

**REPORT No. 93/13**  
PETITION 1063-07  
ADMISSIBILITY  
JESUS FLORES SATUYE AND OTHERS  
HONDURAS  
November 4, 2013

**I. SUMMARY**

1. On October 29, 2003, the Inter-American Commission on Human Rights (hereinafter referred to as “Inter-American Commission,” “Commission” or “IACHR”) received a petition filed by the Honduran Black Fraternal Organization (Organización Fraternal Negra Hondureña, hereinafter referred to as the “petitioner” or “OFRANEH), on behalf of three Garifuna communities against the Republic of Honduras (hereinafter referred to as the “State of Honduras,” “Honduras,” or the “State”).<sup>1</sup> On December 19, 2003, the IACHR decided to separate the complaints that had been filed by each community and to assign to each one a separate number.<sup>2</sup> On July 24, 2007, the IACHR adopted Admissibility Report No. 39/07 regarding the Garifuna Community of Cayos Cochinos, in which it decided to break down into a separate petition, in conformity with Article 29.c of its Rules of Procedure, the alleged incidents in connection with a firearm attack against a Garifuna diver Jesús Flores Satuye.<sup>3</sup> In the same context as that of the petition of Mr. Flores Satuye, the petitioner submitted information about the alleged impacts on the Garifuna divers and fishermen Mauricio Raymundo Santos Cordova, Jael Enrique García Álvarez, Mainor Dionisio Castillo, and Edgar Patricio Arzu López (hereinafter referred to as the “alleged victims”).

2. The petitioner alleged that the State of Honduras had incurred international responsibility for the physical aggression against the alleged victims by the soldiers in charge of monitoring the environment on the archipelago of Cayos Cochinos. These assaults, according to the petitioner, concerned the restrictions imposed upon the Garifuna communities that have been living historically on the archipelago with respect to their physical and cultural subsistence activities. Regarding the petition’s admissibility, it states that the remedies under domestic law were not effective, because the complaints that were filed did not lead to a sound investigation of the facts, a trial and, if applicable, punishment of those responsible.

3. As for the State, it did not dispute the facts described in the petition in connection with Jesús Flores Satuye. It argued, however, that it is inadmissible because remedies under domestic law

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<sup>1</sup> The petition was filed on behalf of the Garifuna Communities of Cayos Cochinos, Punta Piedra and Triunfo de la Cruz, alleging that the State of Honduras had incurred international responsibility for alleged violations of rights protected in Article 8 (right to a fair trial), Article 21 (right to private property) and Article 25 (judicial protection) of the American Convention on Human Rights, in connection with Article 1 of the same instrument and Articles 13.1, 14, 15.1, 17, 18 and 19 of International Labor Organization Convention 169 on Indigenous and Tribal Peoples in Independent Countries, to the detriment of the communities and their members.

<sup>2</sup> On March 14, 2006, the IACHR adopted Admissibility Report No. 29/06, Petition 906-03, Garifuna Community of Triunfo de la Cruz and its members; on July 24, 2007, it adopted Admissibility Report No. 39/07, Petition 1118-03, Garifuna Community of Cayos Cochinos and its members; and on March 24, 2010, it adopted Admissibility Report 63/10, Petition 1119-03 of the Garifuna Community of Punta Piedra and its members.

<sup>3</sup> The petitioner indiscriminately uses the names Jesús Flores Satuye, Jesús Flores Satulle, and Jesús Flores Paredes when referring to the same person.

have not been exhausted as criminal proceedings started on May 22, 2001 and have not yet concluded. The State did not mention the alleged facts and complaints filed in connection with the other alleged victims.

4. Without prejudging the merits of the case, after reviewing the positions of the parties and in compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission has decided to declare that the present petition is admissible as it refers to the alleged violation of Articles 5, 8, 21 and 25 of the American Convention, in connection with Articles 1.1 and 2 of the same instrument. The Commission has also decided to notify this decision to the parties, make it public, and include in its Annual Report to the OAS General Assembly.

