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REPORT No. 20/14
PETITION 1566-07

REPORT ON ADMISSIBILITY

COMMUNITIES OF THE SIPAKEPENSE AND MAM MAYAN PEOPLE OF THE MUNICIPALITIES OF SIPACAPA AND SAN MIGUEL IXTAHUACÁN
GUATEMALA

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Organization of American States

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I. SUMMARY

1. On December 11, 2007, the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission," "Commission," or "IACHR") received a petition lodged by 13 communities of the Sipakepense Mayan people in the municipality of Sipacapa, Department of San Marcos[1] (hereinafter "petitioners") against the State of Guatemala (hereinafter "Guatemala," "State," or "Guatemalan State"). Subsequently, the municipal mayors of Sipacapa and San Miguel Ixtahuacán asked to join as petitioners on behalf of the communities of the Sipakepense Mayan people and the communities of the Mam Mayan people in their respective municipalities (hereinafter "alleged victims"), a matter that was deemed in order by the Commission and that was notified to the parties.

2. The petitioners allege that the State authorized the Marlin Mine I project without prior, free, and informed consultation with the affected indigenous communities and, further, that the negative outcome of a consultation that the communities themselves called for were not taken into account, which the petitioners claim has had had serious consequences for the communities. They maintain that the State is responsible for violating Articles 8 (right to a fair trial), 9 (freedom from ex post facto laws), 11 (right to privacy), 13 (freedom of thought and expression), 19 (rights of the child), 21 (right to property), 23 (right to participate in government), 24 (right to equal protection), 25 (right to judicial protection), and 26 (progressive development) of the American Convention on Human Rights (hereinafter "Convention" or "American Convention"), in relation to Articles 1.1 (obligation to respect rights) and 2 (obligation to adopt domestic measures) thereof, to the detriment of the alleged victims. Likewise, they request that Convention 169 of the International Labour Organization concerning Indigenous and Tribal Peoples in Independent Countries (hereinafter "Convention 169 of the ILO"), ratified by Guatemala, be used as a guide for interpreting the conventional obligations. As concerns admissibility, they argue that domestic remedies were exhausted with the decision of the Constitutional Court issued in the action of unconstitutionality challenging the holding of the consultation authorized by the Municipal Council of Sipacapa.

3. For its part, the State has filed three preliminary objections concerning the fourth instance, the failure to exhaust domestic remedies, and res judicata. Further, it challenges the facts and the violations denounced. Therefore it requests that the petition be found inadmissible.

4. Without prejudging the merits of the case, after examining the positions of the parties and pursuant to the requirements in Articles 46 and 47 of the American Convention, the Inter-American Commission decides to find the petition admissible for the purpose of examining the alleged violation of the rights enshrined in Articles 5, 8, 9, 13, 19, 21, 23, 24, and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof, to the detriment of the alleged victims. The Commission decides to notify this decision to the parties, publish it, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

5. On December 11, 2007, the Commission received the petition and registered it as number 1566-07. In a note dated September 14, 2010, notified on September 21 the same year, the IACHR

[1] The communities that lodged the initial petition are Tres Cruces, Escupijá, Pueblo Viejo, La Estancia, Poj, Sipacapa, Pié de la Cuesta, Cancil, Chual, Quecá, Quequesiguán, San Isidro, and Canoj.

transmitted the pertinent parts of the petition to the State, asking it to submit its response within two months, in accordance with Article 30 of the Commission's Rules of Procedure. On November 13, 2010, the Commission received the State's response, which was duly transmitted to the petitioners. The IACHR received additional information from the petitioners in communications dated July 1 and 17 and September 10 and 19, 2008; April 16, 2009; January 14, April 8, November 29, and December 26, 2010; March 3, May 26, and November 9, 2011; February 22 and June 16, 2012; and January 22, 2013. The IACHR also received observations from the State on June 13 and August 26, 2011; March 20 and November 28, 2012; and July 17, 2013. Notes sent by the parties were forwarded to the opposing party.

- **Precautionary measures 260-07**

6. The petition was accompanied by a request for precautionary measures, which alleged that the mining was producing grave consequences for the life, personal integrity, environment, and property of the communities, especially since it was affecting their only sources of water for consumption and subsistence activities. On May 20, 2010, the IACHR granted the requested measures, asking the State to "[s]uspend mining of the Marlin I project and other activities related to the concession granted […] and to implement effective measures to prevent environmental contamination, until such time as the [IACHR] adopts a decision on the merits of the petition associated with this request […]; [a]dopt the necessary measures to decontaminate, as much as possible, the water sources […] and ensure their members access to water fit for human consumption; [and] address the health problems that are the subject of these precautionary measures […]." Later, after examining additional information from the two parties, the IACHR decided to change the content of the precautionary measures and asked the State to "to adopt the necessary measures to ensure that all beneficiary members of the 18 Mayan communities have access to potable water appropriate for human consumption and household use, as well as for irrigation purposes." Specifically, the IACHR requested that necessary measures be taken to ensure that water resources were not contaminated by mining operations.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. The petitioners state that the ancestral land of the Mam and Sipakapense Mayan people consists of the municipalities of Sipacapa and San Miguel Ixtahuacán, in the Department of San Marcos, located in the Western Highlands region. They indicate that the Sipakapense Mayan people is the "original owner" of the land in the municipality of Sipacapa. They explain that its right to that property was recognized in 1708 and that it was granted a "global" property title in 1816, which was revalidated by means of a municipal title in 1918 and has been recorded in the property registry since 1919. They also state that the Mam Mayan people of the municipality of San Miguel Ixtahuacán owns the territory of that municipality, since it was given title to it in 1674, which was subsequently extended, as indicated in a 1908 title. They point out that the territory has ancestral and communal significance for the Mam and Sipakapense Mayan people and that "the communities and persons manage their lands at the local level, through sale/purchase contracts for property rights inherited by the many generations that have been born, grown up, lived, and died in the territory […]."

