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REPORT No. 37/14
PETITION 674-06

REPORT ON ADMISSIBILITY

GARIFUNA COMMUNITY OF SAN JUAN AND ITS MEMBERS
HONDURAS

Approved electronically by the Commission on June 5, 2014

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Organization of American States

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I. SUMMARY

1. On June 9, 2006, the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission" or the "IACHR") received a request for precautionary measures lodged by the Organización Fraternal Negra Hondureña or Honduran Black Fraternal Organization, known by the Spanish acronym OFRANEH[1] (hereinafter, "the petitioner" or "OFRANEH"), on behalf of the Garifuna Communities of San Juan and Tornabé, alleging an emergency situation of risk stemming from threats leveled against several leaders of said community, as well as a lack of protection of their ancestral lands. The IACHR decided to initiate *motu proprio* the processing of the petition on behalf of the Garifuna Community of San Juan and its members (hereinafter, the "alleged victims"), as provided for in Article 24 of the IACHR Rules of Procedure, and assigned the petition the number 674-06, notifying the petitioner and the State of doing so in a note of July 7, 2006.

2. Under the petition 674-06, the petitioner alleges that, despite several steps taken by the Honduran State, it has failed to grant fee simple property title to all of the ancestral lands of the Community of San Juan. It claims that, on the contrary, these lands have been the target of many acts of trespassing by outsiders and unlawful sales by public officials and third parties, as well as projects, which are to be carried out without any prior consultation with the Community. It contends that keen third party interests in the territory of the Community has given rise to a climate of ongoing unrest and persecution, particularly targeting leaders engaged in defending the territorial rights of the Community. It reports that, in this context, on February 26, 2006, the young Garifuna men Gino Eligio López and Epson Andrés Castillo were the victims of extrajudicial execution perpetrated by agents of the Honduran Army on the outskirts of Laguna Negra, without effective and diligent response from the State.

3. In response, the Honduran State alleges that, based on the request lodged by the Community with the National Agrarian Institute, fee simple property title was granted to it over the area determined through the appropriate administrative procedure and that this decision was not challenged in any way under domestic law. Consequently, it claims that domestic remedies have not been exhausted, as required under Article 46.1 of the American Convention.

4. Without prejudice to the merits of the matter, after examining the positions of the parties and in keeping with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission has decided to find the instant petition admissible as to the alleged violation of Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 16 (freedom of association), 21 (right to property) and 25 (right to judicial protection) of the American Convention, in connection with Articles 1.1 and 2 of this instrument. The Commission also has decided to notify the parties of this decision, publish and include it in the IACHR Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On June 9, 2006, the IACHR received a request for precautionary measures on behalf of the Garifuna Communities of San Juan and Tornabe in the Department of Atlantida, Honduras. In a note

[1] In a communication received on January 21, 2009, the petitioner appointed attorney professor Joseph P. Berra as its legal representative. Subsequently, in a note received on September 7, 2010, it announced that it had appointed Christian Alexander Callejas Escoto as "legal partner" (*acompañante jurídico*) in the petition.

forwarded on July 7, 2006, the IACHR informed the petitioner that it was initiating *motu proprio* the processing of the petition of the Community of San Juan. At that same time, the Commission forwarded the relevant parts of the petition to the State and set a period of two months for it to submit its reply, as provided in Article 30 of the IACHR Rules of Procedure in force at the time. Following an extension granted on September 18, 2006, the initial response of the Honduran State, dated December 21, 2006, was received.

6. The Commission received information from the petitioner on the following dates: October 18 and 31, 2006; February 6 and 20, April 20, and November 2, 2007; February 6, and July 7, 2008; May 21, July 19, and August 6, 2010; October 26, 2011; and February 13, 2013. While the State submitted additional information on the following dates: August 23, 2007, April 11 and September 15, 2008, and September 22, 2010. The communications submitted by each party were duly forwarded to the opposing party. Additionally, during this stage of the proceedings before the IACHR, two working meetings were held and were attended by both parties: the first one, on October 24, 2008, during the 133rd session and the second one, on October 26, 2011, during the 143rd session.

