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REPORT No. 96/14
PETITION 422-06
REPORT ON ADMISSIBILITY

TAGAERI AND TAROMENANI INDIGENOUS PEOPLES IN
ISOLATION
ECUADOR

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I. SUMMARY

1. On May 4, 2006, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) received a petition lodged by Fernando Ponce Villacís, Raúl Moscoso, Juan Guevara, and Patricio Asimbaya¹ (hereinafter “the petitioners”) in which they alleged the international responsibility of the Republic of Ecuador (hereinafter “the State” or “the Ecuadorian State”) for human rights violations to the detriment of Tagaeri and Taromenani indigenous peoples in voluntary isolation and its members (hereinafter “the alleged victims,” “the Tagaeri and Taromenani,” or “the indigenous peoples”). By means of a note received by the IACHR on October 14, 2009, the Confederation of Indigenous Nationalities of Ecuador (hereinafter “CONAIE” or “the co-petitioner”) applied to join the petition, and that request was considered admissible by the Commission and duly notified to both parties.

2. The initial petition was presented in connection with the Ecuadorian State’s failure to adopt effective mechanisms to protect the existence of the Tagaeri and Taromenani indigenous peoples in voluntary isolation and their ancestral territory. The petitioners claimed that this can be seen in the acts of violence and killings that these peoples have suffered, in particular two purported massacres in May 2003 and April 2006 that were allegedly committed by illegal loggers and members of the Waorani indigenous people.² They claimed that those incidents occurred as part of the invasion of the ancestral territory of the Tagaeri and Taromenani, and were related to the legal and illegal exploitation of its natural resources. During the IACHR’s processing of the matter, the petitioners claimed that the State’s continued failure to provide effective protective measures led to a further alleged massacre of the indigenous peoples in isolation in March 2013.

3. They therefore maintain that the State is responsible for violating the rights enshrined in Articles 3 (right to juridical personality), 4 (right to life), 8 (due process), 19 (rights of the child), 21 (right to property), 23 (political rights), 24 (equality before the law), 25 (judicial protection), 26 (economic, social and cultural rights), 2 (domestic legal effects), and 1 (obligation to respect rights) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”); and in Articles I (right to life, liberty, and personal security), II (equality before the law), VI (right to a family and to protection thereof), VIII (right to residence and movement), IX (right to inviolability of the home), XI (right to preservation of health and to well-being), XIII (right to the benefits of culture), XVII (right to recognition of juridical personality and civil rights), XVIII (right to a fair trial), XX (right to vote and to participate in government) and XXIII (right to property) of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”).

4. In turn, in response to the petition, the Ecuadorian State offered information related to the measures adopted to protect the peoples in isolation, such as the establishment and demarcation of a restricted area (*zona intangible*) and the adoption of the National Policy for Peoples in Voluntary Isolation. It further contended that the petition should be ruled inadmissible because domestic remedies had not been exhausted and because the petitioners were seeking for the Commission to act as a court of the fourth

¹ By means of a note received on November 6, 2013, Patricio Asimbaya requested that he no longer be considered a petitioner in this matter.

² In their filings with the IACHR, both the petitioners and the State use the terms Waorani and Huaorani indistinctly to refer to the same indigenous people. In accordance with the self-identification of the indigenous people, in this report the IACHR will refer to them as the “Waorani people.”

instance outside its sphere of competence. Regarding the alleged massacre of March 2013, it reported that the state prosecution service was conducting a preliminary inquiry.

5. Without prejudging the merits of the case, after analyzing the positions of the parties and in compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decided to rule the case admissible for the purposes of examining the alleged violation of the rights enshrined in Articles 4, 8, 19, 21, 24, 25 and 26 of the Convention, in conjunction with Articles 1(1) and 2 thereof. The Commission resolves to give notice of this decision to the parties, and to publish it and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

6. The Commission received the petition on May 4, 2006, and registered it as number 422-06. On October 12, 2006, the Commission conveyed the relevant parts to the State and asked it to reply within a period of two months in compliance with the provisions of Article 30(2) of its Rules of Procedure. The State's reply was received on July 17, 2007.

7. The IACHR received information from both petitioners on the following dates: June 23, 2006; September 11 and 15, 2007; May 19 and September 9, 2010; and April 9, May 28, June 4 and 9, July 10, 13, and 16, September 1, 4, 15, and 20, October 5, 7, 15, 18, 31, November 19, and December 12, 2013. In turn, the State submitted additional information to the IACHR on September 9, 2010. The notes sent by each party were duly forwarded to the other party.

8. Likewise, in a communication dated February 24, 2014, the IACHR asked the State to submit its observations on various documents presented by the petitioners in which joint reference was made to the P-422-06 matter and to the precautionary measures related to it. On March 18 and April 2, 2014, the State requested an extension for the presentation of its response and asked the Commission to send it a copy of the "content of the document considered to be the definitive one so that the State may exercise its legitimate right to procedural defense." On April 14, 2014, the IACHR informed the State that the documents transmitted corresponded to the pertinent parts of various documents submitted by the petitioners in which joint reference was made to the petition's processing and the precautionary measures, reiterating that these documents had been registered in due course as part of the precautionary measures process. In this respect, the Commission said that the request for observations on these communications was being made in the framework of the petition, and it granted the State an extension, as requested, for a period of one month.