## II. PROCESSING BY THE COMMISSION

5. The IACHR received the petition on October 29, 2003, which was divided into three separate petitions. In its Admissibility Report No. 39/07 of July 24, 2007, in connection with petition 1118-03, the IACHR decided to break down the present petition and assign it number 1063-07. In particular, in said Admissibility Report, the IACHR deemed that:

Regarding the allegations of violations of the right to physical integrity as a result of the assault with a firearm against the diver Jesús Flores in January 2001, in accordance with the terms of Article 29.c of its Rules of Procedure,<sup>4</sup> the Commission decided to break down this part of the original complaint and assign a new number to it so that it could be processed in a separate case file.<sup>5</sup>

6. On September 14, 2007, the Commission forwarded the relevant parts to the State, whose response was received on January 4, 2008. The IACHR received information in connection with the present petition on the following dates: August 28 and September 11, 2007; May 14 and September 8 and 14, 2010; October 27, 2010; September 2, 2011; May 23, 2012; and February 14, 2013. The State submitted information on the following dates in connection with the present petition: September 15, 2010 and February 27, 2012, which was duly forwarded to the petitioner.

7. In its communication received on September 14, 2010, the petitioner filed a request for precautionary measures, identified as number 311-10, as a result of death threats received by Jesús Flores Satuye in August 2010. On October 6, 2010 and July 19, 2011, the IACHR requested the petitioner to provide information about this.

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<sup>4</sup> Article 29.c of the Rules of Procedure in force at the time specifically provided that: "If the petition sets forth distinct facts, or if it refers to more than one person or to alleged violations not interconnected in time and place, the claims may be divided and processed separately, so long as all the requirements of Article 28 of these Rules of Procedure are met."

<sup>5</sup> IACHR. Admissibility Report No. 39/07. Petition 1118-03. Garifuna Community of Cayos Cochinos and its members. Honduras. July 24, 2007. Paragraph 16.

### III. POSITIONS OF THE PARTIES

#### A. The petitioner

8. As a context, the petitioner indicated that the Garifuna people settlement in Honduras dates back to 1791 and that they are located in various communities. It stated that for many years now they have been calling for the State's recognition of the Garifuna's ancestral lands. It indicated that the Garifuna people "are a culturally differentiated people that have their own traditional ways of living, world visions, uses and customs, forms of social organization, institutions, beliefs, values, dress and language." It pointed out that, in the territory historically occupied by the Garifuna people, there is the archipelago of Cayos Cochinos, located in the Caribbean Sea of Honduras, where the Garifuna communities had settled upon their arrival in Honduras at the end of the 18th century.

9. It contended that, for the Garifuna island communities of Corozal, Sambo Creek, Nueva Armenia, and Río Esteban, the marine habitat is essential for their way of living, economy and livelihood. It mentioned that these communities have historically managed to rationally take from the sea the inputs for their food, elements for the Dugu religious rituals, materials for building their traditional houses, among others. It stated, however, that the State of Honduras, along with private environmental institutions, have imposed severe constraints on their traditional physical subsistence and cultural activities for environmental protection purposes, although as stated fishing by industrial ships is allowed. It alleged that these constraints have led to severe abuse and harassment against the Garifunas by the institutions in charge of monitoring activities.

10. It also stated that, concretely speaking, in 1992 a Swiss investor bought part of Cayos Cochinos and that, on November 17, 1993, as a result of Presidential Agreement 1928-93, the archipelago was declared a "Protected Natural Area" and traditional fishing with hooks was forbidden. It added that, in 1994, this agreement was amended so as to concretely forbid the gathering of shellfish. As indicated, as of that year, the Navy of Honduras was instructed to safeguard the archipelago, and since then "the Garifuna communities started to suffer from systematic repression." It contended that, in 2003, the President of the Republic ratified Decree 114-2003 which declared that Cayos Cochinos was a "Natural Maritime Monument" and drew up a "Management Plan," according to which the resource guards of the Honduran Foundation for the Protection and Conservation of Cayos (Fundación Hondureña para la Protección y Conservación de Cayos, hereinafter referred to as the "Cayos Cochinos Foundation" or "the Foundation") and the Honduran Navy were in charge of monitoring activities. It also added that said Decree expressly pointed out that the presence of Garifuna communities was detrimental to Cayos and was facilitating non-Garifuna people access to land ownership on the islands.