– **Precautionary Measures (MC 304-05)**[2]

7. In the communication received on June 9, 2006, the petitioner requested the IACHR to approve precautionary measures to ensure an end to threats and harassment leveled against Community leaders Wilfredo Guerrero, Jessica García and Ellis Marin; as well as to violations of the territorial rights of the Community of San Juan as a result of imminent danger of irreparable damage to their physical and cultural survival.

8. On July 7, 2006, the IACHR granted precautionary measures on behalf of the Community of San Juan and the leaders thereof, specifically ordering the Honduran State "to protect the lives and personal integrity of the leaders of the Civic Association (*Patronato*) and the Committee for the Defense of the Land of the Community of San Juan, particularly, Jessica García, Wilfredo Guerrero and Ellis Marin." It also requested the State "to protect and respect the right to property over the ancestral lands belonging to the Community of San Juan; specifically, to take the necessary measures to avoid or suspend execution of any judicial or administrative action, which affected the right to ancestral property of the Community of San Juan, until such time as the bodies of the Inter-American human rights system issue a dispositive decision on petition 674-06." The IACHR continues to monitor the situation.

III. POSITIONS OF THE PARTIES

A. The Petitioner

9. The petitioner claims that the origin of the Garifuna people dates back to the 18th Century and is the product of syncretism between indigenous and African peoples. It notes that the Garifuna people have been inhabiting the Honduran Atlantic coast since 1797 and that the people maintains its "language, customs, culture and practices regarding communal land; […] its own tradition-based institutions of social and political organization." It contends that the Garifuna communities have long been calling on the State to recognize the lands that they have possessed since the times of their ancestors. They argue particularly that, since its founding in 1901, the Community of San Juan "struggled for recognition of its territorial rights over an area of 1770 hectares."

10. The petitioner notes that, far from recognizing its property rights, the National Agrarian Institute (hereinafter, the "INA," its Spanish acronym) granted the community two guarantees of occupation: the first one, in 1979, over 46.40 *manzanas* (approximately 32.5 hectares); and the second one, in 1984, over 72 hectares. It contends that in 1992, the Community filed a request with the INA to be granted title to 1,770

[2] This situation was originally reported by the petitioner in the context of precautionary measure 253-05, pertaining to the Garifuna Community of Triunfo de la Cruz, in Honduras. Because the instant case involves a different Garifuna Community facing a particular situation, it was severed from the original request and assigned Precautionary Measure number MC 304-05.

hectares, attesting to the ancestral occupation of the territory. The petitioner claims that the case file, identified by number 27.660, containing the request of the community along with "the documents that prove its right to property ownership based on ancestral occupation," disappeared while under the control of the Honduran Corporation for Forestry Development (hereinafter, "COHDEFOR"), the protected areas foundation PROLANSATE and the Municipality of Tela. It argues that said case file entered COHDEFOR on April 18, 1997, so the title could be validated, due to the fact that the land was located in protected areas, and that "that was the last time anyone could account for the case file."

11. The petitioner contends that the disappearance of the case file was reported on August 25, 1997 to the General Directorate of Criminal Investigation (hereinafter, the "DGIC," its Spanish Initials) of the Office of the Public Prosecutor and that, among other steps it took, the community sent public communications to the institutions involved demanding that the case file be handed over. It also claims that, despite these efforts, "it still has not found a solution." It notes that the misplacement of the documentation contained in the aforementioned case file has created further roadblocks to the community's attempts to defend its rights over the territory it has historically occupied.

12. The petitioner reports that on July 6, 2000, the INA granted the Community of San Juan final title over a rural property with a total surface area of 328 hectares. It also contends that, notwithstanding, in said title, it is established that "of the property described, two hundred and sixty five hectares, sixty five hectares and eight square meters are excluded," which belong to private individuals. It emphasizes that, as a result of this, only 65 of the 1,775 hectares of the ancestral territory claimed by the community were recognized. It notes that in August 2002, it filed a "request for title in accordance with the ancestral boundaries of the Garifuna Community of San Juan, Tela" with the INA.