8. They maintain that, nonetheless, the State authorized mineral exploration and mining activities whose area of impact includes the territory of the Mam and Sipakapense Mayan communities, without any prior consultation and without guaranteeing that they would share in the benefits accruing from the project or participate in the social and environmental impact assessment (henceforth "EAI"). In particular, they indicate that in 1996 the company Montana Exploradora de Guatemala S.A. (henceforth "the company" or "Montana") was authorized to carry out mineral exploration activities and therefore applied for a mining license. They add that the Montana representatives persuaded community members to "sell their lands for a few quetzales." They contend that on September 12, 2003, the Ministry of Energy and Mines (hereinafter "MEM") published the edict on the mining license application in the official journal and in another print medium. They explain that, under domestic law, opposition may be expressed within 30 days of the date of publication However, those daily papers are not distributed in Sipacapa or San Miguel Ixtahuacán and the

edict was not published in the Sipakapense and Mam languages. They point out that Montana presented an EIA, drawn up by consultants hired by the company and without State supervision, which they assert contains serious deficiencies and corresponds to San Miguel Ixtahuacán exclusively and not to Sipacapa.

9. They claim that the EAI was approved by the Ministry of the Environment and Natural Resources (hereinafter "MARN") on September 29, 2003, and that on November 27, 2003, the MEM granted a strip and underground mining concession for a period of 25 years, covering an area of 20 km^2 in the two municipalities. They state that, subsequently, the company launched a "public information campaign," promoting the benefits the project would have for the region. They indicate that, at the same time, the communities asked the authorities for information on the socio-environmental impact of the mining activity but they did not receive any response. They maintain that, given the communities' discontent and opposition, they decided on their own to approach municipal authorities to call for a community consultation.[2] They report that a decision was reached, together with the Municipal Council of Sipacapa, to hold the community consultation on June 18, 2005, which was recorded in municipal agreements. They explain that the legal basis for such agreements may be found in the Municipal Code, according to which the Municipal Council is entitled to hold good faith consultations with indigenous communities or leaders of the respective municipality, whose "results are binding."[3]

10. They indicate that, nonetheless, company representatives brought two actions challenging the municipal agreements reached in the consultation and requesting their provisional suspension. The petitioners state that, on the one hand, on June 7, 2005, the company representatives filed an action of unconstitutionality before the Constitutional Court and, on the other, on June 13, 2005, an amparo action with the Seventh Court of First Instance for Civil Matters of the Department of Guatemala. The petitioners state that, on the same date, said court ordered "the provisional suspension of the consultation," a court decision that, they indicate, was notified to the Municipal Council of Sipacapa "by the pilot of the departmental governor's office of San Marcos." They point out that the Human Rights Ombudsman and the Mayor of Sipacapa filed appeals against the provisional suspension. They add that, on June 17, 2005, the Constitutional Court reached a decision in the action of unconstitutionality, ruling against suspension of the consultation.

11. They indicate that, considering that decision, the consultation was held on June 18, 2005. It was convened through the Community Development Councils (COCODES) and community leaders and held in accordance with their "own law, usages, and customs." According to the information provided, the communities expressed opposition to the mining project during the consultation. They report that the results were presented to the Municipal Council of Sipacapa, which, in official record 26-2005, dated June 21, 2005, decided to "act accordingly" and pledged "to transmit the respective documentation […] to the corresponding entities for all appropriate purposes." They add that the results were notified to the Presidency, the Congress of the Republic, and the Human Rights Ombudsman.

12. As concerns the substantive decision in the proceedings, they state that the amparo action was settled on July 20, 2005, by the Court of First Instance for Civil and Commercial Matters of San Marcos, which ruled that the municipal agreements "lack legal validity and grounds as they violate constitutional norms and therefore infringe the company's acquired rights." They affirm that the mayor of Sipacapa and the Public Prosecutor's Office filed separate appeals before the Constitutional Court, which were settled on February 28, 2008, by a decision to overturn the decision that was appealed and therefore deny the company's amparo application. With respect to the action of unconstitutionality, they indicate that on May 8, 2007, the Constitutional Court ruled that, of the municipal agreements called into question, only Article 27 of the Rules of Procedure for the consultation was unconstitutional. As they noted, that provision established that the results of the consultation were "generally applicable and mandatory," pursuant to the Municipal Code. They argue that this decision is arbitrary inasmuch as it is not based on constitutional norms but rather

[2] They point out that, in this context, there was a clash in 2005 between the indigenous communities of Sololá and security forces, which resulted in the death of a community member named Raúl Castro Bocel. They claim that the public authorities did not investigate the death.

[3] In this connection, they cite Articles 64 and 66 of the Municipal Code.

on the fact that said code is imprecise about the mandatory nature of the consultation and that, according to ordinary law, it is incumbent on the MEM and not the Municipal Council to set conditions regarding minerals. They indicate that, although the Court recognized that, except for that provision, the consultation was valid, said decision has not been complied with by the competent authorities, like the MARN and the MEM.

13. They contend that due process guarantees were not observed in these proceedings. They maintain that two parallel actions were brought on the same matter, on unequal terms, by the company and the State institutions against the Municipal Council of Sipacapa. They note that the individual appointed as Attorney General of the Nation to defend the State's interests was later appointed as a judge on the Constitutional Court. They indicate that on June 1, 2006, said judge informed the Court that he was disqualifying himself from the case; however, the court did not resolve that question until May 8, 2007, the date on which it issued the ruling. They also allege that the reasonable time period in both constitutional proceedings was not complied with.

14. As concerns domestic remedies, they report that the decision of the MEM to grant the license may be challenged by an "appeal for reversal," which must be filed with the authority whose decision is being contested within five days of its notification. In this connection, they explain that they were unable to file that appeal as they had not been notified and, even if they had been, the communities were not in a position to file it. They explain that there was no EIA for Sipacapa, which would have provided them with information; the five-day period was insufficient to study a file that was located at the General Mining Directorate in Guatemala City and whose content was highly technical; the documentation was not in the Sipakapense or Mam Mayan language; and the communities could not defray the costs of hiring specialized attorneys or gaining access to the file. In short, they allege that said proceeding "is not an appropriate and efficient mechanism for guaranteeing access to domestic remedies, even less so for indigenous peoples." They report that, in view of the foregoing, on January 19, 2007, they applied to the Constitutional Court for amparo, challenging the process of granting the mining license. Said application was denied on January 9, 2008.

