REPORT No. 125/10[1]
PETITION 250-04
ADMISSIBILITY
RAPOSA SERRA DO SOL INDIGENOUS PEOPLES
BRAZIL
October 23, 2010

I. SUMMARY

1. On March 29, 2004, the Indigenous Council of Roraima (CIR) and the Rainforest Foundation US (hereinafter "the petitioners"), lodged a petition with the Inter-American Commission on Human Rights ("the Inter-American Commission" or the "IACHR") against the Federal Republic of Brazil ("the State" or "Brazil") for alleged violations of Articles I, II, III, VIII, IX, XVIII and XXIII of the American Declaration of the Rights and Duties of Man ("the American Declaration") and Articles 4, 5, 8, 12, 21, 22 and 25 of American Convention on Human Rights ("the American Convention"), in connection with the general obligations to respect rights and adopt domestic measures as provided under Articles 1.1 and 2 of the same treaty, to the detriment of the Ingaricó, Macuxi, Patamona, Taurepang and Wapichana *Raposa Serra do Sol* indigenous peoples and their members, ("the Raposa indigenous peoples" or "the alleged victims").

2. The petition claims a delay from 1977 to 2009 to effectively complete demarcation, delimitation and titling of the *Raposa Serra do Sol* indigenous territory ("indigenous territory" or "Raposa territory"), as well as frequent incidents of violence and severe environmental degradation affecting the lives and personal integrity of the alleged victims. According to the petitioners, said incidents of violence and environmental degradation have been the result of the continuous presence of non-indigenous persons on the indigenous territory, which has also led to restraints on freedom of movement and residence and freedom of religion and the right to practice their own culture. According to the petitioners, the administrative process to demarcate the indigenous territory was marred by unwarranted delay and the domestic laws of the State do not ensure due process of law, protection of indigenous territorial rights and equality under the law for indigenous peoples. Consequently, the petitioners contend that the petition is admissible, under the exceptions set forth in Articles 46.2.a and 46.2.c of the American Convention.

3. The State contests the argument that due process of law is non-existent and claims that remedies under domestic law were not exhausted. Additionally, the State contends that, since the administrative process of demarcation of the Raposa indigenous territory has concluded, "the object of this petition does not subsist." Consequently, Brazil requests the Inter-American Commission to declare the petition inadmissible on the grounds that it does not fulfill the requirement set forth in Article 46.1.a of the American Convention and that the exception of non-existence of due process of law is not applicable to protection of the rights of the indigenous peoples of Raposa, as provided in Article 46.2.a of the aforementioned international instrument.

4. After examining the positions of the parties in light of the admissibility requirements established in Articles 46 and 47 of the American Convention, the IACHR concludes in this report, without prejudice to the merits of the case, that the petition is admissible with regard to the alleged violations of Articles I, II, III, VIII, IX, XVIII and XXIII of the American Declaration, as well as Articles 4, 5, 8, 12, 21, 22, 24 and 25 of the American Convention in conjunction with Articles 1.1 and 2 of the same international instrument. Accordingly, the Inter-American Commission resolves to serve notice of this decision upon the parties, and publish and include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE IACHR

[1] Commissioner Paulo Sergio Pinheiro, a Brazilian national, did not take part in the deliberations or the voting on this report, as provided in Article 17.2.a of the IACHR Rules of Procedure.

5. On March 29, 2004, the Inter-American Commission received the initial petition lodged by the petitioners. The IACHR received additional information from the petitioners on April 6, 2004; on May 10, 11, 12, 13 and 14, 2004; and on June 7, 2004. On June 10, 2004, the IACHR forwarded the relevant parts of the petition to the State, requesting it to provide its response within a 2-month period. On August 18, 2004 and September 3, 2004, the Inter-American Commission received communications from Brazil in response to the petition.

6. In light of the Federal Supreme Court decision of March 19, 2009 (*infra par.* 39), regarding demarcation of the Raposa indigenous territory, the IACHR requested updated information from both parties on September 29, 2009. The petitioners submitted updated information on December 4, 2009 and on April 6, 2009. Likewise, the State submitted updated information in the form of notes received on January 19 and 26, 2010.

Precautionary Measures

7. On the date of the filing of the petition, the petitioners filed a request for precautionary measures for the purpose of completing the process of demarcation of the Raposa indigenous territory and ensuring the integrity of the indigenous peoples of said territory. On July 7, 2004, the IACHR conveyed to the petitioners that the request for precautionary measures had been denied. On December 1, 2004, the petitioners reported on further incidents of violence against the indigenous peoples of Raposa, and requested that precautionary measures be granted in order to protect the physical integrity of the alleged victims until the process of demarcation was completed. On December 6, 2004, the Commission granted the precautionary measures that were requested.