13. Additionally, the petitioner alleges that the authorities carried out acts that affected ownership and possession of the ancestral territory, through sales to private individuals and to companies for tourism projects. Particularly, it contends that in 1992, "without consulting or informing the affected Garifuna Communities," including those of San Juan, the expansion of the Municipality of Tela was approved, giving rise to the unlawful sale and dispossession of the community land. It claims that, at the time of the filing of the petition, the ongoing process of unlawful dispossession had reached 265 hectares, handed over by the Municipality to private individuals and tourism companies. With regard to tourism projects, it mentions the "Bahia de Tela" project, later known as "Laguna de Micos," which it alleges is slated to be executed by the company PROMOTUR on ancestral territory of the community, despite the opposition to it and that it poses a serious environmental hazard. The petitioner reports that multiple complaints were filed with the Office of the Public Prosecutor for acts violating the Community's right to property ownership.[3]

14. The petitioner also notes that the State established Jeanette Kawas National Park and in so doing, adversely affected the "activities essential to the subsistence and culture, such as fishing" and restricted access to part of the ancestral territory. According to the petitioner, the State has been promoting the tourism megaproject of Bahia de Tela right in this protected area. It reports that, concurrently with the

[3] Concretely, the petitioner reports filing the following complaints: (i) February 25, 2002 note of the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage, in the context of a complaint for usurpation to the detriment of the Community of San Juan, requesting information from the Director of the INA regarding the awarding of community lands to private individuals (Initial Petition, Annex 6); (ii) numberless complaint filed on April 26, 2005 with the DGIC for construction of human waste oxidation pools, which pollute Los Micos lake (Initial Petition, Annex 10); (iii) complaint 078-06 for the crime of attempted homicide filed by Wilfredo Guerrero Bernandez on January 16, 2006 with the DGIC against security guards of the company PROMOTUR to the detriment of the Community of San Juan [Initial Petition, Annex 12]; (iv) complaint 545-06 for the crime of usurpation of public roads filed by Wilfredo Guerrero Bernandez on March 24, 2006 to the detriment of the Community of San Juan against employees of the company PROMOTUR [Initial Petition, annex 14]; (v) complaint 598-06 for the crime of damages filed by Jessica García, President of the Civil Association of San Juan, on March 31, 2006 to the detriment of the Community of San Juan against the company PROMOTUR [Initial Petition, annex 14]; (vi) complaint 0148-08 filed in January 2008 for threats and harassment inflicted on the residents of the community of San Juan by businessmen, who were accompanied by armed men, coerced the residents into selling their lands, (information provided by the petitioner on February 6, 2008]; (vii) complaint 725-08 filed on May 27, 2008 by Jessica García for the crime of usurpation perpetrated by members of the investment company Empresa Investiones Ullua, to the detriment of the Community of San Juan, "they came into the community of San Juan to survey the land, which according to them they were sold by a some members of the community" (information provided by the petitioner on July 8, 2008).

struggle to gain recognition of the ancestral property of the community, laws and programs to regularize and title private property ownership in Honduras were approved, such as the Law of Property, approved under Decree No. 82-2004 on June 29, 2004 and the Land Administration Program in Honduras, which were both opposed by the Garifuna people's communities in Honduras, including those of San Juan, inasmuch as they were viewed as running counter to the process of gaining recognition of their territorial rights.