11. In this context, it alleged that in January 2001 Jesús Flores Satuye, member of the Garifuna Community of Nueva Armenia, was the target of a life-threatening attack by members of the Honduran Navy and the Cayos Cochinos Foundation when he was fishing using traditional means along with other Garifuna persons. As stated, indeed on January 27, 2001, at 8:00 a.m., a group of *cayucos*—small boats—that were at the place known as *way tagel*, *watagy* or *weitague* on the archipelago of Cayos Cochinos, was intercepted by a patrol boat under the command of a Navy lieutenant and a forest ranger of the Foundation. It indicated that the patrol boat came up to the *cayuco* carrying Jesús Flores, at which time one of the soldiers on board shot him twice in the left arm.

12. It pointed out that afterwards they took him to a tourist center known as the "mue[ll]e de cabotaje" (short-sea shipping wharf) where he stayed for almost two hours "crying out in pain" while

waiting for an ambulance. It reported that since it never came he was taken in a “un carrito de paila” (small pickup truck) and on the way they found the ambulance, which drove him to the EuroHonduras Hospital in La Ceiba, where he stayed for a week. It pointed out that, according to the medical release form from the above-mentioned hospital, the alleged victim had six wounds in the left forearm caused by bullet fragments, some of which “lacerated [the] m[u]scle without jeopardizing the functioning of the fingers.” It stated that, as a consequence of this, he lost “partial movement of his hand, which is preventing him from working efficiently.”

13. It stated that these facts were reported on January 30, 2001 to the District Attorney’s Office in La Ceiba and the General Directorate for Criminal Investigations (Dirección General de Investigación Criminal—DGIC). It reported that the alleged victim had to go repeatedly to the District Attorney’s Office to “obtain an examination of his arm where the bullets were located;” nevertheless, the District Attorney’s Office and the DGIC did not process his report. It stated that, the month after the report was filed, they went to inquire about the investigation, at which time they were told that it was missing. It indicated that, because of this, they went to the Special Prosecution Service for Ethnic Groups and Cultural Heritage and filed a complaint with the National Supervision of the District Attorney’s Office on May 17, 2001 regarding the missing file. It reported that, on the basis of the complaints that were filed, arrest warrants were issued against those implicated; nevertheless, to date these warrants have not been implemented. It added that the Navy man who had fired the shots lived many years in Cayo Eastend, adjacent to the Cayos Cochinos Navy Base.

14. It contended that, in this same context, there have been other incidents of violence against Garifuna divers and fishermen on the archipelago of Cayos Cochinos. Regarding this, it reported that, on November 7, 2007, Mauricio Raymundo Santos Córdova of the Garifuna Community of Nueva Armenia was intercepted by a boat from the Navy Base when he was fishing, at which time the sergeant on board fired two shots at the engine of the motorboat, one of which impacted his right foot. As indicated, because he was wounded, Mauricio Santos was taken to the office of the Integrated Center of the District Attorney’s Office, where he was jailed until his brother paid 13,000 lempiras so that he could be released. It also reported that, on October 13, 2008, Jael Enrique García Álvarez and Mainor Dionisio Castillo had been the target of attempted murder by the archipelago’s surveillance staff, when they tried to arrest them as they were fishing in Cayos Cochinos. It indicated that, on September 20, 2009, Edgar Patricio Arzu López had been hit in the face and the stomach by forest rangers of the archipelago. In the three above-mentioned cases, the petitioner filed complaints with the District Attorney’s Office on November 12, 2007, October 2008,<sup>6</sup> and September 21, 2009, respectively, and requested that “they be included in the petition of Mr. Jesús Flores Satuye.”