8. On March 1, 2007, the IACHR held a hearing on implementation of the precautionary measures and admissibility of this petition, during its 127th Regular Period of Sessions. The IACHR also received additional information from the petitioners[2] and the State[3] regarding the petition and implementation of the precautionary measures.

III. POSITION OF THE PARTIES

A. Position of the petitioners

9. The petitioners note that the Ingaricó, Macuxi, Patamona, Tuarepang and Wapichana indigenous peoples are located in the territory of *Raposa Serra do Sol*, covering an area of approximately 1,747,465 hectares in the northeastern part of Roraima state. The total population is 18,000 indigenous people, which comprise 167 communities located in 4 different ethnic regions: *Serras, Baixo Contigo, Raposa* and *Surumú*, which are politically organized under a regional indigenous council, where decisions concerning the communities as a whole are made.

10. According to the petitioners, the continuous presence of non-indigenous people on the *Raposa Serra do Sol* indigenous territory has led to severe environmental degradation affecting their right to life, integrity and a healthy environment. This has also been exacerbated, according to the petitioners, by the alleged failure to respect the property rights of the *Raposa Serra do Sol* indigenous peoples, as a result of implementation of large-scale development projects without the proper prior consultation with these indigenous peoples and the use of toxic agroindustrial products by rice growers, who have settled

[2] The IACHR received communications from the petitioners on the following dates: October 27, 2004, November 3, 2004, November 5, 2004, December 1, 2004, December 6, 2004, January 7, 2005, January 21, 2005, March 24, 2005, April 28, 2005, July 15, 2005, September 23, 2005, October 25, 2005, June 7, 2006, September 11, 2006, December 7, 2006, January 26, 2007, March 1, 2007, June 20, 2007, July 5, 2007, July 14, 2007, January 15, 2008, February 29, 2008, April 14, 2008, June 10, 2008, and February 2, 2009. Copies of said communications were duly forwarded to the State.

[3] The IACHR received communications from the State on the following dates: April 22, 2005, July 31, 2006, August 7, 2006, December 27, 2006, January 8, 2007, April 21, 2008, April 25, 2008, June 2, 2008 and October 22, 2008. Copies of said communications were duly forwarded to the petitioners.

in the *Raposa Serra do Sol* indigenous territory for many decades. According to the petitioners' claims, the continuous presence of non-indigenous people has also given rise to a long and notorious history of incidents of violence, which has taken a toll on the lives and the integrity of the indigenous peoples and improperly placed restraints on freedom of movement and residence, as well as undermined the right to freedom of religion and to practice their own culture, inasmuch as the *Raposa Serra do Sol* indigenous peoples' culture and beliefs are closely tied to the environment, natural resources and other elements of the indigenous territory. Lastly, the petitioners claim that the way the law deals with indigenous property rights in Brazil is discriminatory, in view of the fact that indigenous peoples are not guaranteed the right to property ownership (which would be from the Federal State or the Union), but are only guaranteed possession of their lands. The petitioners assert that all of this has resulted in the legal process to demarcate indigenous territories being a discretionary administrative procedure, the responsibility of which exclusively belongs to State authorities, with no effective involvement of the indigenous peoples being possible, in light of the fact that no applicable or accessible judicial remedy is available to them. According to the petitioners, this is all discriminatory because non-indigenous property receives a separate and preferential treatment, whereby owners are entitled to countless judicial remedies to ensure their right to property.

11. According to the petitioners, since the 1970's, when contact between Raposa indigenous peoples and non-indigenous people began, demarcation of that indigenous territory was regarded by the indigenous stakeholders and the Brazilian authorities as an essential mechanism for preserving indigenous territorial unity, as well as the survival and reproduction of the culture of the Raposa indigenous peoples. Despite that view, the petitioners contend that the rights of the alleged victims over their territory and natural resources continue to be violated.

12. For example, the petitioners assert that in September 2007, the Federal Government suspended removal of non-indigenous settlers from less-impacted areas, supposedly while prioritizing removal of large-scale rice growers. Nonetheless, the petitioners claim that none of the rice-farmers were removed from the Raposa indigenous territory and that, on the contrary, the smaller-scaled settlers began to expand their holdings. They add that the areas occupied by the rice farmers increased sevenfold; that they remain inside of the boundaries of the indigenous territory; and that the few non-indigenous settlers that have left Raposa, did so on their own accord or as a result of indigenous community action, and not because of any efforts of the State to effectively implement the removal process. They claim that, on the contrary, the Raposa territory is the target of a policy of colonization, promoted by local public institutions, through the creation and expansion –under state and municipal laws- of urban zones within indigenous territory. Additionally, the petitioners assert that a bill authorizing construction of a hydroelectric plant on the Cotingo River, within Raposa territory, is in the process of being introduced in the Federal Chamber of Deputies.