15. The petitioner contends that the strong interest of third parties in the territory of the community gave rise to "a climate of unrest and constant persecution," especially against its leaders. Concretely, it claims that Wilfredo Guerrero, Ellis Marin and Jessica García, among other community leaders and senior members of the Civic Association of the Community, were the targets of threats, harassment and persecution "in a violent and systematic way," because of their advocacy for the territorial rights of the Community. The petitioner also alleges that, in this context, community leaders have been arbitrarily incarcerated. It also notes that when the persecution became more frequent as a result of attempts to obtain the land being claimed by the Community, the members filed numerous complaints with the Office of the Special Prosecutor for Ethnic Groups and the Office of the Public Prosecutor, "all to no avail."[4]

16. The petitioner mentions, in this context, that on February 26, 2006, the young Garifuna men Gino Eligio López and Epson Andrés Castillo were executed by agents of the Honduran Army in the outskirts of Laguna Negra. It also contends that some members of the community believe that these crimes are "an act of pressure to weaken the community's opposition to the Laguna de Micos Touristic Project." It asserts that witnesses concur in identifying two second lieutenants as giving the order to fire, which was carried out by two soldiers. The petitioner also alleges that these crimes were committed in the presence of another three soldiers and one civilian, who have covered up the crimes. It notes that a complaint was filed that is identified with the number 382-06, based on which the Office of the Public Prosecutor filed formal charges against eight individuals, who were allegedly involved. It argues that, following several investigations, on November 19 2007, a hearing was held at which the two soldiers who carried out the order were found guilty for the crime of murder and one second lieutenant was acquitted of the crimes of abuse of authority and breach of duty of public officials. According to the last information provided, an individual sentencing hearing was pending before the Sentencing Court.

17. Additionally, the petitioner alleges that on April 14, 2007, "several hired hit-men fired at the vehicle […] in which five young people were riding," who were members of the community.[5] It notes that one of them was the daughter of the President of the Civic Association of San Juan, Jessica García, who has been "threatened for her steadfast opposition in defense of the territory of her community," and therefore believes that it was an act of coercion against the leaders. It also notes that the crime was reported to the Preventive Police and deemed "an attempted homicide."

18. With regard to the arguments of the State regarding the admissibility of the petition, the petitioner contends that the misplacement of the case file and the State's failure to act to correct this incident, the ongoing persecution of the community leaders and of the petitioning organization, as well as the inability to obtain the services of an attorney because of the refusal to accept their legal representation out of fear of

[4] Specifically, the petitioner provided information regarding the following complaints: (i) complaint 1881-05 filed on January 8, 2006 by Wilfredo Guerrero Bernandez, community leader of San Juan, with the DGIC for arson on his residence in which he lost all of his belongings and community documents and testified that "he believes that this crime was caused by individuals who want to harm him because he is a community leader and he fights for the communal lands" [Initial Petition, annex 12]; (ii) information on a complaint for the crimes of abuse of authority, breach of duty of state officials, breaking and entering into a residence, illegal detention, robbery and attempted forced disappearance against the Secretary of State of the Office of Security and the Assistant Chief for the Northwest of the DGIC to the detriment of Wilfredo Guerrero Bernandez [information provided by the petitioner on October 26, 2011]; (iii) complaint 1120-06 for the crime of threats to the detriment of Jessica García filed on June 22, 2006 [information provided by the petitioner on June 29, 2009; (iv) complaint 763-08 for threats and attempted homicide of Santos Feliciano Aguilar allegedly on June 5, 2008 filed against persons linked to the Empresa Inversiones Ullua [information provided by the petitioner on July 8, 2008]. The petitioner also claims that on February 6, 2013, Mrs. Eligio Suazo, an important leader of the Garifuna people, died as a result of a heart attack when she appeared at a hearing as part of the criminal proceedings against her for the crime of usurpation.

[5] Concretely, the petitioner mentions the names of Keydi Jorleny Marin, Yerli Isolina Ellis, Yanaira Briyed Lambert, Eusebia Guillen and Joselyn Lizet Rivas.

persecution and lack of economic resources, have caused the Community to feel impaired from further exhausting domestic remedies. It alleges that, despite these difficulties, "there have been many claims and complaints of the community regarding the misplacement of the case file, the inadequacy of the title granted in 2000 and the titles illegally granted by the Municipality of Tela." Based on the foregoing, it requests that the petition be found admissible, on the grounds of the exceptions to the requirement of prior exhaustion of domestic remedies provided for in Article 46.2.b of the Convention.