15. The petitioner also stated that, on many occasions, naval authorities in charge of surveillance activities arbitrarily seized the *cayucos* and other fishing and diving equipment belonging to Garifuna persons, incidents that have been repeatedly reported to the District Attorney’s Office. In particular, it reported that, on August 17, 2010, members of the Navy of Honduras and the Cayos Cochinos Foundation arbitrarily seized the *cayuco* and fishing equipment of Jesús Flores Satuye, at which time they threatened to kill him, referring to the assault against him in January 2001. The petitioner indicated that, because of these incidents, on August 25, 2010, it filed a complaint with the District

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<sup>6</sup> It is noted that, in the copy of the complaint filed by the petitioner, the date of its filing does not appear. It is inferred that it was in October, because of the description of the facts, and in 2008, because the complaint number is 3543-08 and the incidents had allegedly taken place that year.

Attorney's Office, identified as CEIN-PROV- 0101-2010-02269.<sup>7</sup> It stressed that the *cayuco* is essential for the coastal communities, especially for the archipelago's divers and fishermen, because "in addition to being an instrument for their work[,] it is a vehicle that carries them for their livelihood and back to land." It added that the seizure of the *cayucos* has created major difficulties for the families who depend on fishing for their livelihood. In short, it contended that the above-mentioned acts of violence and harassment constitute "a threat to the economic, and therefore cultural, survival of our people, which has historically relied on fishing as their primary economic sustenance."

## **B. State**

16. As for the State of Honduras, it did not dispute the facts described by the petitioner in connection with Jesús Flores Satuye. It alleged, however, that the petition was inadmissible as it had not exhausted remedies under domestic law because the criminal proceedings filed on May 22, 2001 were still pending. The State did not refer to the alleged incidents regarding the other alleged victims or to the complaints filed by the latter.

17. Indeed, as described by the State, on January 27, 2001, Jesús Flores Satuye, along with two other persons, were diving in the place known as *weitague*, in the Biology Reserve of Cayos Cochinos. It stated that, in these circumstances, they were intercepted "by a motorboat that was safeguarding that zone and that was carrying three soldiers of the Navy [...], who fired shots at Mr. JESUS FLORES SATUYE and a bullet hit him in the left forearm." It reported that the Navy patrolmen then proceeded to seize the oxygen tank, telling him that it was forbidden to fish in that area.

18. In connection with the investigation of the facts, it indicated that the Special Prosecution Service for Ethnic Groups forwarded to the Regional Prosecution Service of La Ceiba the investigation report and the draft of the criminal charges and that, on May 22, 2001, the latter body filed criminal charges with the District Court of La Ceiba against two of the patrolmen who were allegedly responsible for the crime of wounding Jesús Flores Satuye.

19. As part of the proceedings in this case, the State referred to the request, filed on September 3, 2001 and repeated on June 23, 2003 by the Court, for the Commander of the Navy Base in Cayos Cochinos to hand over the firearms that had been used to commit the offense, medical reports confirming that a wound had been inflicted by the firearms; and statements from witnesses that "concur in identifying" those charged "as responsible for the criminal deed." It also referred to a transcript of the ballistic report where it was determined that the fragments taken from the body of the victim were from one single bullet, probably with a 5.56 x 45/223 caliber and presumably shot by a rifle-type of firearm. It also indicated that, on May 16, 2001, at the request of the Prosecution Service for Ethnic Groups and Cultural Heritage, a new forensic medicine assessment of the alleged victim was conducted, which confirmed "the wounds and average time of disability, plus functional limitations in the fingers of the left hand."