13. The petitioners indicate that in 1977 the National Foundation of Assistance to the Indigenous ("FUNAI") formally instituted the Raposa indigenous territory demarcation process, whereby a contiguous area of 1,743,089 hectares was recognized on April 13, 2005. Nonetheless, they argue that as of today's date no measures have been actually implemented relating to the delimitation, demarcation and granting of final title for their territory; mainly due to a failure to effectively allow for the removal of non-indigenous settlers from the demarcated indigenous territory.

14. According to the petitioners, this has led to several acts of violence against the alleged victims, which have continued to occur up to the present time. They allege that as of the present time, the investigations into the incidents described above have not been completed, nor have those responsible been punished. The incidents described hereunder are cited as examples by them:

(i) Trespassing onto the *Jowari, Homologação, Brilho do Sol* and *Lilás* indigenous communities on November 13, 2004, by 40 persons identified as rice growers, farmers and indigenous people opposed to the legalization of the land, who burned and destroyed 34 homes and a National Health Foundation (FUNASA) post;

(ii) Trespassing onto the *Surumu* community on September 16, 2005 by 150 hooded gun men who, according to the petitioners, had set the Training and Cultural Center of Raposa Serra do Sol, the hospital, the church, the refectory and the library on fire;

(iii) Partially burning down a 30-meter-long bridge over the Urucuri River, which provided access to the village of Maturuca, on September 22, 2005; and

(iv) Armed assaults, which left 10 indigenous people wounded on January 5, 2008, perpetrated by employees of rice grower Paulo Cesar Quartiero, while the indigenous persons were building their dwellings (*Maloca*).

15. The petitioners also claim that the alleged victims fear being assaulted by the rice farmers and non-indigenous settlers, and that fences built by the rice farmers prevent free movement and access to the roads, highways and rivers of the region, as well as access to sacred sites of the Raposa indigenous peoples. Additionally, according to the petitioners, as a result of the rice farmers and illegal residents remaining on indigenous territory, the environment has become polluted, mainly from the monoculture of rice farming and spraying of toxic agroindustrial chemicals. They also point to evidence of burning, as a method for preparation of the land for rice cultivation, the unsustainable use of rivers for irrigation of rice fields, illegal fishing, damming of rivers, disposal of waste materials and unauthorized slaughterhouses, which exacerbate the state of the environment.

16. As for exhaustion of domestic remedies, they contend that:

> (…) 30 years after the start of the initiatives of demarcation of the land, the Raposa Serra do Sol indigenous communities still do not have any assurances of their territorial rights. Given the distinctive characteristics of this case, the petitioners request the IACHR, with regard to the administrative procedure, takes into consideration the unwarranted delay in resolving the administrative process of demarcation of the indigenous land in keeping with the exception set forth in Article 46.2.c of the American Convention. With regard to the judicial proceedings, in light of the good faith conduct of the petitioners in the judicial cases, while recognizing the limitations of the judiciary in imparting a final judgment, they ask the Inter-American Commission to consider: 1) that the case law of the Inter-American system clearly indicates that domestic remedies need only be exhausted when they are adequate and effective; and 2) that domestic legislation of the Brazilian State currently does not provide for due process of law to ensure protection of indigenous territorial rights, nor are remedies available to petitioners to demand full and effective implementation of the Decree of Recognition of the Raposa indigenous territory. Therefore, the exception set forth in Article 46.2.a of the American Convention is applicable." (Free translation from the original Portuguese)

17. Lastly, the petitioners note that on March 19, 2009, the Federal Supreme Court issued its ruling on one of the suits filed by non-indigenous third parties regarding demarcation of the Raposa indigenous territory. According to the petitioners, said ruling recently allowed for the removal of the non-indigenous settlers from the demarcated indigenous territory, and thus completed the administrative process of demarcation, 32 years after it began. Despite this, the petitioners argue that the Federal Supreme Court's decision itself violates the right to communal property and the right to prior consultation, among other things, of the *Raposa Serra do Sol* indigenous peoples. As claimed by the petitioners, this is because said decision improperly sets 19 requirements for demarcation of Raposa indigenous territory (as well as for any demarcation of indigenous territories in Brazil in general), which amounts to violations of internationally recognized indigenous peoples' rights.