B. The State

19. In response, the State of Honduras alleges that, based on the request for title filed by the Community, the INA did grant a fee simple property title to the Community over the area determined through the appropriate administrative procedure and that this decision was not challenged in the domestic courts. It contends that, consequently, domestic remedies were not exhausted, as required under Article 46.1.a of the American Convention.

20. In particular, it argues that on April 3, 2000, the Garifuna Community of San Juan filed, through its legal representative, a request for fee simple property title with the Regional Agrarian Office for the Atlantic Coast Zone, which was assigned case file number 54.312. It claims that in said request, the community did not request "ownership over a specific plot of land," but instead requested "that the respective field inspection be conducted as established by law" and "to perform the surveying and second measuring of the requested property." It argues that, accordingly, on April 18, 2000, the INA began the appropriate proceedings and on that same date "an inspection and survey of boundaries" was conducted, at which it claims the President and Secretary of the Community appeared, as well as several members thereof.

21. As for the misplacement of case file 27.660, while not denying the claim of the petitioner, the State alleges that the INA opened a new case file under the number 54.312. It contends, in the submission filed on April 11, 2008, that "steps are being taken to move forward in the search for the person responsible for misplacing it," through inquiries conducted by investigators of the Unit of Ethnic Groups and Cultural Heritage of the Directorate of Investigation. The State also claims that when these inquiries are completed, a final report will be issued.

22. The State asserts that, as a result of the proceeding under case file 54.312, it was determined that the area that was covered in the request filed by the Community totaled 328 hectares, and 3187.87 square meters. It claims that this surface area was reduced "because other individuals owning plots of land presented their respective documents" and because "other properties are under dispute," and consequently what "remained was a total area of three plots on 62 hectares and 6709.68 square meters." It notes that on June 5, 2000, the INA issued Resolution No. 145-2000 in which it awarded "definitively and without valuable consideration" to the Garifuna Community of San Juan, a plot of land of 328 hectares and 3187.87 square meters, "excluding 265 hectares and 6,478.06 square meters, which belong to other individuals who are listed in the Resolution." The State asserts that on June 6, 2000, the Executive Director of INA issued the respective final title of property, which was recorded in the Real Property and Business Register of Tela.

23. The State contends that INA Resolution No. 145-2000 was not challenged or appealed by the Garifuna Community of San Juan, by means of the remedies provided for under the Law of Administrative Procedure and the Law of Agrarian Reform, which consist of "a motion for reconsideration, a motion to appeal and an objection" and once these remedies are exhausted, in the respective judicial body. It also notes that should it be deemed that "the land that the State granted them does not conform to the right they are entitled to […], [they may] request through an administrative procedure, the respective expansion or rectification." In this regard, the State mentions that they must, first, "request the nullification of said title by filing the appropriate civil suit" and then, "bring the appropriate administrative action so that the right they are attempting to assert is recognized." Consequently, the State requests that the petition be found inadmissible, inasmuch as it has not fulfilled the requirement of prior exhaustion of domestic remedies, as set forth in Article 46.1.a of the American Convention.

24. As for the arguments concerning the "death of the young men Gino Eligio López and Epson Andrés Castillo, and the alleged assault on the young girls," it contends that it is out of order to include these issues in this petition; but that based on Article 29.c of the IACHR Rules of Procedure, these allegations must instead be severed from the petition and a new proceeding must be opened, should it meet the requirements set forth in Article 28 of the aforementioned Rules of Procedure.