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<sup>7</sup> There are reports about other incidents where the *cayucos* and fishing equipment of Garifuna fishermen and divers had been arbitrarily seized by the surveillance staff of Cayos Cochinos: (1) on September 29, 2009 from Kelvin Adony Flores Aranda, according to report No. 0101-2009-00561 filed with the Regional Prosecution Service of La Ceiba on October 6, 2009; and (2) on August 13, 2010 from Nectali Alfonso Zuniga Cruz, Luis Alonso Martínez, Marcio Francisco Sacaza, and Tiofilo Alexis Martínez Arzú, according to the report filed that same day with the District Attorney's Office and identified as CEIN-0101-2010-02057.

20. It indicated that, at the request of the Prosecution Service, the Court issued two warrants of arrest for those charged. The first was issued on March 5, 2001 and the second on June 12, 2003. It stated that, afterwards, the Prosecution Service requested a warrant of arrest for the third official of the State implicated in the incidents, on the basis of the statements of the alleged victim and witnesses who indicated that he would have been the person who fired the shot. It indicated that, because of this, a third warrant of arrest was issued on December 15, 2003 for the three soldiers of the Navy, which were issued again in November 2007 and November 2008. It stated that, despite the orders that had been issued, "to date none of the accused has been arrested." He added that "many of the investigative activities" requested by the Prosecution Service "have yet to be conducted."

21. It concluded by indicating that criminal proceedings are still under way and, because of this, it invoked the exception set forth in Article 46.1 of the American Convention regarding the remedies under domestic law which had not been exhausted, as a result of which it requested that the petition be declared inadmissible.

#### **IV. REVIEW OF ADMISSIBILITY**

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

22. Article 44 of the American Convention entitles the petitioner to file petitions with the Commission. The petitioner points out that the alleged victims are individual persons whose rights, as enshrined in the American Convention, the State has pledged to respect and guarantee. As for the State, the Commission points out that Honduras has been a State Party to the American Convention since September 8, 1977, the date on which it deposited its respective ratification instrument. Therefore, the Commission has jurisdiction *ratione personae* to examine the petition. The Commission also has jurisdiction *ratione loci* to hear the petition, because it alleges violations of rights protected in the American Convention that had taken place in the territory of Honduras, which is a State Party to said treaty.

23. The Commission has jurisdiction *ratione temporis* because the obligation to respect and guarantee the rights protected in the American Convention was already in force for the State at the time the incidents alleged in the petition had occurred. Finally, the Commission has jurisdiction *ratione materiae*, because the petition reports possible violations of human rights protected by the American Convention.

24. Regarding what is indicated by the petitioner in the complaint in connection with the statement that the State of Honduras violated ILO Convention 169, the Commission does not have jurisdiction in that regard, without detriment to using it as a guideline for interpreting obligations under the Convention in light of what has been established in Article 29 of the American Convention.<sup>8</sup>

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<sup>8</sup> In that regard, see IACHR, Report No. 29/06, Petition 906-03, Admissibility, Garifuna Community Triunfo de la Cruz and its members, paragraph 39; and IACHR, Report No. 39/07, Petition 1118/03, Admissibility, Garifuna Community of Cayos Cochinos and its members, paragraph 49.

## **B. Other requirements for admissibility of the petition**

### **1. Exhaustion of remedies under domestic law**

25. Article 46.1.a of the American Convention provides that, for admissibility of a petition filed with the Inter-American Commission pursuant to Article 44 of the Convention, remedies under domestic law must have been attempted and exhausted in accordance with generally recognized international principles. The requirement of prior exhaustion is applicable when the domestic system does have remedies that are truly available, adequate, and effective to remedy the alleged violation. In this regard, Article 46.2 specifies that the requirement shall not be applicable when: a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights allegedly violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

