging violations of that instrument by the State by virtue of Canada's ratification of the OAS Charter on December 20, 1989 and in conformity with Article 20 of the IACHR's Statute and Article 51 of its Rules of Procedure.[2] The IACHR therefore has competence *ratione personae* to examine the complaint. The Commission also has competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Declaration occurring within the territory of the Canada, with respect to which the Declaration is a source of obligation.

51. The IACHR has competence *ratione temporis*, since the obligation of respecting and ensuring the rights protected by the American Declaration was already in force for the State on the date on which the events described in the petition allegedly occurred. Finally, the Inter-American Commission has competence *ratione materiae* since the petition describes possible violations of human rights that are protected by the American Declaration.

52. As the Commission has held, the rights contained in the American Declaration may be interpreted in accordance with the principle of the best interests of the child and the *corpus juris* on the rights of the child.[3]

[2] Article 20(b) of the Statute of the IACHR provides that, in respect of those OAS member states that are not parties to the American Convention on Human Rights, the IACHR may examine communications submitted to it and any other available information, to address the government of such states for information deemed pertinent by the IACHR, and to make recommendations to such states, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights. See also Charter of the Organization of American States, Arts. 3, 16, 51, 112, 150; IACHR's Rules of Procedure, Arts 50 and 51; I/A. Court H.R., Advisory Opinion OC-10/8 "Interpretation of the Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights," July 14, 1989, Ser. A Nº 10 (1989), paras. 35-45; I/A Comm. H.R., James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87, paras. 46-49.

[3] See IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II, Doc. 78, July 13, 2011, paras. 18 and 20.

B. Other requirements of admissibility

1. Exhaustion of domestic remedies

53. The Inter-American Commission must verify whether the remedies of the domestic system have been pursued and exhausted in accordance with generally recognized principles of international law, pursuant to Article 31(1) of its Rules of Procedure. However, Article 31(2) of the Rules specifies that this requirement does not apply if the domestic legislation of the state concerned does not afford due process of law for protection of the right allegedly violated; if the party alleging the violation has been denied access to domestic remedies or is prevented from exhausting them; or if there has been an unwarranted delay in reaching a final judgment under the domestic remedies.

54. The IACHR recalls that any decision on the application of exceptions to the rule on the exhaustion of domestic remedies shall be adopted prior to and independently of an analysis on the merits of the case, because it is premised on a type of evidence different from that employed to determine whether or not there has been a violation of Articles XVIII and XXVI of the American Declaration.[4]

55. According to the information provided by the parties, the procedures by which the supervision, interim and continuing custody orders concerning Mrs. Edmonds' children were established are contained in the Child, Family and Community Service Act (CFCSA). The Commission observes that it is a mixed procedure, combining both an administrative procedure within the Ministry of Children and Family Development (MCFD) that makes the assessments on parenting, acts as a child representative, and also suggests courses of action and decides removal actions, and judicial reviews, as well as judicial hearings to establish supervision and interim and continuing custody orders.

56. In this case, the parties disagree as to whether this requirement has been met. The petitioners argue that they have exhausted all effective and available remedies. They argue that Mrs. Edmonds lives in extreme poverty, comes from an indigenous community which mainly communicates orally, does not understand the court procedures and did not have adequate counsel, due to the fact that the lawyers were court-appointed and did not know her or talk to her before or after any of the hearings. They argue that despite this fact, Mrs. Edmonds attended every negotiation meeting held in the Ministry, always requested custody and visitation with her children at the administrative level, and attended every court hearing, except the last one in which the continuing custody order for her youngest child was decided. She has further insisted before the Ministry that she needs more frequent and better access to her children, and that she needs support to get them back. The petitioners argue that there is no further legal remedy available to her. In relation to the allegation that the Canadian courts have no jurisdiction to decide on family matters regarding Aboriginal children because there is no treaty with the Lil-Wat Nation, they argue that Canada has not implemented international human rights standards, and thus there is no legal remedy to argue the self-determination of First Nations in Canada.

57. For its part, the State contends that the petitioners have not exhausted the available domestic remedies. In this regard, the State argues that there is a formal complaint review process before the Mount Currie Band and the possibility to contact the Ombudsperson, and that Mrs. Edmonds failed to try either of them. In relation to judicial remedies, the State argues that Mrs. Edmonds could

[4] IACHR, Report No. 42/10, Petition 120-07, Admissibility, *N.I. Sequoyah,* United States, March 17, 2010, para. 38.

have appealed the custody order dated April 1, 2010, that affected her four oldest children, but didn't do so. They argue that the appeal is not available to her in relation to the continuing custody order dated June 10, 2010, because she consented to it. The State argues that the CFCSA also provides for further appeals under certain conditions to the British Columbia Court of Appeal and, ultimately, to the Supreme Court of Canada. In addition, the State argues that the CFCSA provides a process of cancellation of the orders in case the circumstances change significantly. In relation to the jurisdiction issue, and their right to self-determination, the State argues that the petitioner has never challenged the constitutionality of the CFSA or made any such challenge before any court.