IV. ANALYSIS OF ADMISSIBILITY

A. Request to sever petitions

25. In the instant matter, the Honduran State requested that the petitioner's allegations pertaining to the extrajudicial execution of two members of the Community of San Juan and the attempted homicide against five other members be severed into a separate case. In this regard, Article 29.4 of the IACHR Rules of Procedure establishes that "If the petition sets forth distinct facts, or if it refers to more than one person or to alleged violations not interconnected in time and place, the Commission may divide it and process the files separately, so long as all the requirements of Article 28 of these Rules of Procedure are met."[6]

26. Based on the information submitted in the proceedings, the IACHR notes that these allegations do not lack a link in time and place to the purpose of the petition, as described in general terms as the recognition and effective protection of the ancestral territory of a Garifuna community. In fact, as argued by the petitioner, the principal claim involves the recognition and quiet enjoyment of its territorial rights vis-à-vis third parties with interests in their territory, who have perpetrated several acts of violence, persecution and intimidation against members of the Community. According to the petitioner, these acts include the extrajudicial execution of two members of San Juan Community and the attempted homicide of another five members. The IACHR also notes that the information provided on this issue by the petitioner, as of the filing of the initial petition and throughout the proceedings before the IACHR, was brought to the attention of the State in a timely fashion. Therefore, the Commission finds that it is out-of-order to sever these allegations and it shall take them into consideration in the examination of admissibility requirements.

B. Competence of the Commission *ratione personæ, ratione loci, ratione temporis* and *ratione materiæ*

27. The petitioner is entitled under Article 44 of the American Convention to lodge petitions before the Commission. The petition identifies as the alleged victims the Community of San Juan and the members thereof belonging to the Garifuna people,[7] for whom the State undertook to respect and ensure the rights enshrined in the American Convention. As for the State, the Commission notes that Honduras has been a State Party to the American Convention since September 8, 1977, when it deposited the respective instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to hear the petition, inasmuch as violations of rights protected in the American Convention are alleged therein to have taken place within the territory of Honduras, a State Party to these treaties.

28. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was already in effect on the State when the facts alleged in

[6] Approved by the Commission at its 137th regular session, held from October 28 to November 13, 2009; and amended on September 2, 2011, and at its 147th regular session, held from March 8 to 22, 2013, entering into force on August 1, 2013.

[7] The alleged victims include members of the Garifuna Community of San Juan, the approximate population of which is 1400 persons. The community is located in a specific geographic area, the members of which can be individually identified. In this regard, see: IA Court of HR, *Case of the Mayagna (Sumo) Awas Tingni Community*. Judgment August 31, 2001. Series C Nº 79, par. 149; IACHR, Report No. 62/04, *Kichwa de Sarayaku Indigenous People and its Members (Ecuador)*, paragraph 47; IACHR, Report No. 58/09, *Kuna de Mandungandi and Emberá de Bayano Indigenous Peoples and their Members (Panama)*, paragraph 26; IACHR, Report No. 79/09, *Ngobe Indigenous Communities and their Members in the Chingola River Valley (Panama)*, paragraph 26.

the petition took place. Lastly, the Commission is competent ratione *materiae* being that the petition charges potential violations of human rights protected under the American Convention.

C. Other Admissibility Requirements

1. Exhaustion of Domestic Remedies

29. Article 46.1.a of the American Convention provides that In order for the IACHR to admit a petition under Article 44 of the Convention, domestic remedies must be pursued and exhausted in accordance with generally recognized principles of international law. The prior exhaustion rule applies when the national system has recourse available that is adequate and effective for remedying the alleged violation. However, Article 46(2) states that the prior exhaustion rule shall 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, or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

30. Pursuant to the IACHR Rules of Procedure and the legal precedents of the Inter-American system, whenever a State alleges failure to exhaust domestic remedies, it has the burden to indicate what remedies should have been pursued and also to prove that they are "adequate" to rectify the alleged violation; in other words, that the function of these recourses under the domestic legal system is suitable to remedy the alleged human rights violations that have been brought to the attention of the Inter-American system. The Inter-American Court has also held that 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."[8]

31. In the matter before the IACHR, it notes that the parties are disputing whether this requirement set forth in the Convention has been met. In fact, the State put forth an objection for failure to exhaust domestic remedies contending that INA-issued Resolution No. 145-2000 was not challenged or appealed by the Garifuna Community of San Juan. However, the petitioner argues that it has asserted its right to recognition of its property on many occasions, and has brought complaints for the inadequacy of the title granted in 2000 and the unlawfully granted titles, but it has not had effective access to theoretically available remedies and, therefore, it contends that the petition is admissible, based on the exception to prior exhaustion of domestic remedies set forth in Article 46.2.b of the Convention.