26. According to the Rules of Procedure of the IACHR and case law of the Inter-American System, when a State alleges that remedies under domestic law have not been exhausted, it must indicate which remedies must have been provided and also demonstrate which results are “adequate” to redress the alleged violation, that is, the function of these remedies under domestic law is suitable to redress the alleged violations of human rights brought to the Inter-American System’s cognizance. As pointed out by the Inter-American Court, it is not the Commission’s task “to identify *ex officio* which domestic remedies shall be exhausted, but instead it corresponds to the State to point out in a timely manner the domestic remedies that must be exhausted and their effectiveness. Likewise, it does not correspond to the international bodies to correct the lack of precision of the State’s arguments.”<sup>9</sup>

27. In the matter being examined, the IACHR observed that the parties are debating compliance with this requirement of the Convention. Indeed, the State challenged the exception of non-exhaustion of remedies under domestic law with respect to Jesús Flores Satuye, because it asserts that the criminal proceedings that were lodged with the criminal charges filed on May 22, 2001 by the Regional Prosecution Service of La Ceiba with the District Court of La Ceiba have not concluded. As for the petition, it alleged that the State of Honduras has not guaranteed that the remedies for the complaints that were filed are effective.

28. In view of the allegations of the parties, it must be determined, in connection with the purpose of the present case, what remedies under domestic law must be exhausted. The Commission’s case law provides that when a crime is perpetrated that can be pursued in the performance of the State’s duties, the State has the obligation to promote and process criminal proceedings and that, in those cases, that it is suitable channel to clarify the facts, try those who are responsible, and establish the corresponding criminal sanctions, in addition to facilitating other ways of providing monetary reparations.<sup>10</sup> The Commission considers that the facts alleged by the petitioner in the present case involve the alleged violation of basic rights such as integrity and personal freedom, which mean that under domestic law they are crimes to be prosecuted *ex officio* and that, therefore, these are the

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<sup>9</sup> I/A Court H.R. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C, No. 197, paragraph 23. Quoting ECHR, *Case of Bozano v. France*, judgment of 18 December 1986, paragraph 46, Series A, No. 111.

<sup>10</sup> IACHR, Report No.52/97 (Merits), Case 11.218, *Arges Sequeira Mangas*, Nicaragua, February 18, 1998, paragraphs 96 and 97. See also Report No. 55/04 paragraph 25. Report No. 16/06 paragraph 35; Report No. 32/06, paragraph 30.

criminal proceedings, conducted by the State itself, that must be considered when determining whether a complaint is admissible or not.<sup>11</sup>

29. In the present case, the Commission observed that the petitioner and the alleged victims filed complaints in connection with the various alleged incidents. Indeed, according to what was alleged by the petitioner and not disputed by the State, on January 30, 2001 it filed a complaint with the District Attorney's Office in La Ceiba and the DGIC regarding the facts in connection with the wound of Jesús Flores Satuye. This complaint was supposedly lost and, as indicated in the information provided to IACHR, it was reported to the National Supervision of the District Attorney's Office on May 17, 2001. Because of this, the petitioner went to the Special Prosecution Service for Ethnic Groups and Cultural Heritage, which referred the investigation to the Regional Prosecution Office of La Ceiba. According to what was reported, on May 22, 2001, this Prosecution Service filed criminal charges with the District Court of La Ceiba, which led to criminal proceedings which are still pending today. Regarding this, the State affirmed in its communications to the IACHR that, in these proceedings, "there are still various investigative activities that are pending" and that, to date, at least five warrants of arrest have been issued for the soldiers implicated in the incidents, although none of them has been effectively implemented.

30. Moreover, the IACHR notes that, with regard to the alleged incidents in connection with Mauricio Raymundo Santos Cordova, Jael Enrique García Álvarez and Mainor Dionisio Castillo, and Edgar Patricio Arzu López, the petitioner filed the complaints with the District Attorney's Office in November 2007, October 2008, and September 2009, respectively. As for the State, it did not mention the State's response to these complaints.