15. In addition, among the domestic remedies pursued, they mention that on December 18, 2006, the Madre Selva Community filed a criminal complaint against Montana Exploradora for industrial contamination and damage to health and the environment. They report that the complaint was transmitted to the Office of the Prosecutor for Environmental Crime in Guatemala City and that the situation "remains unpunished to this day." Further, they report that, in keeping with a statement made by the ILO Committee of Experts on the Application of Conventions and Recommendations (hereinafter "CEACR"), on March 2, 2010, they submitted a constitutional petition to the President calling for the suspension of mining operations under Article 28 of the Constitution. Moreover, they indicate that the Congress of the Republic conducted an investigation into the legality of the mining license, which resulted in a report, dated October 22, 2009, by the Special National Commission for Transparency, which declared that said commission could not recommend suspension of the mining operations since that matter was within the purview of the MEM.

16. They contend that the mining activity produced and continues producing grave consequences for the life, personal integrity, environment, and property of the communities, especially because of its contamination of the Tzalá River and its tributaries, the only sources of water for consumption and subsistence activities. They maintain that as a result of the water contamination, a large number of inhabitants, mainly children, have suffered from physical consequences, such as skin infections, thinning hair, and other health problems.[4] They add that this has also had serious social and cultural consequences, as it resulted in high levels of conflict, intra-community division, and the criminalization and intimidation of leaders. On the last point, they report that seven members of the Mam Mayan communities of Ágel, San José Ixcaniche, and Salitre were charged by the Public Prosecutor's Office as a result of complaints filed by the company for minor injuries, serious injuries, instigation to commit crime, coercion, and threats. Similarly, they indicate that the competent judge in San Marcos issued arrest warrants against eight indigenous women

[4] Among the cases, they report the death of a 13-month old baby in July 2008 "for reasons unknown to the family and community" and they provided photos "taken a short while before his death [that] show skin problems—a rash and open sores." Communication from the petitioners dated April 16, 2009, p. 33.

from San Miguel Ixtahuacan for interrupting the mine's power line, which went through their homes. They claim that the arrest warrants against these women have meant that for years they have lived in fear of being detained and that personnel from the company, accompanied by police officers, went to their homes on several occasions presumably "to take measures" or have them arrested, which caused great anxiety and intimidation.

17. As regards the admissibility of the petition, they argue that domestic remedies were exhausted with the ruling of the Constitutional Court of May 8, 2007, which was notified on June 25, 2007, and issued in the action of unconstitutionality. Likewise, they request that the preliminary objections raised by the Guatemalan State be dismissed.

B. The State

18. For its part, Guatemala affirms that it disagrees with the facts put forward by the petitioners as well as with the violations denounced. It indicates that, through the MEM, a strip and underground mining license was granted to Montana Exploradora in 2003 to mine for gold and silver for a 25-year period, in what is called the Marlin I Mine project. It states that the concession granted covers a surface area of 20 km^2, 85 percent of which was in the municipality of San Miguel Ixtahuacán and 15 percent in Sipacapa, both in the Department of San Marcos.

19. It points out that, according to the Constitution, "the technical and rational exploitation of non-renewable natural resources is a matter of public utility and need." It notes that, accordingly, once the administrative procedure was completed and the technical and legal certificates obtained, the mining license was granted. It explains that, under domestic law, it is incumbent on the entity interested in securing a mining right to present the EIA conducted by consultants certified by the MARN and based on the terms of reference prepared by said ministry. It affirms that, once the results of the EIA were obtained, it issued public announcements through edicts in the Spanish and Mam languages. It points out that, although any party concerned could object, neither the petitioners nor anyone else did so. As for the consultation process, it contends that "the right of the indigenous people to be consulted is unquestionable," in accordance with the treaties ratified by Guatemala and the jurisprudence of the Constitutional Court. It notes that, accordingly, the MARN informed the company that it was mandatory to conduct a public participation process, in keeping with Article 74 of the Regulations on Environmental Assessment, Control, and Monitoring (Government Agreement 431-2007), which was carried out in full. It points out that, although it is not called a "consultation," "it is indeed a prior process" in which "notification was given that a mining project would be executed."

20. At the same time, it notes that, although ILO Convention 169 "clearly stipulates that the State must consult the peoples concerned whenever consideration is being given to administrative measures—as in this case—which may affect them directly, […] there is still a void in the regulations of said Convention," which is why draft regulations governing this right are being drawn up. It points out that this "has meant that there is not a single official mechanism for holding consultations and that procedures are being used that are inconsistent with Guatemala law." It maintains that while it recognizes that good faith consultations are valid "they must be convened and held by the administrative entities responsible for the matters considered in the consultations." As concerns the consultation held in the municipality of Sipacapa, it indicates that since neither the municipality nor the communities organized into Development Committees are bodies charged with approving projects or issuing licenses, "they cannot be given legal authority or decision-making power inasmuch as they lack competence." It maintains further that by the time the consultation was held, a decision had been reached by the Seventh Court of First Instance for Civil Matters ordering its suspension. Nonetheless, it adds, the communities "decided to disobey the court order by their *de facto* holding of the so-called consultation."

21. With respect to the alleged impact on the environment, hydrological conditions, health, and physical integrity, the State indicates that the national institutions charged with monitoring environmental protection have conducted various studies, none of which have shown the alleged contamination. As concerns the complaint lodged against Montana for contamination, it reports that after an official investigation, the

Public Prosecutor's Office asked the court to dismiss the complaint since "the conduct reported is not defined as a crime in the code of substantive criminal law."