9. On May 9, 2014, the State presented a document with additional observations on the admissibility of the present case and said that "it made no sense to include as part of the petition's processing those proceedings that have been recorded in another context, such as precautionary measures, which moreover do not have protected status under the Convention." Said communication was forwarded to the petitioners for information. On September 15, 2014, the petitioners submitted additional material, which was transmitted to the State for information.

– Precautionary Measures (MC-91-06)

10. Along with the initial petition, the petitioners requested the adoption of precautionary measures on behalf of the Tagaeri and Taromenani peoples and their members. The application claimed that on April 26, 2006, in the Cononaco Chico sector of the Yasuní National Park, an unspecified number of Taromenanis – possibly as many as thirty – were killed, allegedly by illegal loggers. It contended that the incident was related to illegal logging activities and to the absence of effective measures taken by the State to control logging and to prevent attacks on the peoples in isolation and their ancestral territory.

11. In light of this situation of risk, on May 10, 2006, the IACHR asked the Ecuadorian State to "adopt effective measures necessary to protect the lives and physical integrity of the members of the Tagaeri and Taromenani peoples and, in particular, to adopt the measures necessary to protect the territory they inhabit, including the steps necessary to prevent the entry of third parties." The State and the petitioners

reported regarding some progress made in the area of protective measures, as well as about subsequent acts of violence. Subsequently, in the context of this action and the petition, the State presented communications to the IACHR on September 11, 2013, and May 9, 2014, respectively, in which it indicated that “the precautionary measures are not provided for either in the American Convention on Human Rights or in the IACHR Statute and [...] therefore the State will not recognize any of those measures or issue a response in their regard [...]”.

12. In particular, in April 2013, the petitioners indicated that “the evidence available to date suggests that a further massacre of the Tagaeri and Taromenani indigenous peoples in voluntary isolation has occurred in Yasuní.” They reported that on March 30, 2013, between 12 and 18 members of communities from the Waorani indigenous people attacked the Taromenani with firearms and spears. They said that this incident took place as revenge for the murder, with spears, of Ompore and Buganey, two adults belonging to the Waorani indigenous people, at the hands of members of the Taromenani indigenous people in voluntary isolation, which allegedly occurred on March 5, 2013. The Commission was also informed that in the course of the alleged massacre of March 30, 2013, two Taromenani sisters, aged approximately 2 and 6, were abducted by the members of the Waorani people who had participated in the acts of violence.

13. In connection with the situation of these two children, on January 19, 2014, the IACHR submitted a request for provisional measures to the Inter-American Court of Human Rights, asking it to order the Ecuadorian State to protect the life, physical integrity, right to family, and right of identity of the two girls from the Taromenani people in voluntary isolation in the Ecuadorian rain forest. Through an order dated March 31, 2014, the Inter-American Court rejected the request for provisional measures, considering that “the information it has been provided to carry out the analysis of the request for provisional measures is substantially different from the information that the Inter-American Commission had when establishing the grounds for its request,” owing to “the State’s unwillingness to present complete information on the two girls.”³

14. As of the date of this report, the Commission is continuing to monitor the implementation of the precautionary measures extended on behalf of the Tagaeri and Taromenani peoples.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

15. The petitioners state that the Tagaeri and Taromenani are indigenous peoples in voluntary isolation, also known as “hidden” or “uncontacted” peoples, who have chosen to live without maintaining contact with the nonindigenous majority of the population. They report that the peoples in isolation have rejected outside attempts to establish contact with them and that they perceive such acts as aggressive or hostile. They explain that the Tagaeri and Taromenani inhabit the eastern zone of the Ecuadorian Amazon, along the Nashiño, Shiripuno, Tiguino, and Cononaco Rivers, close to the border with Peru, and that their subsistence depends entirely on the rain forest. They claim that reports indicate that these peoples have been driven southward by the invasion caused by Texaco’s prospecting activities and that they are believed to inhabit a part of the concession known as Block 17. They state that these peoples are estimated to number at least between one hundred and two hundred members and that they are believed to be the last of Ecuador’s uncontacted indigenous peoples.

16. They contend that the failure to adopt measures to protect the Tagaeri and Taromenani peoples and their ancestral territory has caused them to be victims of different acts of violence. In particular, they claim that, on May 26, 2003, between 12 and 26 members of the Taromenani were killed by nine members of the Waorani indigenous people. According to the petitioners, the Waorani responsible for the killings approached the location known as Cuchiyacu, on the border between the provinces of Pastaza and

³ I-A Court H.R. *Matter regarding Two Girls of the Indigenous People of Taromenane in Voluntary Isolation*, Provisional Measures regarding Ecuador, Order of March 31, 2014, para. 16.