58. In this regard, the IACHR recalls that the jurisprudence of the Inter-American System has determined that with regard to indigenous peoples, the State must provide them with effective protection that takes into consideration their own traditions, their social and economic condition as well as their specially vulnerable situation, their common law, values, practices and customs.[5] This also includes taking into account the political mechanisms indigenous peoples use through their respective representatives, to manage their relations with the State and to claim their rights.

59. In addition, the Inter- American System has established that there are certain categories of vulnerable groups, among others, indigenous peoples, persons living in poverty, persons living with disabilities and children[6] for whom that vulnerability has an effect on their access to justice and due process guarantees. In this regard, the *"Reglas de Brasilia sobre Acceso a la Justicia de las Personas en condición de Vulnerabilidad*",[7] establish that the State has a reinforced duty to ensure access to justice to all persons who are in a vulnerable condition, on equal terms and the duty to adapt the procedures and all due process guarantees to protect their rights.

60. In the present case, the IACHR considers that Mrs. Edmonds could not exhaust all remedies her, in order to maintain and later regain access to and custody of her children. The Commission notes that Mrs. Edmonds' situation is particularly vulnerable because of her ethnic origin and because she lives in extreme poverty. In this regard, the IACHR notes that the State has not provided information as to how other remedies could have been available for an indigenous person, living in extreme poverty, completely dependant upon State programs to subsist and on a court-appointed legal counsel, which, allegedly, did not inform her of the possibility of the appeal. Although

[5] IA Court H.R., *Case Yakye Axa Indigenous Community*, par. 63; C*ase Sawhoyamaxa Indigenous Community*. Merits, Reparations and Costs. Judgment issued March 29, 2006. Series C No. 146, par. 83; and *Case of the Saramaka Peoples*. Preliminary Exceptions, Merits, Reparation and Costs. Judgment issued November 28, 2007. Series C No. 172, par. 178; *Case Tiu Tojin*. Judgment issued November 28, 2008. Series C No. 190, par. 96. IACHR, Report No. 58/09 (Admissibility), Petition 12.354, Kuna de Madungandi y Emberá de Bayano Indigenous Peoples and their Members (Panamá), April 21, par. 37.

[6] I/A Court H.R., *Case of Furlan and Family v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246 para. 241; and I/A Court H.R. *Case of Atala Riffo and daughters v.Chile*. Request for Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of November 21, 2012. Series C No. 254,para.. 199.

[7] En el ámbito de la Organización de Estados Americanos, la Asamblea General de la OEA ha adoptado dos resoluciones en materia de garantía al acceso a la justicia: resolución AG/RES 2656 (XLI-O/11), "Garantías para el acceso a la justicia. El rol de los Defensores Públicos Oficiales", aprobada en el cuadragésimo primer período ordinario de sesiones de la Asamblea General, celebrada el 7 de junio de 2011; y, AG/RES. 2714 (XLII-O/12), "Defensa pública oficial como garantía de acceso a la justicia de las personas en condiciones de vulnerabilidad", (Aprobada en la segunda sesión plenaria, celebrada el 4 de junio de 2012). En el marco de la XIV Cumbre Judicial Iberoamericana, celebrada en Brasilia del 4 al 6 de marzo del 2008, se adoptaron las "Reglas de Brasilia sobre Acceso a la Justicia de las Personas en Condición de Vulnerabilidad", aprobadas en desarrollo a los principios recogidos en la "Carta de Derechos de las Personas ante la Justicia en el Espacio Judicial Iberoamericano" (Cancún, 2002).

the State indicates that there is a specific complaint process to be carried out before the Mount Currie Band, it is not a procedure meant to get the children's custody back. The same applies to the possibility of contacting the Ombudsperson.

61. As a result, the Commission concludes that the exception to the rule of exhaustion of domestic remedies as set forth in Article 46.2.b) of the Convention is applicable to the present case.

62. The IACHR recalls that invoking the exceptions to the rule of exhaustion of domestic remedies provided for in Article 31(2) of the Rules of Procedure is closely tied to the determination of potential violation of certain rights enshrined in the American Declaration, such as guarantees of access to justice. Nevertheless, Article 31(2), due to its nature and purpose, is a provision with autonomous content separate from the substantive provisions of the Declaration. Therefore, the determination as to whether exceptions to the rule of exhaustion of domestic remedies provided for in said provision are applicable in this particular case are taken prior to and separate from an analysis of the merits of the matter, as it depends on a standard of assessment different from that used when determining violations of the respective of the Declaration. It should be clarified that the causes and effect that have hindered the exhaustion of domestic remedies in this case will be analyzed, as relevant, in the report that the Commission adopts on the merits of the case in order to assess whether these constitute violations of the American Declaration.