18. Based on the aforementioned arguments, the petitioners contend that Brazil violated Articles 4, 5, 8, 12, 21, 22, 24, and 25, in conjunction with articles 1.1 and 2 of the American Convention. Furthermore, they allege that it violated Articles I, II, III, VIII, IX, XVIII, XXIII, as provided in the American Declaration, to the detriment of the Ingaricó, Macuxi, Patamona, Taurepang and Wapichana indigenous peoples and their members.

B. Position of the State

19. The State contends that the petition is inadmissible on the grounds of failure to exhaust domestic remedies and the inapplicability of the argument of non-existence of due legal process for protection of the rights of the alleged victims. Additionally, the State claims "the object of this petition does not subsist" following completion of the administrative process of demarcation of the Raposa indigenous territory.

20. With regard to prior exhaustion of domestic remedies, Brazil states that through the Office of the General Counsel of the Union, it has actively introduced every legal measure required and admissible to resolve the litigation involving the Raposa indigenous territory. The State argues that said legal measures are effective domestic remedies in the process of being developed; and therefore alleges that the petition does not meet the requirement set forth in Article 46.1.a of the Convention.

21. Moreover, with regard to the existence of due process of law, it claims that:

> [t]he defense of indigenous rights can be pursued both by administrative procedure, as is the case in the administrative process of demarcation (...) as well as the judicial procedure. In the event that the Public Administration has not carried out the demarcation or else it has carried it out in dissonance with indigenous wishes, they could have instituted an admissible judicial action, *in casu,* an action for declaratory judgment. They could have even brought an *actio popularis*, as was done by Silvino Lopes da Silva et al (…) on the grounds that the act of demarcation was harmful to the administrative morality, the environment and the historical and cultural heritage." (Free translation of the original Portuguese)

22. With regard to the situation of the Raposa indigenous territory, the State alleges that FUNAI has promoted the compensation and removal of the non-indigenous settlers since 2002. It notes that of the 359 identified settlements by third parties, 210 settlements, which showed good faith efforts, received compensation; 67 received compensation by means of an escrowed payment of 5 million *reais*; 32 are in the process of receiving compensation; and 49 would not be entitled to the respective compensation, because they involve bad faith settlements or settlement by indigenous people themselves.

23. Brazil contends that according to FUNAI records, since the start of the settlement removal process, the resettlement of 300 families of non-indigenous people, who were residing in the Municipality of Caracari, has moved forward. It adds that said families were moved to plots of land that range from 100 to 1,500 hectares, with access to electricity and means of communication to facilitate getting their products out to market. Nonetheless, the State affirms that a group of 40 to 50 families, under the leadership of 8 large-scale rice growing business owners, do not accept the government's offers and refuse to leave the location.

24. Additionally, the State recognizes that the judicial remedies relating to the Raposa indigenous territory, filed by third parties with a stake in said territory, delayed the process of removal of the non-indigenous settlers. It claims that the last non-indigenous removal operation conducted by the police was temporarily halted by an injunction order from the Federal Supreme Court on April 9, 2008, until one of the main legal actions or appeals dealing with the demarcation of the indigenous territory is settled. Nonetheless, the State adds that after the handing down of the Federal Supreme Court decision on *actio popularis* P. 3.388-4, dated March 19, 2009 upholding the continuous demarcation of the Raposa territory, all pending court proceedings pertaining to said demarcation were declared moot. Moreover, the State stresses that in August of 2009, a few months after said decision, it was confirmed that the removal of the non-indigenous settlers from the demarcated indigenous territory had peacefully concluded, thereby completing the administrative process of demarcation. On the grounds of this recent development, the State argues that "the object of this petition does not subsist" and renews its request for it to be found inadmissible.

25. The State also notes that it has been engaged in a variety of efforts in the fields of health, education, ethnic-development and citizenship benefitting the indigenous peoples of Roraima state. It

claims that it shall continue to undertake the measures it needs to in order to fulfill the Decree of Recognition of the indigenous territory and defense of the peoples inhabiting the region.

26. With regard to the provisions of law affecting indigenous territory, the State reports that the municipal government since February 2007 has suspended enforcement of municipal laws 110 and 111, while the action for provisional remedy (*ação cautelar*) [pending before the Supreme Court] is resolved, for both laws to be repealed for good by the Municipal Council. Additionally, the State reports that bill Nº 2540/2006 on construction of a hydroelectric plant on indigenous territory is still being debated by the Federal Chamber of Deputies and that its approval is contingent upon a variety of protection measures benefitting the affected indigenous communities.