32. The Commission notes that the facts that are the subject of the instant matter are related to effective protection of the right to collective property of a Garifuna community, which for decades has been taking steps before State authorities first to get its ancestral territory recognized and second to be allowed the use and effective enjoyment of its rights. In the instant case, there is no dispute regarding the right to property of the Garifuna Community of San Juan. The issue pertains to the nature and scope of the obligation of the State of Honduras to provide effective protection to the collective property right of said community. In this regard, the Inter-American Court of Human Rights (hereinafter, the "Court" or "Inter-American Court") has ruled that "such protection of property, under Article 21 of the Convention [...] places upon the State a positive obligation to adopt special measures that guarantee members of indigenous and tribal peoples the full and equal exercise of their right to the territories they have traditionally used and occupied."[9]

33. Based on the analysis of the information and documents provided by the parties, as early as 1979 and 1984, the Community took action before the State authorities to get the INA to recognize these rights, which led to the granting of two "guarantees of occupation." It is noted that the Community once again

[8] IA Court of HR. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment June 30, 2009. Series C No. 197, par. 23. Citing. *ECHR, Bozano v. France*, judgment of 18 December 1986, § 46, Series A no. 111.

[9] IA Court of HR. *Case of the Saramaka People v. Suriname*. Judgment November 28, 2007. Series C No. 172, paragraph 91.

filed a titling request with the INA, which was misplaced by a State institution, along with the documents that allegedly prove its ancestral occupation and this misplacement was reported in 1997 to the Office of the Public Prosecutor and reported again and again to State authorities. The Community filed a new request with the INA, which gave rise to Resolution No. 145-2000 being issued on June 5, 2000, effectively awarding 65 of the 1,775 hectares claimed as ancestral territory. Additionally, the record shows that representatives of the Community and the petitioning organization, subsequently, continued to take action before the authorities filing a request in August 2002 with the INA. The record also shows that from 2002 to 2008, the Office of the Special Prosecutor for Ethnic Groups, and the DGIC of the Office of the Public Prosecutor received at least seven complaints for crimes linked to third party occupation and acts on the ancestral lands of the Community (see *supra* footnote 3).

34. The Commission notes the State alleged that in not challenging INA Resolution No. 145-2000, there was failure to exhaust domestic remedies of an administrative nature and mentioned, in general terms, that these remedies are set forth in the Law of Administrative Procedure and in the Law of Agrarian Reform, and consist of "a motion for reconsideration, a motion to appeal and an objection," though it did not prove whether they were adequate and effective to remedy the alleged violations. On the contrary, the information available to the IACHR suggests ineffectiveness of domestic remedies, inasmuch as the Community's territorial claim before the INA dates back to at least 1979 and for decades the Community has filed no less than five request for recognition of its ancestral territory, which led to the titling of 65 of the 1,775 hectares it was claiming as its own. It is also noted that Honduras has not conveyed to this Commission what the suitable judicial remedy would be offered under domestic law and, accordingly, needs to be exhausted. The references to the judicial actions that could have been brought by the alleged victims, once administrative remedies have been exhausted, have been formulated in generic terms.[10] The State has not proven in any of these instances that such remedies are adequate to cure the issue raised in the petition concerning recognition of the historic possession of a Garifuna community; the titling, demarcation and delimitation; as well as the use and quiet enjoyment of their property.

35. In view of the foregoing, the IACHR understands that the alleged victims repeatedly requested recognition and protection of their territory from the State but finds that no adequate and effective mechanisms were available to them in order to demand from the State the protection of their territory they were requesting. The IACHR notes that in this process of filing their claim, the Community and the petitioning organization faced many difficulties, such as the alleged misplacement of the documentation regarding historical occupation; as well as alleged acts of intimidation, harassment and violence against members and leaders of the Community, which were reported repeatedly to the competent authorities. In short, the IACHR finds that Honduras did not make available to the alleged victims any remedy that would make it possible to assert the right alleged to be violated, which under Article 46.2.a of the American Convention, constitutes grounds for an exception to the rule of prior exhaustion of domestic remedies.