22. Regarding the eight women who were issued arrest warrants, it contends that these warrants were issued on June 23, 2008, for the crime of aggravated encroachment to the detriment of Montana Exploradora.[5] It adds that the arrest warrants are pending execution by the National Civil Police and thus that "no one has been arrested." In addition, it reports that a criminal proceeding is underway against five community members for crimes of instigation to commit crime, coercion, threats, aggravated encroachment, minor injuries, and arson,[6] a proceeding in which Montana is both complainant and civil actor. It adds that the arrest of the defendants was not deemed necessary initially as it was considered to be an "excessively harsh" measure and that subsequently one of them was ordered to be arrested as he did not appear for a public hearing which he had been duly notified of.

23. Moreover, it is filing three preliminary objections. With regard to the fourth instance objection, it maintains that it is clear from the petition that the Guatemalan State was being denounced because of the Constitutional Court ruling of May 8, 2007, declaring Article 27 of the Rules of Procedure for the consultation unconstitutional. It indicates, however, that the petitioners were able to freely exercise their rights to defense and access to the courts. It affirms that the ruling of the Constitutional Court that denied the amparo application filed by Montana, as well as the rulings in which it examined and applied ILO Convention 169, demonstrate said Court's impartiality. Accordingly, it maintains that the petitioners' disagreement with the ruling of May 8, 2007 "is not sufficient to classify it as arbitrary, since said ruling does not entail any violations of the human rights denounced in the present petition."

24. With regard to the failure to exhaust domestic remedies, it argues that, according to the petitioners, the aforementioned decision of the Constitutional Court is the legal action that led up to international responsibility. Nonetheless, it affirms that "the alleged victims were not party to, nor did they file any appeal, in the proceeding that resulted in this ruling." Rather, the action was brought by individuals. Therefore the petitioners cannot denounce the State before the IACHR. It adds that the Court's decision referred to the binding nature of the results of the consultation, but the right to consultation is unquestionable for the State and was exercised through the convocation issued by the Municipal Council of Sipacapa, in conformity with the Municipal Code and the Urban and Rural Development Law. It asserts, however, that the domestic regulations on the right to consultation are "overly broad and imprecise" and that, considering that the international obligation of consultation is not self-fulfilling, efforts are being made for its implementation in domestic legislation.

25. As concerns the same objection, it contends that the petitioners did not bring actions to recover the indigenous communal property, even though the law provides "a number of remedies that can be used by persons who consider that their possession or ownership of real property has been affected." In this respect, it mentions the writ of possession or ownership, governed by Article 255 of the Civil and Commercial Code; the writ of possession, established in Article 255 of the same code; and the real property claim with the Property Registrar, established in Article 1164 of the Civil Code, applicable in cases where "persons are negatively affected by a real property record detrimental to their interests." It adds that an application for amparo or protection may also be filed "if it is apparent that what has been done is an obvious transgression of the law […], in order to prevent legitimate rights from being violated as, for example, in the present case, the right to private property, which is guaranteed in Article 39 of the Constitution."

26. Regarding this objection, it points out that there are internal processes for decision-making applicable in the present case. In particular, it reports that, based on an official note from the Office of the Attorney General of the Nation, dated July 21, 2010, issued to enforce the precautionary measure requested

[5] According to the parties, these eight women are Gregoria Crisanta Pérez Bámaca, Crisanta Hernández Pérez, Patrocinia Mateo Mejía, Catalina Pérez Hernández, Olga Bámaca González, María Días, Crisanta Yoc, and Marta Pérez.

[6] The names of these individuals are Florencio Yoc, Gregoria Crisanta Pérez Bámaca, Ángel Jacobo López, Jesús Pérez, and Maximiliano Hernández.

by the IACHR, an administrative procedure was set in motion with the General Directorate of Mining to suspend mining activities. It points out that said procedure is carried out in accordance with the Mining Law and that it was decided to allow "the beneficiaries and their representatives to participate in this case, in compliance with international standards—even if this not established by law." It indicates that some stages are still pending "which will likely conclude late this year [2010]." Moreover, it mentions that a petition to suspend mining operations was presented to the President of the Republic in compliance with a statement made by the CEACR of the ILO, which has led to actions like the "investigation and settlement of the conflict resulting from cracks in houses in the vicinity of the Marlin I Mine." Further, it affirms that amparo was applied for based on the report the State presented to the IACHR on June 23, 2010, in the framework of the precautionary measure. Subsequently, it reported that the amparo application was dismissed on April 15, 2011.

27. The third objection refers to the existence of res judicata since, as it argues, the aforementioned ruling of the Constitutional Court was the result of a proceeding in which due process was respected and the judges acted independently and impartially. Accordingly, it maintains that said decision "has resulted in formal and material res judicata […] and is not inconsistent with the American Convention […] or with Convention 169 [of the ILO]." Lastly, it maintains that no violations of the rights set out in the Convention have been established since the State does not bear international responsibility for the Constitutional Court's ruling. In light of the foregoing, it requests that the petition be found inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

28. The petitioners are entitled under Article 44 of the American Convention to lodge petitions with the Commission. In the initial petition, the petitioners identified as alleged victims 13 communities of the Sipakepense Mayan people in the municipality of Sipacapa, Department of San Marcos and its members. Subsequently, it was asked to join as alleged victims the communities of the Mam Mayan people and its members, which according to the information provided, would be 61 communities[7]. In respect to the mentioned communities and its members, the State of Guatemala pledged to respect and guarantee the rights embodied in the American Convention.[8] As concerns the State, the Commission notes that Guatemala has been a State party to the American Convention since May 25, 1978, the date on which it deposited its instrument of ratification of the Convention. The Commission therefore is competent *ratione personae* to examine the petition. Likewise, the IACHR is competent *ratione temporis* since the petitioners claim that the alleged violations have occurred since 1996, when the American Convention was already in force for Guatemala.