Orellana, in the east of Ecuador; and, after locating a Taromenani settlement there, they launched a surprise attack, killing men, women, and children. They claim the Taromenani huts were burned down and the bodies mutilated. They state that, according to the Waorani who participated in the incident, “the massacre was intended to avenge the death of Carlos Ima [a Waorani], who was killed by the Taromenani ten years previously.” However, they report that “there are suspicions that illegal logging groups in that sector of the Ecuadorian rain forest [paid] for the massacre to be carried out.” They report that the Pastaza provincial prosecution service launched an investigation into the incident and “visited the settlement and examined evidence”; the investigation, however, “was never completed,” nor was any substantive ruling or judgment issued in connection with the case.

17. They also report that on April 26, 2006, in the Cononaco Chico sector of the Yasuní National Park, near the Chiripuno River, other members of the Taromenani people were killed. The exact number, they state, is unknown because of the remoteness and inaccessibility of the location. They report that the bodies of two women with gunshot wounds were found; however, they claim that some accounts speak of a death toll of up to thirty, with the possibility that the bodies were thrown into the rivers or hidden in the undergrowth of the rain forest. They claim the massacre of April 2006 was in revenge for a Taromenani spear-attack on two illegal loggers on April 12, 2006, and on another illegal logger on August 11, 2005. They explain that the attacks by the Taromenani have occurred as a reaction to the constant invasions of their territory by loggers.

18. They further claim that on that occasion, “the local prosecutor did not investigate the facts,” and that “all the State did in this case was to fly over the area of the rain forest in a helicopter.” They report that they sent a series of communications to the Minister of the Interior, the Ministry of Defense, and the President of the Republic regarding the prosecution service’s failure to investigate the acts of violence and the urgency of adopting “real and effective measures to control timber trafficking”; according to their claims, however, those communications received no replies.⁴ They add that according to investigations, between 2005 and 2006 alone ten complaints were filed with the prosecution service in Orellana in connection with situations affecting indigenous peoples in isolation and/or involving illegal logging, all of which had been given “negligent attention.”

19. According to the petitioners, the massacres of 2003 and 2006 “were not the result of clashes between uncontacted groups: they were the result of authentic acts of genocide orchestrated by groups of illegal loggers and contacted Waoranis, who received money from the loggers.” They contend that illegal loggers, acting in conjunction with members of Waorani indigenous groups, planned and executed those attacks to exterminate the Taromenani in reprisal for the Taromenanis’ efforts to defend their territory. They note that “studies on uncontacted peoples have documented that they attack when their habitat is threatened by outside incursions.” They claim that although the connection between illegal logging activities and the extermination of the uncontacted peoples has been clearly established, the “Ecuadorian State, through its competent agencies, has taken no effective action to control illegal timber trafficking” even though “their transportation routes are well known and limited.”

20. They say that although the Ecuadorian State later took certain steps to protect the territories of the Tagaeri and Taromenani, those actions were insufficient. Specifically, they note that Executive Decree No. 552 of February 2, 1999, created the “restricted area” (*Zona Intangible*) covering some 700,000 hectares in the provinces of Orellana and Pastaza. They note that a part of that restricted area is included in the Yasuní Biosphere Reserve. They state that although the decree set a deadline of six months for demarcating the restricted area, its boundaries were not determined until January 16, 2007, by means of Executive Decree No. 2187, with a total area of 758.01 hectares.

⁴ Specifically, the petitioners presented the following documents: Circular deed No. 050-SPA of June 16, 2006, sent by Alfredo Barragán, Undersecretary for Environmental Protection, to the Minister of the Interior, the Minister of Defense, and the President of the Republic; letter sent by the petitioners to Alba Albán, Environment Minister of Ecuador, dated April 14, 2006; letter sent by the petitioners to Felipe Vega de la Cuadra, Minister of the Interior, dated April 19, 2006; letter to the Minister of the Interior and Police, the Environment Minister, and the Minister of Defense of Ecuador, presented by the petitioners on May 6, 8, and 9, 2006, respectively.

21. They contend that those decrees did not include funding for the restricted area and the cessation of illegal logging activities, which constitutes one of the main threats to the indigenous peoples in voluntary isolation. They further note that the restricted area does not cover the entirety of the Tagaeri and Taromenani peoples' territory, since there is evidence that they inhabit a zone to the north of the restricted area, as far as the Tiputini River. They add that a portion of their territory extends into Peru, and that Ecuador has pursued no steps with the Peruvian State to protect the Tagaeri and Taromenani as they move between the two countries. They also claim that on August 19, 2004, the Ecuadorian State granted the Brazilian company Petrobras an oil extraction permit covering an area located in the provinces of Orellana and Pastaza, in a zone known as Block 31, without consulting either the indigenous peoples or members of civil society. They add that in August 2013, the executive branch of government presented the National Assembly with a government project to enable the exploitation of hydrocarbons in Blocks 31 and 43, where the presence of peoples in isolation had been detected.