31. Because of the above, the IACHR notes that more than 12 years after the alleged incidents in connection with Jesús Flores Satuye had occurred and the same amount of time since the criminal proceedings were filed, they continue to be under way, with "various investigative activities" requested by the Prosecution Service that still have to be conducted, as asserted by the State. Along with the above, it has been observed that there are several warrants of arrest that have not been implemented although they were issued at least 12 years ago. As noted previously, the IACHR, in accordance with its Rules of Procedure and case law of the bodies of the Inter-American System, it is the State that must bear the burden of proving the adequacy and effectiveness of the remedies that must be exhausted under domestic law. Nevertheless, in the present case, in view of what was reported by the petitioner regarding the complaints filed in November 2007, October 2008 and September 2009 as a result of the incidents in connection with the other alleged victims—in other words, four to six years after the complaints were filed with the District Attorney's Office—the State has not indicated to the IACHR that it had taken any action to effectively investigate the alleged incidents, identify those responsible, and carry out the relevant sanctions in response to the complaints that were filed.

32. Therefore, in view of the above-mentioned characteristics, the Commission believes that the exception envisaged in Article 46.2.c of the American Convention is applicable. The Commission reiterates that resorting to exceptions to the rule of exhausting remedies under domestic law as provided for in Article 46.2 of the Convention is closely tied to determining whether or not there were any possible violations of certain rights enshrined therein, such as the guarantees of access to justice.

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<sup>11</sup> Report No. 52/97, Case 11.218, *Arges Sequeira Mangas*, Annual Report of the IACHR 1997, paragraphs 96 and 97. See also: Report No. 55/97, paragraph 392. Report No. 62/00, Case 11.727, *Hernando Osorio Correa* Annual Report of the IACHR 2000, paragraph 24.

Article 46.2 of the American Convention, however, because of its nature and purpose, is a statute with autonomous contents with respect to the substantive statutes of the Convention. Therefore, whether or not exceptions to the rule of exhaustion of remedies under domestic law set forth in that statute are applicable to the case being examined must be determined prior to, and separately from, the review of the merits of the case, because it depends on a standard of appreciation that is different from the one used to decide whether or not there was a violation of Articles 8 and 25 of the Convention.

## **2. Time-limits for filing the petition**

33. Article 46.1.b of the Convention establishes that, for a petition to be declared admissible, it must have been lodged within a period of six months from the date on which the petitioner is notified of the final judgment exhausting remedies under domestic law. This rule is not applicable, however, when the Commission finds that one of the exceptions to the prior exhaustion of remedies under domestic law as enshrined in Article 46.2 of the Convention has been established. In these cases, the Commission must decide whether or not the petition was filed within a reasonable period of time, in conformity with Article 32 of its Rules of Procedure.

34. As indicated in the preceding paragraphs, the Commission concluded that, in the present case, the exception provided for in Article 46.2.c of the American Convention is applicable. Bearing in mind the date when the incidents allegedly violating rights took place, the existence of criminal proceedings filed with the District Court of La Ceiba that remained open after more than 12 years, the criminal complaints referred to without reporting any actions taken to effectively investigate the alleged facts, and the filing of the petition on October 29, 2003, the Commission deems that the petition was filed within a reasonable period of time.

## **3. Duplication of international proceedings and international *res judicata***

35. Article 46.1.c establishes that a petition's admissibility depends on the requirement that the case "is not pending in any other international proceeding for settlement" and Article 47.d of the Convention stipulates that the Commission shall not admit any petition that is "substantially the same as any petition or communication previously examined by it or another international body." There is nothing on record to indicate that any of these circumstances of inadmissibility is present.