2. Timeliness of the petition

63. Article 32.1 of the Inter-American Commission's Rules of Procedure requires that petitions be lodged within a period of six-months following the date on which the final decision was notified. However, by virtue of Article 32.2 of the IACHR's Rules of Procedure, in those cases in which the exceptions to the requirement of the prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable time, as determined by the Inter-American Commission. For this purpose, the Inter-American Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.[8]

64. In this case, the petition was received on June 9, 2007; a few weeks after Mrs. Edmonds' four eldest children had been removed from her care on April 25, 2007. Further, the situation complained of may be considered to be of an ongoing nature. Therefore, the Commission considers that the petition was submitted in a reasonable timeframe and the requirement for admissibility regarding the deadline for submission has been met.

3. Duplication of proceedings and *res iudicata*

65. From the case file there is nothing to indicate that the subject of the petition is pending before any other international settlement proceeding or that it reproduces a petition already examined by this or any other international body. Therefore, it is appropriate to find that the requirements established in Article 33.1 of the Inter-American Commission's Rules of Procedure are satisfied.

[8] IACHR, Report No. 63/10, Petition 1119-03, Admissibility, *Garífuna Punta Piedra Community and its Members*, Honduras, March 24, 2010, para. 146.

4. Colorable claim

66. Article 34 (a) of the Inter-American Commission's Rules of Procedure provides that petitions filed before the IACHR must state facts that tend to establish a violation of the rights referred to in its Article 27, or the petition must be declared inadmissible for being "manifestly groundless" or "out of order", according to the provisions of Article 34 (b). The criteria used to analyze admissibility differ from those used for an analysis on the merits of the petition, since the Inter-American Commission only undertakes a *prima facie* examination to determine whether the petitioners have established the apparent or possible violation of a right protected by the American Declaration. It is a general analysis not involving a prejudgment of, or issuance of a preliminary opinion on the merits of the matter.

67. Neither the American Declaration nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient element.

68. In view of the elements of fact and law presented by the parties, along with the nature of the matter submitted for its attention, the IACHR finds that the facts alleged, if proven, may tend to establish violations of articles of the American Declaration on the Rights and Duties of Man. In particular, the Commission will examine at the merits stage the possible violations committed by Canada throughout the administrative and judicial processes that removed Mrs. Edmonds' six children from her care and the alleged detrimental effects that this decision had on Mrs. Edmonds' and her childrens' health. The Commission will examine if the best interests of the children were adequately addressed; if their rights were adequately represented and if they were heard. In addition, the Commission will consider whether the fact that they are First Nations' children had an impact on the decision of removal from Mrs. Edmonds care and if the State took adequate measures to prevent separation.

69. In this regard, the Commission considers that, if proven, the alleged facts could amount to a violation of the following rights of Mrs. Edmonds' and her six children: right to equality before the law (Article II); the right to protection of honor, personal reputation, and private and family life (Article V); Right to a family and to protection thereof (Article VI); Right to protection for mothers and children (Article VII); Right to residence and movement (Article VIII); Right to inviolability of the home (Article IX); Right to the preservation of health and well being (Article XI); Right to the benefits of culture (article XIII); Right to a fair trial (Article XVIII); Right of Petition (Article XXIV) and Right to due process of law (Article XXVI).

70. Finally, the IACHR considers that the claims concerning Articles XIX and XXX of the American Declaration containing the right to nationality and duties of parents are inadmissible.

V. CONCLUSIONS

71. The Inter-American Commission concludes that it is competent to hear this case and that the petition is admissible according to Article 34 of its Rules of Procedure. Based on the arguments in fact and in law set forth above, and with no pre-judgment on the merits of the matters,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

72. To declare this petition admissible inasmuch as it refers to alleged violations of the following rights as set forth in the American Declaration of the Rights and Duties of Man: the right to equality before the law (Article II); the right to protection of honor, personal reputation, and private and family life (Article V); Right to a family and to protection thereof (Article VI); Right to protection for mothers and children (Article VII); Right to residence and movement (Article VIII) Rights to inviolability of the home (Article IX); Right to the preservation of health and well being (Article XI); Right to the benefits of culture (article XIII); Right to a fair trial (Article XVIII); Right of Petition (Article XXIV); and Right to Due Process of Law (Article XXVI).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. Declare the claims in the petition admissible with respect to Articles II; V; VI;VII; VIII; IX; XI; XIII; XVIII; XXIV and XXVI of the American Declaration on the Rights and Duties of Man;

2. Give notice of this decision to the State and to the petitioners;

3. Continue with the analysis of the merits of the case; and

4. Publish this report and include it in the Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 4th day of the month of November, 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Dinah Shelton, and Rose-Marie Antoine, Commissioners.