27. The State reports that the incidents of violence charged by the petitioners are under investigation by the Federal Department of Police in Roraima state. Likewise, it notes that the alleged illegal mining is under investigation as part of Civil Public-Interest Suit N° 91.0013363-9.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

28. The petitioners are entitled, in principle, under Article 44 of the American Convention to submit petitions to the IACHR. The petition names the Ingaricó, Macuxi, Patamona, Taurepang and Wapichana indigenous peoples and their members as alleged victims,[4] with regard to whom the Brazilian State has undertaken to respect and ensure the rights enshrined in the American Convention. As for the State, the Inter-American Commission notes that as a member of the Organization of American States,[5] Brazil is bound by the obligations and duties set forth in the American Declaration and the OAS Charter. Brazil is also a State Party to the American Convention, which it ratified on September 25, 1992. Consequently, the IACHR is competent *ratione personae* to examine the petition. Moreover, the IACHR is also competent *ratione loci* to entertain the petition, inasmuch as it alleges violations of human rights that are protected in the American Declaration and the American Convention, which had taken place within the territorial borders of Brazil, a State Party to those instruments.

29. Pursuant to Articles 1.2.b and 20 of its Statute, the IACHR is competent *ratione materiae* to examine potential violations of human rights protected by the American Declaration; and it is competent *ratione temporis* to look into potential violations of the American Convention that have taken place as of the ratification date of said treaty by Brazil. The American Convention constitutes the principal source of obligation for events occurring subsequent to ratification of this instrument by Brazil.

30. The Inter-American Commission notes that the acts described in the petition began in 1977, when the State had not yet ratified the American Convention. The IACHR is, in this case, competent *ratione temporis* to determine whether any violation of the rights protected by the American Declaration occurred during the period prior to September 25, 1992. In this regard, the Inter-American Court of Human Rights ("the Inter-American Court") has asserted that:

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[4] The Macuxi, Patamona, Taurepang and Wapichana indigenous peoples, and their members are organized peoples located in a specific geographic area, whose members can be individually identified. As described in the initial petition lodged by the petitioners and received by the Commission on March 29, 2004, the Ingaricó, Macuxi, Patamona, Taurepang and Wapichana indigenous peoples inhabit an area covering approximately 1,747,465 hectares in northeastern Roraima state; their total population is 18,000 indigenous members, who comprise 167 communities located in 4 ethnic regions: *Serras, Baixo Contigo, Raposa* and *Surumú.* Regarding the competence *ratione personae* of the IACHR with respect to indigenous peoples, see IACHR Report Nº 98/09, P4355-02, Admissibility, Xucuru Indigenous People, Brazil, October 29, 2009, para. 27; Report N° 62/04, P167/03, Admissibility, Kichwa de Sarayaku Indigenous People and the members thereof, Ecuador, October 13, 2004, para. 47; and the IA Court H/R, *Case of the Mayagna (Sumo) Awas Tingni Community Vs. Nicaragua, Merits, Reparation and Costs.* Judgment August 31, 2001. Series C No. 79, para. 149.

[5] Brazil is a founding member of the Organization of American States; it signed the OAS Charter in 1948 and deposited the ratification instrument in 1950.

> For the member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter. Moreover, Articles 1.2.b and 20 of the Commission's Statute define the competence of that body with respect to the human rights enunciated in the Declaration, with the result that to this extent the American Declaration is for these States a source of international obligations related to the Charter of the Organization.[6]

B. Exhaustion of Domestic Remedies

31. Article 46.1.a of the American Convention establishes prior exhaustion of remedies available under the domestic law of the State as an admissibility requirement for a petition. Paragraph 2 of that same article sets forth that the provisions pertaining to exhaustion of remedies under domestic law shall not be applicable when:

> a. the domestic legislation of the state concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;
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> 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
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> c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

32. The State contends that the requirement of prior exhaustion of domestic remedies has not been fulfilled and that the exception alleged by the petitioners of lack of due process of law for the protection of the rights of the alleged victims does not apply in this situation. According to the State, at the time the petition was lodged, several different judicial remedies brought by the Office of the General Counsel of the Union were in the process of being heard. Moreover, the State argues that if the demarcation were not carried out or were contrary to the interests of the Raposa indigenous peoples, the petitioners would have been able to bring an action for declaratory judgment or an *actio popularis*.

33. Notwithstanding, the State has informed the IACHR that in August 2009 the peaceful removal of the non-indigenous settlers from the demarcated indigenous territory was confirmed. The State finds that the administrative process of demarcation was thereby completed (*supra* par. 25). Similarly, the petitioners also confirmed that, 32 years after its start, the administrative process of demarcation was completed (*supra* par. 18).