29. The Commission is competent *ratione loci* to consider the petition inasmuch as it has to do with rights protected under the American Convention that took place within the State's jurisdiction. Lastly, the Commission is competent *ratione materiae* because the petition concerns possible violations of the human rights protected under the American Convention. As regards the petitioners' comments about ILO

[7] The alleged victims are the members of the Sipakepense and Mam Mayan communities of the municipalities of Sipacapa and San Miguel Ixtahuacán, who make up socially and politically organized communities. Said communities are found in a specific geographic location and their members can be differentiated and identified. According to the information submitted, the thirteen communities of the Maya Sipakepense have between 15,000 and 16,000 inhabitants, while the 61 communities of the Maya Mam of the Municipality of San Miguel reach a population of approximately 30,000 inhabitants. [Initial petition received on December 11, 2007, petitioner's written communication received on April 8, 2010, petitioner's written communication received on March 3, 2011]. In this regard, see: Inter-Am. Ct. H.R., Case of the Mayagna (Sumo) Awas Tingni Community, Judgment of August 31, 2001, (Ser. C) No. 79, para. 149; IACHR, Report No. 62/04, The Kichwa Peoples of the Sarayaku Community and Its Members (Ecuador), para. 47; IACHR, Report No. 58/09, Kuna of Madungandí and Emberá of Bayano Indigenous Peoples and Their Members (Panama), para. 26.

[8] In this regard, see: IACHR, Report No. 63/10, Garifuna Community of Punta Piedra and Its Members (Honduras), March 24, 2010, para. 32; IACHR, Report No. 141/09, Diaguita Agricultural Communities of the Huasco-Altinos and the Members Thereof (Chile), December 30, 2009, para. 28; and IACHR, Report No. 75/09, Ngöbe Indigenous Communities and Their Members in the Changuinola River Valley (Panama), para. 26.

Convention 169, the Commission reiterates that, although it lacks competence to rule on any violation of said Convention, the ILO Convention may be used as a standard for interpreting treaty obligations, in light of Article 29 of the American Convention.[9]

B. Other admissibility requirements

1. Exhaustion of domestic remedies

30. Article 46.1.a of the American Convention establishes that for a petition lodged with the Inter-American Commission pursuant to Article 44 of the Convention to be admissible the remedies of domestic law must have been pursued and exhausted in accordance with generally accepted principles of international law. The prior exhaustion requirement is applicable when the remedies actually available under the domestic system are 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.

31. Similarly, Article 31.3 of the Rules of Procedure of the IACHR establishes that, when the petitioner invokes one of the exceptions to the exhaustion of domestic remedies set forth in Article 46.2 of the Convention, it is up to the State concerned to demonstrate that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record. By the same token, to decide if the petitions lodged by the petitioners should be deemed inadmissible because of the failure to exhaust available domestic remedies, the Commission refers to the basic principles governing the nature of the remedies to be exhausted under the inter-American system, that is, whether they are appropriate for remedying the alleged violation.[10]

32. In the instant matter, the Commission notes that the parties are at odds about compliance with this requirement under the Convention. The State raised the objection of failure to exhaust domestic remedies on the basis of arguments referring essentially to the following: (i) the alleged victims were not party to nor did they file actions in the proceeding that culminated in the ruling of the Constitutional Court on May 8, 2007, a decision that, in any event, does not call into question the right to consultation, which is embodied in domestic norms, some of which are in the process of being brought into line with the international instruments ratified by Guatemala; (ii) the petitioners did not exhaust the remedies available to claim the indigenous communal property; and (iii) domestic processes are being carried out that may result in decisions relevant to the present case. For their part, the petitioners argue that the domestic remedies were exhausted with the Constitutional Court's ruling on May 8, 2007. At the same time, they state that the domestic mechanisms for challenging the granting of the mining license are not appropriate and effective in the case of this petition and they report on remedies pursued to call for a consultation, draw the State authorities' attention to its results, and have the alleged damage investigated.

33. The Commission observes that, according to the information provided, the facts denounced in the present case have to do with compliance with the State's obligations regarding the right of indigenous people to collective property as it relates to the approval of a mining project. The IACHR notes that, contrary to what is affirmed by the State, the problem raised includes, but is not limited to, the challenge to the May 8, 2007, ruling of the Constitutional Court inasmuch as it refers, inter alia, to compliance with the State's

[9] Along the same lines, see IACHR, Admissibility Report No. 87/12, Petition 140-08, Maya Kaqchikel Communities of Los Hornos and El Pericón I and Their Members (Guatemala), November 8, 2012, para. 32; IACHR, Admissibility Report No. 29/06, Garifuna Community of "Triunfo de la Cruz" and Its Members (Honduras), para. 39; and IACHR, Admissibility Report No. 39/07, Garifuna Community of Cayos Cochinos and Its Members (Honduras), para. 49.

[10] Inter-Am. Ct. H.R., Velásquez Rodriguez Case, Judgment of July 29, 1988, (Ser. C) No. 4, paras. 63–66. See also Inter-Am. Ct. H.R., *Exceptions to the Exhaustion of Domestic Remedies* (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights). Advisory Opinion OC-11/90, August 10, 1990, (Ser. A) No. 11, paras. 34–36.

obligations concerning the right to consultation and, as appropriate, to prior, free, and informed consent; the preparation of prior environmental and social impact studies, with indigenous participation; and reasonable participation in the benefits that accrue from the project. Likewise, the information made available to the IACHR is related to the observance of due process guarantees in internal proceedings for the recovery of rights as well as to the consequences that the alleged mining activity, on which no consultation was held, for the rights of the alleged victims.

34. Thus, the IACHR finds that the first argument put forward by the State is unfounded and continues its analysis of this requirement in terms of the subject matter of the petition. In this connection, it notes that it is clear from the information and documents provided by the parties that the alleged victims and their representatives endeavored to exhaust the domestic remedies available to protect their allegedly infringed rights. Indeed, as noted by the petitioners and not challenged by the State, the communities undertook on their own a number of measures before government authorities, especially in the municipal sphere, to arrange for a community consultation to be held, under the Municipal Code and the Urban and Rural Development Law. The IACHR notes that, as reported by the State, the aforementioned norms "establish the right of indigenous peoples to consultation" in the Guatemalan legal system. The parties do not challenge the fact that the community consultation was held on June 18, 2005, after the license was granted and that the outcome of said consultation was negative, which the State authorities were allegedly informed of. It also notes that, even though the community consultation was allegedly challenged through two constitutional proceedings that concluded with decisions upholding its validity under domestic law, the Commission was not informed by Guatemala about measures the State would take to respond to the results of the community consultation.