22. In April 2013, the petitioners reported that "the evidence available to date suggests that a fresh massacre of the Tagaeri and Taromenani indigenous peoples in voluntary isolation has occurred in Yasuní." Specifically, they state that on March 5, 2013, members of the Taromenani people attacked and killed with spears Ompore and Buganey, two Waorani adults, at Yarentaro in Oil Block 16. They say that the couple's death caused a group of between 12 and 18 Waoranis to organize a revenge attack. According to their claims, after several incursions into the area to locate them, on March 30 the Waorani group attacked the Taromenani with firearms and spears, killing somewhere between 30 and 50 men, women, and children. They state that two Taromenani sisters, aged approximately 2 and 6, were abducted and kept by the Waoranis who participated in the attack.

23. They claim that the State failed to take the steps necessary to avoid this massacre. According to the petitioners, from the time that Ompore and Buganey were killed in early March, "several officials were aware that the inhabitants of Yarentaro wanted revenge against the Taromenani." They maintain that although "the State was alerted through various channels [...] of the danger [...], the Government took no steps to avoid those acts of retaliation." They report that the prosecution service opened a preliminary inquiry; they claim, however, that it is not being pursued diligently, since no expert opinions have been obtained, no statements regarding the incident have been taken, and there has been no appropriate interinstitutional coordination for establishing the facts. They claim that the authorities located the massacre site in a flyover; however, they did not land to examine the bodies. Accordingly, they maintain that there is a lack of interest in investigating on the part of the prosecution service and other authorities. They add that after the March 2013 incident, they wrote to various state authorities to alert them regarding fresh incursions by the Waorani into the area of the massacre and about the need to take steps to prevent future acts of violence; those communications, they claim, received no replies.⁵

24. Regarding the two Taromenani girls, they report that during the alleged massacre, they witnessed the murder of their mother and other members of their people, they were separated from the indigenous people to which they belonged, and they were taken by members of the Waorani people from which the assailants came. They contend that the Ecuadorian State failed to adopt immediate and appropriate protective measures in consideration of their status as uncontacted indigenous children. They state that, on the contrary, on November 26, 2013, the Ecuadorian State conducted an operation in which "hooded personnel" abruptly removed the older girl from school and carried her away in a helicopter. They say that since that date, the older girl has been kept in the custody of the State, while the younger girl has remained in a Waorani community, separated from her sister.

25. Regarding the exhaustion of domestic remedies, the petitioners claim that the exceptions contained in sections (b) and (c) of Article 46(2) of the American Convention are applicable in this case. They contend that after the acts of violence that the Tagaeri and Taromenani peoples have suffered, the State has

⁵ Specifically, the petitioners presented a letter addressed to the President of the Republic, lodged with the office of the President on October 4, 2013; the same letter was lodged with the Interior Ministry and the office of the Attorney General on October 7, 2013.

failed in its duty to investigate, prosecute, and punish the perpetrators, even though the crimes are publicly actionable. They claim that to date no agency of the judiciary has issued any judgment determining responsibilities and, if applicable, punishing the perpetrators of these crimes, which constitutes an unjustified delay.

26. Furthermore, they contend that although *amparo* remedies can be filed against the actions or omissions of public authorities that violate or could violate rights enshrined in the Constitution of Ecuador, such remedies can only be lodged by the persons affected, either in person or through an attorney, and only in cases involving the protection of the environment can they be filed by any person. They hold that given the *sui generis* situation of indigenous peoples in voluntary isolation, the Tagaeri and Taromenani cannot file for *amparo* relief, since the regulations do not allow for third parties to file applications on their behalf.

27. To summarize, they maintain that situation of violence threatening the subsistence of Ecuador's last peoples in isolation is the result of the State's inaction in protecting them and the impunity surrounding those crimes, which allows them to "proliferate and persist in a cycle of violence that will ultimately put an end to these exceptionally vulnerable peoples." They therefore argue that the State is responsible for the violation of Articles 1, 2, 3, 4, 8, 19, 21, 23, 24, 25, and 26 of the American Convention and of Articles I, II, VI, VIII, IX, XI, XIII, XVII, XVIII, XX, and XXIII of the American Declaration.

B. Position of the State

28. The Ecuadorian State does not dispute the facts set out in the petition; instead, it describes the measures it has adopted to protect the Tagaeri and Taromenani peoples in isolation. It also holds that the petition should be ruled inadmissible because domestic remedies have not been exhausted and because the petitioners are seeking for the Commission to act as a court of the fourth instance.

29. In particular, it reports that by means of Decree No. 552 of February 2, 1999, the President of the Republic at the time, Jamil Mahuad Witt, established a restricted conservation area (*zona intangible*), off limits to all forms of extractive activities, on the lands inhabited and used by the Tagaeri and Taromenani peoples. Ecuador emphasizes that the restricted area covers around 700,000 hectares, within which a buffer zone was established in which moderate tourism can be pursued, along with the regulated extraction of renewable and nonrenewable natural resources, subject to law and to the competent authorities responsible for enforcing it. It states the restricted area was subsequently demarcated by means of Executive Decree No. 2187 of January 16, 2007.