34. On this issue, the IACHR deems it pertinent to note that the overriding purpose of this petition is the protection of the Raposa indigenous peoples' right to ownership of their ancestral lands, in order to bring about the removal of non-indigenous people from indigenous territory, and thus eliminate and prevent the alleged incidents of violence that have been witnessed over the past decades. Based on the petitioners' claims, the alleged acts of violence against the Raposa indigenous peoples are actually the result of the delay in the process of demarcation of the indigenous territory and of the consequent continuous presence of non-indigenous people on the ancestral territory of the Raposa indigenous peoples.

35. Neither party disputes the fact that the right to property (or to "possession", under Brazilian law) of indigenous peoples in Brazil must be ensured through an administrative demarcation process, at the initiative of FUNAI and the Ministry of Justice. Nor does either party dispute the fact that

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[6] Inter-American Court of HR, *interpretation of the American Declaration of the Rights and Duties of Man in the Context of Article 64 of the American Convention of Human Rights, Advisory Opinion OC-10/89 July 14, 1989,* Series A No. 10 par. 45. Also see IACHR. Report No. 19/98, Admissibility, Case 11.516, Ovelario Tames, Brazil, February 21, 1998, par. 15; Report No. 33/01, Admissibility, Case 11.5552, Guerrilla de Araguaia, Julia Gomes Lund et al, Brazil, March 6, 2001, par. 38; Report No. 17/98, Admissibility, Cases 11.407 Clarival Xavier Coutrim, 11.406, Celso Bonfim de Lima, 11.416, Marcos Almeida Ferreira, 11.413, Delton Gomes da Mota, 11.417, Marcos de Assis Ruben, 11.412, Wanderley Galati, 11.415, Ozeas Antonio dos Santos, 11.415, Carlos Eduardo Gomes Ribeiro, 11.286, Aluísio Cavalcanti Júnior and Cláudio Aparecido de Moraes, Brazil, February 21, 1998, par. 163.

the administrative demarcation process of the Raposa indigenous territory began in 1977, and that it was completed between March and August of 2009.

36. Based on the information provided by the parties and the documents on record in the case file, the administrative demarcation process of the Raposa indigenous territory was opened by FUNAI on March 24, 1977 when it set up the working group[7] to identify and demarcate the Raposa territory as part of Case No. FUNAI/BSB/3233/77. On April 12, 1993, FUNAI approved Opinion 036/DID/DAF, which recognized an area of 1,678,800 hectares as Raposa territory. Said Opinion was forwarded that same year to the Ministry of Justice for the respective consideration, and it issued Ministerial Decision (*Portaria*) No. 80 of December 20, 1996, determining that FUNAI should re-identify the delimited area. In 1998, FUNAI resent the case file to the new Minister of Justice for reconsideration of Decision No. 80. On December 11, 1998, the Minister of Justice issued Ministerial Decision No. 820/98 (overturning Decision No. 80), whereby the indigenous peoples' permanent possession over the *Raposa Serra do Sol* lands, with a total surface area of approximately 1,678,800 hectares, is recognized.

37. It is noted that several judicial appeals[8] were filed against Ministerial Decision (*Portaria*) No. 820/98, by third parties and even by the Roraima state, which partly delayed it from coming into effect. On April 13, 2005, the Ministry of Justice at the time overturned Ministerial Decision (*Portaria*) No. 820/98 and issued Ministerial Decision (*Portaria*) 534/05, on the grounds that the Raposa indigenous territory was recognized to be a continuous area of 1,747,464 hectares and 32 centiares.

38. Then on April 15, 2005, the President of Brazil signed the Decree of Recognition in Ministerial Resolution No. 534/05; in August 2005, the process of Raposa land registration opened with the Secretariat of Property of the Union. Nonetheless, it is noted that once again non-indigenous stakeholders and also the Roraima state filed several different judicial appeals[9] against Ministerial Decision 534/05 demanding that the process of demarcation be vacated; and these appeals suspended the process of removal of the non-indigenous inhabitants from the Raposa territory, until the Federal Supreme Court[10] had ruled on the merits of at least one the suits and/or appeals dealing with demarcation of the indigenous territory at issue.

39. The IACHR notes that the first decision of the Federal Supreme Court on demarcation of Raposa indigenous territory was issued recently in the context of "Petition 3388/RR Roraima," on March 19, 2009 and published in the Official Gazette of the Union on September 25, 2009. In said decision, the Ministerial Decision and the Decree of Recognition were upheld, and continuous demarcation of the Raposa indigenous territory was declared constitutional, provided that 19 requirements set forth in the

[7] Pursuant to Ministerial Order No. 80, December 20, 1996, in 1977, 1978, 1984 and 1989, different working groups were formed by the State, to delimit the indigenous territory.