35. Similarly, with regard to the mechanisms referred to by the parties under the mining licensing process, the IACHR observes that the means of "public participation" applicable under the law would be those made available by the applicant company that would extend to the public at large,[11] without any guarantee that the indigenous peoples and communities would be able to take part in decisions that may have an impact on their ancestral lands. As repeatedly stated by the organs of the inter-American system, the right to consultation encompasses the positive duty of the States to make available appropriate and effective mechanisms to obtain prior, free, and informed consent, in accordance with indigenous peoples' customs and traditions, before undertaking activities that may have an impact on their interests or could affect their rights to their lands, territory, or natural resources.[12]

36. In addition, the petitioners argue that it was impossible to file an action to challenge the application to conduct mining operations, which is governed by the Mining Law,[13] or to file an action to have the decision on granting the mining license reversed, under the Law on Administrative Litigation.[14] In this connection, the IACHR notes the alleged existence of obstacles preventing the communities from learning about possible actions for bringing challenges—obstacles associated with the fact that documentation was not produced in the Sipakapense or Mam languages, the time available to prepare and file the appeal was insufficient, and there were difficulties in filing the appeal owing to geographical distances and a lack of economic resources and technical assistance. The IACHR notes that, at this procedural stage, the State did not

[11] See Section VIII of the Regulations on Environmental Assessment, Control, and Monitoring (Government Agreement 431-2007).

[12] See inter alia: IACHR, Report on Ecuador 1997, Conclusions in Chapter IX and Chapter VIII; IACHR, Report on the Human Rights Situation in Colombia. Chapter X, 1999, Recommendation No. 4; IACHR, Report on the Merits No. 75/02, Case 11.140, Mary and Carrie Dann (United States), Annual Report of the IACHR 2002, para. 140; IACHR, Report on the Merits No. 40/04, Case 12.053, Maya Indigenous Community of the Toledo District (Belize), October 12, 2004, para. 142; IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia.* Chapter IV, para. 248; IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*, OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, Chapter IX; Inter-Am. Court H.R., Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007, (Ser. C) No. 172, para. 127; Inter-Am. Court H.R., Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations, Judgment of June 27, 2012, (Ser. C) No. 245, para. 156.

[13] See Article 46 of the Mining Law.

[14] See Article 59 of the Mining Law and Article 9 of the Law on Administrative Litigation.

call into question what the petitioners said with regard to the lack of adequate resources for the alleged victims in indigenous communities to have access on an equal footing. Further, the Commission points out that the amparo application filed to challenge the procedure for granting the license was denied by the Constitutional Court on January 9, 2008.[15]

37. The Commission notes that, according to the State itself, the domestic regulations governing the right to consultation are "overly broad and imprecise" and that there is a "void in the regulations," and therefore it refers to the need to bring domestic norms into line with the international obligations assumed by Guatemala, in particular, ILO Convention 169. It also points out that, according to available information, rulings have made by the Constitutional Court urging the Congress of the Republic "to give effect to the indigenous peoples' right to consultation" in domestic law and "to undertake a legislative review and amend those mechanisms for publication and challenges by neighbors, as concerns decisions that may have an environmental impact, with a view to ensuring that the communities affected may be informed and afforded the possibility of commenting."[16] The IACHR also takes into account the lodging of a criminal complaint for contamination, which was dismissed, and the filing of other actions referred to earlier (see paragraph 15 *supra*), which did not ultimately protect the alleged rights violations.

38. With respect to the remedies for claiming communal property, referred to by the State in its second argument, the IACHR notes that, under the Guatemalan Code of Civil and Commercial Procedure,[17] writs of possession or ownership and writs of assistance are summary proceedings intended to resolve factual matters related to the temporary protection of real property holders, but they do not resolve issues regarding the final ownership of property or the ancestral possession of land by indigenous communities.[18] The same applies to real property claims filed with the Property Registrar, not to mention the fact that this has not been shown to be the appropriate means to protect the allegedly violated rights, considering that said action applies in cases where persons "may be affected by a real property record."[19]

39. As concerns the State's third argument, the IACHR notes that three actions were brought after the petition was lodged, namely, a petition to suspend mining operations, presented in March 2010; an administrative proceeding to suspend operations, initiated in July 2010 to enforce the precautionary measure requested by the IACHR; and an amparo application for implementation of the aforementioned precautionary measure. According to the State, the last of these was dismissed on April 15, 2011. As concerns the first two, the Commission notes that, at least three years after their filing, the State has not provided information on stages still pending or on concrete measures taken, nor has it demonstrated their appropriateness and effectiveness in addressing the present complaint.

40. It bears recalling that the IACHR has established that the rule requiring the exhaustion of domestic remedies does not mean that alleged victims have to exhaust all remedies available. Indeed, the Inter-American Court has maintained that "[a] number of remedies exist in the legal system of every country, but not all are applicable in every circumstance."[20] Both the Court and the Commission have repeatedly held "[…] the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body

[15] The IACHR notes that the rights whose violation was denounced were defense, consultation by indigenous peoples, life, health and a healthy environment, personal protection, noncompliance with State obligations, and due process.

[16] See inter alia Constitutional Court, Decision of April 9, 2008, Record 2376-2007, Considering VI; and Decision of May 18, 2007, Record 1179-2005, Considering VI.

[17] Articles 229.5, 249, 253, 254, and 255 of the Code of Civil and Commercial Procedure, adopted through Decree Law No. 107 on September 14, 1963.

[18] See IACHR, Admissibility Report No. 87/12, Petition 140-08, Maya Kaqchikel Communities of Los Hornos and El Pericón I and Their Members (Guatemala), November 8, 2012, para. 38.

[19] Article 1164 of the Civil Code.