30. It adds that on April 18, 2007, the President of the Republic presented the "National Policy on Peoples in Voluntary Isolation," which was prepared by an interinstitutional committee led by the Ministry of Energy and Mines and the Environment Ministry, and comprising representatives of the office of the People's Defender, the Ministry of Foreign Affairs, the Council of Nationalities and Peoples of Ecuador, and the office of the Attorney General of the State. According to the State, the importance of the adoption of this multisectoral public policy is that it represents "a crosscutting axis in the design of the policy for the extraction of hydrocarbons and timber, in reviewing oil contracts, and, above all, in the prevention, investigation, and punishment of state agents or private citizens who fail to respect the areas of the Amazon where these peoples in isolation voluntary are located."

31. It maintains that it has acted diligently in the adoption of protective measures for the Tagaeri and Taromenane peoples, in particular since the IACHR extended the precautionary measures on May 10, 2006. It notes that the area where the Precautionary Measures Plan is being implemented corresponds to the location where the peoples in isolation are to be found. It specifies that the Yasuní National Park is located in this area and its buffer zone, together with the Tagaeri-Taromenane Restricted Area and the territory of the Waorani Reserve. According to the State, by September 2010 it was carrying out an oversight and monitoring program of "forestry control activities, wildlife trafficking, and tourism," which involved patrols, seizures, and the management, verification, and follow-up of the forestry resource usage plans in place in the areas adjacent to the territories occupied by the peoples in isolation.

32. It also indicates that there is a “relationship between the State’s oil policy and its policies for the protection of rights,” and that it has taken “every precaution to avoid having an impact on the peoples and their cultures or on nature.” On this point, it refers to the adoption of a Code of Conduct for Oil Companies for avoiding contact, and the implementation and observance of Comprehensive Contingency Protocols to Avoid, Prevent, or Handle Chance Contacts.

33. Regarding the alleged massacres of 2003 and 2006, Ecuador states, in general terms, that criminal investigations are underway into the facts alleged by the petitioners, and so the domestic remedies have not been exhausted. On this point, Ecuador notes that in assessing the reasonable time criterion, attention must be paid to the complex nature of this matter, given, on the one hand, that it involves the basic and collective rights of peoples in isolation and, on the other, “the number, statuses, and location of the people involved in the proceedings, suspects and witnesses alike,” in addition to the location where the investigations are being carried out. In light of this, it contends that “the State took the correct steps, as indicated in the applicable provisions of criminal law, to investigate and resolve the existence or commission of alleged crimes within its domestic jurisdiction, in particular in the regrettable incidents connected with the problem of the Tagaeri-Taromenane indigenous peoples in voluntary isolation.”

34. Regarding the alleged massacre of March 2013, while not denying the facts alleged by the petitioners, the State notes that a preliminary inquiry is underway under the aegis of the prosecution service of the Ecuadorian State. Regarding the girls who “allegedly belong to the peoples in voluntary isolation,” Ecuador indicates that the Ministry of Justice, Human Rights, and Worship is “monitoring and evaluating [their] general state of health.” According to most recent information submitted to the IACHR by the State, the girls were being cared for by two Waorani families and had been inoculated, while anthropological studies were being conducted to determine whether they did in fact belong to the Taromenani indigenous people.

35. In addition, Ecuador contends that the petition seeks for the agencies of the inter-American system to serve as a fourth instance, in that it appears that the petition wants the Commission to rule on the innocence or guilt of the individuals involved in the facts. On account of the foregoing, the State requests that the petition be ruled inadmissible.

36. Lastly, in a communication dated May 9, 2014, the State reiterated that the present matter involved certain complexities stemming, among other things, “from the number, status, and location of persons associated with an intercultural process [...] complexities that become apparent in a criminal investigation within this environment” and that they must be taken into account in light of the reasonable period criterion and the State’s due diligence obligation in this case. Likewise, it maintained that the analysis of the present matter should focus exclusively on the temporal and factual context denounced at the time the petition was presented and not on situations that occurred subsequently.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *Ratione Personae, Ratione Materiae, Ratione Temporis, and Ratione Loci*

37. The petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names, as the alleged victims, the Tagaeri and Taromenani indigenous peoples in voluntary isolation and their members,⁶ with respect to whom the State has agreed to

⁶ The alleged victims are the Tagaeri and Taromenani peoples, with a population of around 100 to 200 individuals. These nomadic peoples inhabit a specific geographical region of Ecuador’s eastern rain forest, the existence of which is identified by means of several elements. The IACHR acknowledges that the conditions of isolation in which these peoples live poses a *sui generis* situation as regards the possibility of individually identifying their members, in that it presumes contact with mainstream society. Nevertheless, that situation in no way poses an obstacle to the protection of their rights through the inter-American system, which must take into account those circumstances. This is in line with the organs of the Inter-American System’s recognition of indigenous peoples as collective subjects of rights enshrined in the inter-American instruments, and it also respects their decision to remain in isolation as an expression of the people’s right of self-determination. On this point, see: 1/A Court H. R., *The Mayagna (Sumo) Awas Tingni Community Case*, Judgment of August 31, 2001, Series C No. 79, para. 149; IACHR, Report No. 62/04, Kichwa People of the Sarayaku Community and its

[continues ...]

respect and ensure the rights enshrined in the American Convention. With respect to the State, the Commission notes that Ecuador has been a party to the American Convention since December 28, 1977, when it deposited the corresponding instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint.