[8] It is noted that the following remedies were pursued in the courts: "*Mandado de Segurança*" ['Action for writ of mandamus']: in 1999, the State of Roraima brought "suit for writ of mandamus" registered under No. 6.210 – DF (1999/0016885-2) with the Federal Supreme Court against Ministerial Decision No. 820/98; Citizen Suit: in 1999 Silvino Lopes da Silva brought an *actio popularis* registered under No. 1999.42.00.000014-7, before the Judge of the First Federal Appellate Court of Roraima, against the Union et al, for the purpose of vacating Ministerial Decision No. 820/98; Constitutional Appeal: in August 2004, filed by the Federal Office of the Public Prosecutor with the Federal Supreme Court.

[9] It is noted that the following judicial appeals were filed: Senators Cavalcanti and Augusto Botelho brought action for provisional remedy No. 1.086-1/8222 before the Federal Supreme Court; Marcio Junqueira Pereira filed civil action No. 804 against Ministerial Decision N° 534/05, wherein the anthropological award of the demarcation of the indigenous territory is called into question; two motions for injunction, 2006.42.00.000084-0 and 2006.42.00.000098-7; suits for declaratory judgment 2006.42.00.000.7575, 2006.42.00.000739-7 and 2006.42.00.000737-0; and public-interest civil action 2006.42.00.000748-6.

[10] On April 9, 2008, the Federal Supreme Court suspended *in limine* the removal operation of non-indigenous persons as a result of the action for provisional remedy (AC. 2014) filed by the Federal Union, and upheld the decision to suspend the non-indigenous people removal operation until the merits of at least the cases brought before the Federal Supreme Court were ruled on. As part of the appeal for constitutional protection 333107/RR, dated June 28, 2006, the Federal Supreme Court ruled it was competent to examine the claims in dispute over the demarcation of the *Raposa Serra do Sol* territory, and took over all suits that had been filed with the First Federal Appeals Court of Roraima.

opinions of the Federal Supreme Court Justices were fulfilled.[11] Then between March and August 2009, according to information provided by both parties, the administrative process of demarcation concluded with complete removal of non-indigenous settlers from demarcated indigenous territory.

40. With regard to the aforementioned demarcation process, the Inter-American Commission finds it appropriate to note that—based on the allegations of the petitioners, which have not been disputed by the State—the judicial appeals, which have been filed over the course of the administrative process of demarcation, have been brought by third parties with a stake in the indigenous territory. That is, said judicial appeals are not appeals filed by the petitioners nor by the alleged victims, nor by third parties on their side; and, therefore, are not suitable remedies to settle the alleged claims set forth in the petition. Therefore, the Inter-American Commission is not taking said judicial appeals into consideration in order to determine whether the prior exhaustion of domestic remedies requirement has been fulfilled, as provided in Article 46.1.a of the American Convention.[12]

41. For this reason, taking into account the circumstances of this petition, the IACHR finds that the administrative process of demarcation has been completed and, thus, the demarcation, delimitation and titling of the territory at issue has therefore been determined. Based on the foregoing, the Inter-American Commission rules that the domestic remedies of the administrative demarcation process—the appropriate administrative procedure—are exhausted, as provided in Article 46.1.a of the American Convention.[13]

C. Timeliness of the petition

42. Article 46.1.b of the American Convention establishes that all petitions must be lodged within a period of six months from the date on which the petitioner was notified of the final judgment. In the case at hand, the Inter-American Commission ruled above on exhaustion of domestic remedies. The petition was lodged on March 29, 2004, prior to the exhaustion at issue; in this regard, the IACHR understands the admissibility requirements must be met at the time of approval of the admissibility report. Thus, the Commission concludes that the requirement of article 46.1.b of the American Convention has been fulfilled in the case before it.

D. Duplication and r*es judicata*

43. Nothing in the case file suggests that the petition before the Inter-American Commission is currently pending in any other international settlement proceeding, or that it is substantially the same as any petition or communication previously examined by the IACHR or any other international body, as provided in Articles 46.1.c and 47.d of the American Convention.