[20] Inter-Am. Ct. H.R., Case of Velásquez Rodriguez v. Honduras, Judgment of July 29, 1988, (Ser. C) No. 4, paras. 64 and 66.; Inter-Am. Ct. H.R., Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of August 31, 2001, (Ser. C) No. 79, para 111.

for acts imputed to it before it has had the opportunity to remedy them by internal means."[21] Therefore, if the alleged victims raised the issue by any lawful and appropriate alternative and the State had the opportunity to remedy the matter within its jurisdiction, then the purpose of the international rule has been served.[22]

41. In light of the foregoing, the IACHR is of the view that Guatemala did not provide the alleged victims with a remedy enabling them to protect the rights that were allegedly violated, which, pursuant to Article 46.2.a of the American Convention, is one of the exceptions to the exhaustion of domestic remedies rule. Suffice it to add that Article 46.2, by its nature and purpose, is a norm with autonomous content vis-à-vis the substantive norms of the Convention. Therefore, the determination as to whether the exceptions to the exhaustion of domestic remedies rule are applicable to the case at hand should be made prior to, and separately from, the analysis of the merits, since it relies on a standard of assessment different from that used to determine the violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that prevented the exhaustion of domestic remedies in the present case will be examined, where relevant, in the report the Commission adopts on the merits of the dispute, to determine whether violations of the Convention have actually occurred.

2. Timeliness of the petition

42. Article 46.1.b of the Convention provides that for a petition to be deemed admissible, it must be lodged within a period of six months following the date on which the alleged victim was notified of the final decision that exhausted the domestic remedies. This rule does not apply when the Commission determines that one of the exceptions to the exhaustion of domestic remedies, set forth in Article 46.2 of the American Convention, is applicable. In such cases, the Commission must determine whether the petition was presented within a reasonable period of time, in keeping with Article 32 of its Rules of Procedure. As indicated in the preceding paragraphs, the Commission concluded that, in the present case, the exception established in Article 46.2.a applies. Taking into account the date on which the facts that gave rise to the petition presumably occurred, the alleged continuation of the presumed violations, the alleged ineffectiveness of the remedies pursued, and the filing of the petition on December 11, 2007, the Commission considers that the petition was presented within a reasonable period of time.

3. Duplication and international res judicata

43. 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." In this connection, the Commission notes that said grounds for inadmissibility require that, in addition to having identical subjects, purposes, and claims, the petition must be under consideration, or have been ruled upon, by an international body that is competent to adopt decisions on the specific facts contained in the petition, and measures for effective settlement of the dispute concerned.[23]

44. In the present case, the State filed the objection of res judicata as it considered that the Constitutional Court decision of May 8, 2007, "has resulted in formal and material res judicata […] and is not inconsistent with the American Convention […] or with Convention 169 [of the ILO]." The IACHR is of the view that said objection should be rejected as it is based on the existence of a decision adopted by a domestic body whereas the requirement under the Convention refers to "international res judicata," which assumes that the subject of the petition has been or is being considered by an "international body."

[21] Inter-Am. Ct. H.R., *In the matter of Viviana Gallardo et al.*, (Ser. A) No. G 101/81, para. 26.

[22] IACHR, Report No. 57/03 (Admissibility), Petition 12.337, Marcela Andrea Valdés Díaz v. Chile, October 10, 2003, para. 40; and IACHR, Report No. 67/12, Petition 728-04, Rogelio Morales Martínez (Mexico), July 17, 2012, para. 34.

[23] IACHR, Report No 96/98 (Admissibility), Petition 11.827, Peter Blaine, December 17, 1998, para. 42; IACHR, Report No. 01/09 (Admissibility), Petition 1491-05, Benito Antonio Barrios et al., January 17, 2009, para. 66.

45. Moreover, the information provided demonstrates that the ILO Committee of Experts on the Application of Conventions and Recommendations, in its observations on Guatemala's implementation of Convention 169, referred to " [...] the permit for mining exploration and exploitation granted to Montana-Glamis in the departments of San Marcos and Izábal [...]," according to communications from the Trade Union Confederation of Guatemala.[24] The Commission considers that when the CEACR makes reference to a specific situation in its observations it does not take decisions or measures to resolve disputes like the one in question here, nor is there a duplication of subject, purpose, and intent in that process and the individual petition mechanism under the inter-American system.[25] Accordingly, the Commission considers that the requirements for determining the inadmissibility of the petition are not present, pursuant to Articles 46.1.c and 47.d of the Convention and Article 33 of the Commission's Rules of Procedure.

4. Characterization of the alleged facts

46. The Commission considers that at this stage of the proceedings a determination need not be made as to whether the violations said to have been committed against the alleged victims occurred or not. For purposes of admissibility, the IACHR must determine at this time only whether or not, if proven, the alleged facts would establish violations of the American Convention under its Article 47.b, and whether the petition is "manifestly groundless" or "obviously out of order," pursuant to Article 47.c. The criterion to analyze these points is different from the one required to decide on the merits of a complaint. The IACHR must make a *prima facie* evaluation and determine if the complaint provides grounds for an apparent or potential violation of a right guaranteed by the American Convention, not whether the violation has in fact occurred.[26] At the current stage what is appropriate is to make a concise analysis that does not entail a prejudgment or the advance of an opinion on the merits. The Inter-American Commission's Rules of Procedure themselves, in establishing a stage for admissibility and another for merits, reflects this distinction between the evaluation that the Inter-American Commission must conduct to declare a petition admissible and the one required to establish whether a violation, imputable to the State, has been committed.[27]

47. Furthermore, neither the American Convention nor the IACHR's Rules of Procedure require the petitioner to identify the specific rights allegedly violated by the State in the matter submitted to the Commission although the petitioners may do so. It falls to the Commission, based on the system's jurisprudence, to determine in its admissibility reports which provision of the relevant inter-American instruments applies and could establish a violation if the facts alleged are proven sufficiently.

48. In the present case, the petitioners allege that the State authorized the mining operation to the detriment of the alleged victims without meeting obligations regarding the indigenous peoples' right to communal property. They contend that, although the communities sought a consultation on the basis of a mechanism established by law, the authorities did not take any heed of the consultation's negative outcome. They maintain that due process guarantees were violated in the domestic proceedings carried out to challenge the community consultation and to assert their rights. They argue that the mining had

[24] ILO, Observation (CEACR), adopted 2009, published 99th ILC session (2010). According to available information, the CEACR has referred to the matter in the following observations: Observation (CEACR), adopted 2005, published 95th ILC session (2006); Observation (CEACR), adopted 2006, published 96th ILC session (2007); Observation (CEACR), adopted 2008, published 98th ILC session (2009); Observation (CEACR), adopted 2011, published 101st ILC session (2012); Observation (CEACR), adopted 2012, published 102nd ILC session CIT (2013).