38. The Commission has competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. The Commission has competence *ratione temporis* since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred. Finally, the Commission has competence *ratione materiae* since the petition describes violations of human rights that are protected by the American Convention.

39. Regarding the alleged violations of the American Declaration, both the Court and the Commission have ruled that the American Declaration is a source of international obligations for OAS member states,⁷ and so, in principle, the Commission has competence *ratione materiae* to examine violations of rights enshrined in that Declaration. However, the IACHR has stated that after the Convention has come into force for a State, it is that instrument and not the Declaration that is the primary source of law that the Inter-American Commission is to apply,⁸ provided that the petition alleges violations of rights that are substantially identical in the two instruments and that an ongoing situation is not involved. In the matter at hand, the IACHR notes that the provisions of the Declaration and those of the Convention that the petitioners have invoked are similar, with the exception of the right to the benefits of culture (Article XIII) and the right to health and well-being (Article XI) enshrined in the Declaration and not expressly provided for in the American Convention. Consequently, the Commission will examine the petitioners' contentions as regards those articles of the Declaration.

B. Other Admissibility Requirements of the Petition

1. Exhaustion of domestic remedies

40. Article 46(1)(a) of the American Convention provides that for a petition submitted to the Inter-American Commission in accordance with Article 44 of the Convention to be admitted, remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The prior exhaustion requirement applies when the national system does in fact offer available resources that are adequate and effective for remedying the alleged violation. Thus, Article 46(2) states that the requirement does not apply when: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

[... continuation]

Members (Ecuador), para. 47; IACHR, Report No. 58/09, Kuna of Mandungandi and Emberá of Bayano Indigenous Peoples and their Members (Panama), para. 26; IACHR, Report No. 79/09, Ngöbe Indigenous Communities and their Members in the Changuinola River Valley (Panama), para. 26.

⁷ See: I/A Court H. R., *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89 of July 14, 1989, Series A No. 10, paras. 35-45; IACHR, James Terry Roach and Jay Pinkerton (United States), Case 9647, Res. 3/87, September 22, 1987, Annual Report 1986-1987, paras. 46-49; Rafael Ferrer-Mazorra and Others (United States), Report No. 51/01, Case 9903, April 4, 2001. See also: Statute of the Inter-American Commission on Human Rights, Article 20.

⁸ IACHR, Report on Admissibility No. 03/01, Case 11.670, Amílcar Menéndez and others (Argentina), January 19, 2001, para. 41. IACHR, Report on Admissibility No. 16/05, Petition 281/02, Claudia Ivette González (Mexico), February 24, 2005, para. 16.

41. According to the IACHR's Rules of Procedure and the established jurisprudence of the inter-American system, whenever a State alleges a failure to exhaust domestic remedies, it must indicate which remedies should have been pursued and, in addition, demonstrate that they are "suitable" for remedying the alleged violation: in other words, that the function of those resources within the domestic legal system is applicable to resolving the alleged human rights violations brought before the inter-American system. In addition, as the Inter-American Court has stated, it is not the task of the Commission "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."⁹

42. In the instant case, the Commission notes that the parties are in dispute regarding compliance with this requirement set by the Convention. In this regard, the State argues that the domestic remedies have not been exhausted since a criminal investigation into the facts alleged in the petition is still open. It maintains that in evaluating the reasonable time requirement, note should be taken that the case is complex on account of the series of factors already identified. Regarding the alleged massacre of March 2013, it reports that the prosecution service is conducting a preliminary inquiry. In turn, the petitioners contend that on repeated occasions they filed complaints and demanded effective measures to protect the Tagaeri and Taromenani peoples, together with determined measures to prevent future acts of violence.

43. The Commission notes that the alleged facts of the matter at hand involve the effective protection of the Tagaeri and Taromenani indigenous peoples and their ancestral territory, and that those indigenous peoples have chosen to remain in isolation from mainstream society and that they depend on the environment in which they live for their physical and cultural survival. In the case at hand, the petitioners allege that the continued absence of effective protective measures can be seen in the specific acts of violence committed against these peoples, such as the three alleged massacres in 2003, 2006, and 2013.

44. An analysis of the information and the documents submitted by the parties indicates that the available internal processes were initiated in order to protect the rights of these peoples. Thus, the Commission was told about prosecutorial investigations opened into each of the alleged massacres, in which the relevant state authorities were informed about the specific facts and circumstances that gave rise to the acts of violence against the Tagaeri and Taromenani, as well as about the alleged absence of effective protective measures. The IACHR notes that it does not have any information on the conclusions the investigating authority may have reached in the period of over 10 years since the first alleged massacre took place and, according to the information provided, the process was apparently still at its initial stage.