E. Colorable claim

44. Article 47.b. of the American Convention establishes that the Inter-American Commission shall consider inadmissible any petition or communication submitted if "it does not state facts that tend to establish a violation of the rights guaranteed by this Convention." The standard used to evaluate these requirements is different from the standard used to rule on the merits of a petition. In fact, the IACHR's evaluation of admissibility is aimed at determining, *prima facie,* whether the allegations in the petition are

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[11] Federal Supreme Court Decision (*Acórdão*) on Petition 3.388-4 Roraima (Annex A of the petitioners' communication received on December 4, 2009), available at http://www.stf.jus.br/portal/geral/verPdfPaginado.asp?id=603021&tipo=AC&descricao=Inteiro%20Teor%20Pet%20/%203388

[12] See, *mutatis mutandi*, IACHR. Report No. 98/09, P4355-02, Admissibility, Xucuru Indigenous People, Brazil, October 29, 2009, par. 34.

[13] See, *mutatis mutandi*, IACHR. Report No. 98/09, P4355-02, Admissibility, Xucuru Indigenous People, Brazil, October 29, 2009, par. 35; Report No 11/03, Admissibility, P 0326, Xakmok Kasek Indigenous Community of the Enxet People, Paraguay, February 20, 2003, par. 38; and Report No. 12/03, Admissibility, P 0322/2001, Sawhoyamaxa Indigenous Community of the Enxet People, Paraguay, February 20, 2003, par. 45.

grounds for an apparent or potential violation of a right guaranteed by the American Convention, and not at establishing whether there was an actual violation of a right. In other words, this analysis is of a preliminary nature and does not entail any prejudice or preview to the merits of the case.

45. The petitioners contend that the State has violated the right to property of the Raposa indigenous people as a result of the delay in the process of demarcation of their ancestral territory and the ineffectiveness of the judicial protection aimed at ensuring their right to property, due to failures in existing legislation on this subject matter. Furthermore, they claim that the aforementioned legal treatment of indigenous territorial property is discriminatory and less beneficial then that afforded to non-indigenous people, and that the alleged lack of available and accessible legal remedies to the indigenous peoples is a violation of their right to equality under the law.

46. The petitioners add that all of this has resulted in the violation of other rights of the Raposa indigenous people, such as, the right to life, to personal integrity, the inviolability of the home, as a consequence of countless incidents of violence perpetrated with impunity by the non-indigenous settlers against the lives and integrity of the indigenous peoples, and in light of the serious environmental degradation that constitutes a serious threat to the right to life and to integrity of the indigenous peoples.[14] Additionally, they argue that the State is responsible for improper restraints on transit and movement and on religious freedom as a result of the State's tolerance of the continuous presence of non-indigenous people on the *Raposa Serra do Sol* territory, who prevent the movement of the indigenous peoples and restrict their access to sacred sites and natural resources used by said peoples to express their beliefs and practice their culture.

47. Thus, the Inter-American Commission notes that in the event that the claims of the petitioners regarding the alleged violations set forth above are proven, they could constitute violations of Articles 4, 5, 8, 12, 21, 22, 24 and 25 of the American Convention, in conjunction with the obligation to respect rights and the duty to adopt domestic measures of a legislative or other nature in order to ensure enjoyment of the rights enshrined in the American Convention, as provided in Articles 1.1 and 2 of the same international instrument.

48. Additionally, the Inter-American Commission takes note that the process of demarcation at issue was opened in 1977, when the American Convention had still not been ratified by Brazil; therefore, the IACHR finds that in the event that they are proven, the facts mentioned above occurring prior to September 25, 1992, could constitute violations of Articles I, II, III, VIII, IX, XVIII, XXIII of the American Declaration.

49. In conclusion, the IACHR decides that the petition is admissible in accordance with Article 47.b of the American Convention, as explained above.

V. CONCLUSIONS

50. The Inter-American Commission concludes that it is competent to examine the petition and it fulfills the admissibility requirements, as provided in Articles 46 and 47 of the American Convention. Based on the arguments of fact and law set forth above and without prejudice to deciding the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

[14] See, *mutatis mutandi,* IACHR. Report No. 76/09. Admissibility, Petition 1473-06, La Oroya Community (Peru), August 5, 2009, par. 74; and Report No. 69/04, Admissibility, Petition 504-03, San Mateo de Huanchor Community and its members (Peru), October 15, 2004, par. 66.

1. Declare the petition admissible as to the alleged violations of Articles 4, 5, 8, 12, 21, 22, 24 and 25 of the American Convention in conjunction with Articles 1.1 and 2 of the same instrument;

2. Declare the petition admissible as to the alleged violations of Articles I, II, III, VIII, IX, XVIII, XXIII of the American Declaration;

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

3. Proceed to examine the merits of the matter;

4. Publish this decision and include it in the Annual Report to be submitted to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of October, 2010. (Signed): Felipe González, President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, and José de Jesús Orozco Henríquez, members of the Commission.