## **4. Characterization of the facts alleged**

36. The Commission's view is that this is not the proper phase in the proceedings to determine whether the alleged violations of the alleged victims' rights did or did not occur. For admissibility purposes, all the IACHR need establish is whether the facts alleged, if proven, tend to establish violations of the American Convention, as stipulated in its Article 47.b and whether the petition is "manifestly groundless" or is "obviously out of order," in line with subparagraph (c) of the same article. The standard for evaluating these extreme situations is different from the standard for deciding the merits of a petition. The IACHR must conduct a *prima facie* evaluation to determine whether the petition establishes grounds for the apparent or potential violation of a right guaranteed by the American Convention, but not to establish the existence of a violation.<sup>12</sup> In the present phase, a

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<sup>12</sup> See IACHR, Report No. 128/01, Case 12.367, *Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser from the daily newspaper "La Nación" (Costa Rica)*, December 3, 2001, paragraph 50; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy*

summary review must be conducted, one that does not imply a prejudgment or prior opinion on the merits. The Commission's own Rules of Procedure, by providing for an admissibility phase and another phase on the merits of the case, make the distinction between the examination the Commission must make to determine whether a complaint is admissible and the examination required to determine whether a violation for which the State can be held liable has in fact occurred.<sup>13</sup>

37. Neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights that the State is allegedly violating in the case submitted to the Commission, although the petitioners may do so. It pertains to the Commission, on the basis of the System's case law, to decide in its admissibility reports, what provision of the relevant inter-American instruments is applicable or could establish its violation if the allegations are proven on the basis of sufficient evidence.

38. The petitioner alleges that the State of Honduras is responsible for the physical attacks on the alleged victims by the soldiers in charge of surveillance activities on the archipelago of Cayos Cochinos, in a context where severe restrictions were imposed on the physical and cultural subsistence activities of the Garifuna communities who have historically inhabited the archipelago. It also contends that, although these incidents were reported to the relevant state authorities, it has not led to any sound and diligent investigation of the facts or to the trial and punishment of those responsible.

39. The Inter-American Commission believes that, if the allegations of the petitioner are proven, they would tend to establish violations of Articles 5, 8 and 25 of the American Convention on Human Rights, in connection with Article 1.1 of that same instrument. The allegations referring to the alleged arbitrary seizure of the *cayuco* and fishing equipment of Jesús Flores Satuye could also tend to establish a violation of Article 21 of the Convention, in connection with its Article 1.1. The Commission also deems that the allegations that the restrictions imposed upon the Garifuna divers and fishermen were based on domestic provisions, such as Presidential Agreement 1928-93 and Decree 114-2003, that had not taken into account that they constitute traditional activities for the physical and cultural subsistence of the Garifuna people and that they had been the traditional settlers of the archipelago, could tend to establish a violation of Article 2 of the American Convention. Because it is not evident that the petitioner's allegations are groundless or out of order, the Commission concludes that the petition meets the requirements set forth in Article 47.b and c of the American Convention.

## V. CONCLUSION

40. On the basis of the arguments of fact and law set forth above and without prejudging the merits of the case, the Inter-American Commission concludes that the present case does meet the admissibility requirements set forth in Articles 46 and 47 of the American Convention and therefore

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(Argentina), February 24, 2004, paragraph 43; Report No. 32/07, Petition 429-05, *Juan Patricio Marileo Saravia and others* (Chile), April 23, 2007, paragraph 54.

<sup>13</sup> See IACHR, Report No. 31/03, Case 12.195, *Mario Alberto Jara Oñate and others* (Chile), March 7, 2003, paragraph 41; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, paragraph 43; Petition 429-05, *Juan Patricio Marileo Saravia and others* (Chile), April 23, 2007, paragraph 54; Petition 581-05, *Victor Manuel Ancalaf Laupe* (Chile), May 2, 2007, paragraph 46.

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

**DECIDES:**

1. To declare the present petition admissible as regards the alleged violations of the rights protected in Articles 5, 8 and 25 of the American Convention, in connection with Articles 1.1 and 2 of the same instrument, to the detriment of the alleged victims.

2. To declare the present petition admissible, as it refers to the alleged violations of the rights protected in Article 21 of the American Convention in connection with Article 1.1 of the same instrument, to the detriment of Jesús Flores Satuye.

3. To notify the parties of this decision.

4. To make this decision public and to include it in its 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, Rodrigo Escobar Gil, and Rose-Marie Belle Antoine, members of the Commission.