45. In addition, the IACHR notes that, according to claims made by the petitioners and not disputed by the State, between 2005 and 2006 alone ten complaints were filed with the prosecution service in Orellana in connection with situations purportedly affecting the isolated indigenous peoples and/or dealing with illegal logging, none of which had been allegedly pursued with due diligence. In addition, the IACHR was apprised of a series of communications sent by the petitioners to state authorities in connection with the need to adopt protective measures to address the violations of the isolated peoples' rights reported to the IACHR, and it was informed that no reply was given to those communications, according to claims made by the petitioners and not disputed by the State (see paragraphs 16 and 21 *supra*).

46. Regarding the State's claims about the complexity of the investigations into the facts alleged in the petition, the IACHR points out that although the complexity of a matter is one of the elements to be taken into consideration in assessing the reasonableness of the time taken with a given proceeding, under the established precedent of the agencies of the inter-American system, it must be shown that the duration of the proceedings is related to that situation and is not due to such factors as a lack of activity on the part of the

⁹ 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, para. 23. Citing: *ECHR, Bozano v. France*, Judgment of 18 December 1986, § 46, Series A No. 111.

state authorities.¹⁰ In the instant case, the IACHR notes, for the purposes of admissibility, that the information furnished by the State does not allow it to establish that the duration of the investigations for more than ten years following the incidents in question was the result of such complexity. It also notes that the State provided no information on the procedural status of those investigations, the stages still pending, or the specific formalities already carried out, and that neither did it indicate which of the alleged facts they specifically deal with. The Commission believes that the circumstances described imply, *prima facie*, an unwarranted delay for the purposes of admissibility, and so the IACHR believes that the exception provided for in Article 46(2)(c) of the American Convention is applicable to the instant case.

47. Regarding the *amparo* remedy referred to by the petitioners, the IACHR notes that under the terms of Ecuador's Constitutional Control Law, that remedy may be filed by the injured party, by his or her representative, or by an "*ex officio* agent who provides grounds for the injured party's inability to do so," subject to the requirement of ratifying that decision within the space of three days. The law also provides for the possibility, solely in cases of environmental protection, for the remedy to be lodged by any individual or corporate body.¹¹ In turn, the State did not dispute this argument or provide information on any domestic remedies and mechanisms covering the particular status of indigenous peoples in isolation that would serve to ensure the effective protection of the collective rights of the alleged victims *vis-à-vis* infringements of their basic rights.

48. In consideration whereof, the IACHR finds that the petitioners did repeatedly request that the State adopt measures to protect the Tagaeri and Taromenani peoples in isolation and their ancestral territory through the available resources but that, for the purposes of admissibility, they were not afforded appropriate and effective mechanisms for demanding that the State provide the requested protection. Consequently, given the considerations set out above and the characteristics already described, the Commission concludes that the requirement in question can be waived in the instant case.

49. Finally, the triggering of the exceptions to the domestic remedy exhaustion rule provided for in Article 46(2) of the Convention is closely related to the finding of possible violations to certain rights provided for therein, such as guarantees of access to justice. However, Article 46(2), by nature and purpose, is a norm with autonomous content *vis-à-vis* the substantive norms of the Convention. Consequently, whether or not the Convention's exceptions to the rule requiring the prior exhaustion of domestic remedies are applicable in the case at hand must be decided prior to and in isolation from the analysis of the merits of the case, and that is because it depends on a standard of appreciation that is different from the one used to determine whether or not Articles 8 and 25 of the Convention have been violated. It should be noted that the causes and effects that have prevented the exhaustion of domestic remedies in the case at hand will be analyzed, as relevant, in the Commission's report on the merits of the controversy, in determining whether or not the American Convention was in fact violated.

2. Filing period

50. Under Article 46(1)(b) of the American Convention, for a petition to be admissible, it must be lodged within a period of six months from the date on which the allegedly injured party was notified of the judgment whereby the domestic remedies were exhausted. Article 32 of the Commission's Rules of Procedure provides that "in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case."

¹⁰ I/A Court H. R., *Case of Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 7, 2004, para. 176; and *Case of the Serrano Cruz Sisters v. El Salvador*, Merits, Reparations, and Costs, Judgment of March 01, 2005, para. 69.

¹¹ Article 48 of the Constitutional Control Law. "*Amparo* remedies may be filed by offended parties, either acting on their own behalf, by means of an intermediary or attorney, or by an *ex officio* agent who provides grounds for the injured party's inability to do so and subsequently ratifies that decision within the space of three days, by the People's Defender and his deputies and commissioners in the cases provided for in the Constitution and by law, or by any individual or corporate body in cases involving environmental protection." Law No. 000, RO/99, July 2, 1997.

51. In the case at hand, the Commission has already ruled (*supra*) on the waiving of the domestic remedy exhaustion requirement. Since the petition was received on May 4, 2006, alleging incidents taking place in 2003 and 2006, and given the existence of ongoing investigations, the Commission believes that the petition was presented in a timely fashion and that the admissibility requirement referring to the timeliness of the petition should be taken as having been met.

3. Duplication and international *res judicata*

52. Article 46(1)(c) states that the admissibility of a petition depends on the matter not being “pending in another international proceeding for settlement,” and Article 47(d) of the Convention rules that the Commission cannot admit a petition that is “substantially the same as one previously studied by the Commission or by another international organization.” In this case, neither of those grounds for inadmissibility are indicated by the record.