[25] In this regard, the IACHR notes that, according to the rules governing this mechanism, such observations are public comments on the progress or challenges encountered in implementing the Convention, adopted on the basis of periodic reports submitted by the States parties and on communications of organizations representing employers and workers authorized to present information to the ILO. See ILO Constitution, Articles 22 and 23, para. 2.

[26] IACHR, Report No. 128/01, Case 12.367, Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of "La Nación" Newspaper (Costa Rica), December 3, 2001, para. 50; Report No. 4/04, Petition 12.324, Rubén Luis Godoy (Argentina), February 24, 2004, para. 43; Report No. 32/07, Petition 429-05, Juan Patricio Marileo Saravia et al. (Chile), April 23, 2007, para. 54.

[27] IACHR, Report No. 31/03, Case 12.195, Mario Alberto Jara Oñate et al. (Chile), March 7, 2003, para. 41; Report No. 4/04, Petition 12.324, Rubén Luis Godoy (Argentina), February 24, 2004, para. 43; Petition 429-05, Juan Patricio Marileo Saravia et al. (Chile), April 23, 2007, para. 54; Petition 581-05, Víctor Manuel Ancalaf LLaupe (Chile), May 2, 2007, para. 46.

consequences, inter alia, in the community, environmental, social, cultural, and health spheres. In particular, they maintain that numerous inhabitants, primarily children, have suffered from physical effects as a result of contamination, and that various leaders have been criminalized because of their opposition to the project. For its part, the State alleges that consideration of the petition would require the IACHR to act as a "a fourth instance" since it considers that the matter was resolved by the Constitutional Court decision of May 8, 2007, with regard for due process.

49. In this connection, the IACHR recalls that it "cannot review the judgments issued by the domestic courts acting within their competence and with due judicial guarantees,"[28] nor can it "serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction."[29] However, in keeping with its mandate to guarantee observance of the rights set out in the Convention, the Commission is necessarily competent to find a petition admissible and examine its merits when the petition relates to a national decision presumably taken without regard for due process or that apparently violates any other right guaranteed by the Convention.

50. As concerns the State's position, the IACHR notes that the petitioners presented arguments concerning alleged violations of the right to protection and to a fair trial, including inter alia guarantees of independence and impartiality, in the proceeding that resulted in said decision; they also claimed that the subject matter of the proceeding violated the rights enshrined in the Convention. Moreover, as indicated in the preceding paragraphs, it is clear from the arguments made and the information provided that the present petition includes but is not limited to the aforementioned decision of the Constitutional Court. Thus, the Commission considers that the examination of this petition does not require it to act as a "fourth instance."

51. Accordingly, the Commission notes that, the facts alleged by the petitioners in regard to the lack of compliance with the obligations regarding the right of indigenous peoples to collective property, if substantiated, could tend to establish violations of Articles 8, 21, 24, and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof. The arguments related to the compliance with the obligations concerning the right to consultation and, as appropriate, to prior, free, and informed consent; the preparation of prior environmental and social impact studies, with indigenous participation; and reasonable participation in the benefits that accrue from the project; could establish, in addition to the aforementioned Article 21, violations of the rights contained in Articles 13 and 23 of the Convention, in relation to Articles 1.1 and 2 thereof. In addition, the IACHR considers that the arguments on the alleged violation of the right to humane treatment of the community members, particularly children, could establish violations of Articles 5 and 19 of the Convention. Likewise, the Commission finds that the arguments on the presumed excessive or unjustified use of criminal law to the detriment of the indigenous leaders allegedly aimed at obstructing their freedom to defend the human rights of their communities, if proven, could establish violations of Articles 5, 8, and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof.[30] Similarly, it will examine the possible violation of Article 9 of the Convention during the merits stage in relation to the alleged application of criminal charges contrary to the inter-American standards of the principle of legality.

52. However, the Commission considers that the petitioners did not present facts sufficient to establish violations of Articles 11 and 26 of the Convention, and therefore that Article 47.b of the American Convention has not been complied with.

V. CONCLUSION

[28] See IACHR, Report No. 101/00, Case 11.630, Arauz et al. (Nicaragua), October 16, 2000, in the Annual Report of the IACHR 2000, para. 56, which cites IACHR, Report No. 39/96, Case 11.673, Marzioni (Argentina), October 15, 1996, in the Annual Report of the IACHR 1996, paras. 50 and 51.

[29] IACHR, Report No. 7/01, Case 11.716, Güelfi (Panama), February 23, 2001; Report No. 39/96, Case 11.673, Marzioni (Argentina), October 15, 1996, in the Annual Report of the IACHR 1996, paras. 50 and 51.

[30] IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas,* OEA/Ser.L/V/II, Doc. 66, December 31, 2011, paras. 76–87. IACHR, Submission note of the Case to the Court and Report on the Merits of Case 12.661 "Nestor Jose and Luis Uzcategui et al.", October 22, 2010, para. 279.

53. The Commission concludes that it is competent to hear the complaint presented by the petitioners and that the petition is admissible, in accordance with Articles 46 and 47 of the Convention, for the alleged violation of Articles 5, 8, 9, 13, 19, 21, 23, 24, and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof.

54. Based on the foregoing arguments of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find the petition admissible as to the alleged violations of the rights set forth in Articles 5, 8, 9, 13, 19, 21, 23, 24, and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof, to the detriment of the alleged victims.

2. To find the present petition inadmissible with respect to the alleged violations of Articles 11 and 26 of the American Convention.

3. To notify this decision to the parties.

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

Done and signed in the city of Washington, D.C., on the 4th day of April, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice-President; Felipe González, Second Vice-President; José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi, James L. Cavallaro, members of the Commission.