4. Colorable claim

53. At the admissibility stage, the Commission must decide whether the stated facts could tend to establish a rights violation, as stipulated in Article 47.b of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” as stated in Article 47(c). The level of conviction regarding those standards is different from that which applies in deciding on the merits of a complaint. The Commission must conduct a *prima facie* assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of such a violation. That examination is a summary analysis that does not imply prejudging the merits or offering an advance opinion on them.

54. Moreover, neither the American Convention nor the IACHR’s Rules of Procedure require the petitioners to identify the specific rights that they claim were violated by the State in a matter placed before the Commission, although the petitioners may do so. Instead, it falls to the Commission, based on the precedents set by the system, to determine in its admissibility reports what provisions of the relevant inter-American instruments are applicable, the violation of which could be established if the alleged facts are proven by means of adequate evidence.

55. The petitioners contend that the State failed to adopt effective mechanisms to protect the existence of the Tagaeri and Taromenani indigenous peoples in voluntary isolation and their ancestral territory. They claim this can be seen in the specific acts of violence and killings suffered by the peoples at different times, allegedly at the hands of illegal loggers and members of Waorani indigenous communities. They hold that these facts occurred against the backdrop of the invasion of the Tagaeri and Taromenani peoples’ ancestral territory and of the legal and illegal exploitation of its natural resources, with the consent of the State. They claim that during the most recent alleged massacre, two Taromenani girls, aged approximately 2 and 6, were abducted by the Waoranis who participated in the incident, with the State failing to adopt immediate and appropriate protective measures in consideration of their extreme vulnerability as uncontacted indigenous children.

56. In the case at hand, the State claims that analyzing the merits of this petition would require the Commission to act as a court of the fourth instance in that, as it sees, the aim is for the IACHR to rule on the innocence or guilt of the individuals involved in the alleged facts. Similarly, it contends that analysis of the present matter should focus on what was denounced in the initial 2006 petition and not on facts that occurred subsequently.

57. As has been noted previously, and taking into account its mandate and competence, the Commission understands first of all that the matter at hand involves not the innocence or guilt of individual persons but rather an analysis of the alleged international responsibility of the Ecuadorian State for actions or omissions in connection with the international obligations it has assumed with respect to the Tagaeri and Taromenani indigenous peoples. Thus, it again notes that it “is not competent to review judgments handed down by national courts acting within the scope of their jurisdiction and observing due judicial guarantees,”¹² 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.”¹³ However, as part of its mandate to ensure observance of the rights provided for in the Convention, the Commission is necessarily competent to find a petition admissible and examine the grounds thereof when it involves a domestic decision that is alleged to not adhere to the principles of due process of the law or is an apparent violation of any other right protected by the Convention. Second, the Commission acknowledges that in the case at hand the parties have presented arguments on facts that supposedly occurred after the initial petition was presented. In view of the prima facie analysis that is to be conducted during the present stage and taking into account that the State has had procedural opportunities to respond to these arguments during the admissibility stage, the Commission considers that said arguments are related to the subject and basis of the initial complaint presented by the petitioners.

58. In consideration whereof, the Commission believes that according to the information available to it, the petitioners’ contentions are neither “manifestly groundless” nor “obviously out of order.” Consequently, the IACHR holds that if the facts alleged by the petitioners are proven true, they could constitute violations of the rights enshrined in Articles 4, 8, 19, 21, 24 and 25 26 of the American Convention, in conjunction with Articles 1(1) and 2 thereof. Likewise, the Commission will consider at the merits stage the possible application of Article 26 of the Convention, in the context of the allegations raised in this petition. Consequently, the Commission finds that the requirements contained in Article 47(c) of the American Convention have been met. At the same time, the IACHR finds that the petitioners have not offered arguments of fact or of law to assert, at this stage in the proceedings, an alleged violation of Articles 3 and 23 of the American Convention or of Articles XIII and XI of the American Declaration.

V. CONCLUSION

59. On the basis of the foregoing findings of fact and of law, and without prejudging the merits of the matter, the Inter-American Commission concludes that this case meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention; therefore:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To rule this petition admissible as regards Articles 4, 8, 19, 21, 24, 25 and 26 of the American Convention, in conjunction with Articles 1(1) and 2 thereof.
2. To declare this petition inadmissible as regards the alleged violations of Articles 3 and 23 of the American Convention, and of Articles XIII and XI of the American Declaration.
3. To notify the parties of this decision.
4. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

¹² See, in general: IACHR, Report No. 101/00, Case 11.630 Arauz and Others (Nicaragua), October 16, 2000, in: Annual Report of the IACHR, 2000, paragraph 56, citing: IACHR, Report No. 39/96, Case 11.673, Marzioni (Argentina), October 15, 1996, in: Annual Report of the IACHR, 1996, paras. 50 and 51.

¹³ 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: Annual Report of the IACHR, 1996, paras. 50 and 51.

Done and signed in the city of Washington, D.C., on the 6th day of the month of November, 2014.
(Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi and James L. Cavallaro, Commissioners.