36. Additionally, the petitioner alleged that, in this context of defending the Community's property and the heightened interests of third parties in their ancestral lands, numerous threats and acts of harassment were made against members of the Community and, especially, its leaders. The case file shows many complaints brought before the Office of Public Prosecutor by Community leaders for death threats, attempted homicide, harassment and acts of violence allegedly committed by private individuals (see above, footnotes 3 and 4). Among other incidents, the petitioner reports the attempted homicide on April 14, 2007 of five Garifuna youths, one of them the daughter of the President of the Civic Association of San Juan, by alleged "hit men." It claims the incident was reported to the Preventive Police and classified as an attempted homicide. The State, in response, did not make any reference to the response given by the authorities to these reports. As the IACHR noted above, under its Rules of Procedure and the legal precedents of the Inter-American system, when the State alleges noncompliance with this requirement, the burden is on the State to prove adequacy and effectiveness of the domestic remedies to be exhausted. Notwithstanding, in the instant case, in light of information provided by the petitioner regarding several complaints brought from 2006 to

[10] IACHR. Admissibility Report No. 63/10, Petition 1119/03 –Garífuna Community of Punta Piedra and its Members (Honduras), March 24, 2010. Par. 43.

2008, in other words, seven to five years after their filing, the State has not indicated to the IACHR any steps taken to effectively investigate the alleged crimes, determine who is responsible for them and apply the appropriate punishment in response to the complaints that have been filed.

37. The petitioner also alleged the extrajudicial execution of Gino Eligio López and Epson Andrés Castillo by agents of the Honduran Army, committed on February 26, 2006. It claims that, even though witnesses concur in attesting to the involvement to varying degrees of seven officers and soldiers of the Army, and of one civilian, on November 19, 2007, two soldiers that had carried out the order and a second lieutenant were found guilty of murder, while this officer was acquitted of the charges for the crimes of abuse of authority and breach of duty of public officials. On this topic, the IACHR recalls that, in keeping with consistent legal precedent of the Inter-American system, in cases of extrajudicial executions or disappearances, States have the obligation to conduct a speedy, serious, impartial and effective investigation *ex officio.*[11] As the Commission and the Court have held, the obligation to investigate and punish human rights violations requires all actual perpetrators and masterminds involved in the crimes to be punished.[12]

38. Based on the claims of the petitioner, which have not been disputed by the State, three of the eight persons allegedly involved in the alleged extrajudicial executions have been found guilty. It also reported that the individual sentencing hearing was pending before the Sentencing Court. Accordingly, the Commission notes that, even though some progress has been made by the justice system, it has been alleged that more than seven years after the alleged incidents took place, the full extent of responsibility would have not been established as to actual perpetrators and masterminds and, consequently, the alleged crimes remain in partial impunity.

39. Therefore, in light of the specific profile of the instant petition and the length of time that has elapsed since the crimes alleged in the claim occurred, the Commission finds that the exception set forth in Article 46.2.c of the American Convention with regard to unwarranted delay in conducting domestic judicial proceedings is applicable, and that the prior exhaustion requirement is not enforceable. Finally, it should be noted that citing the exceptions to the rule of prior exhaustion of domestic remedies provided for in Article 46.2 of the Convention is closely related to the establishment of possible violations of rights enshrined therein, such as the rights to a fair trial and judicial protection. Nonetheless, Article 46.2, by its nature and purpose, is an autonomous provision, in contrast to the substantive provisions of the Convention. Therefore, a determination as to whether the exceptions to the rules of prior exhaustion of domestic remedies provided for therein are applicable in the case at hand must be made prior to and independently of the analysis of the merits, since the standard by which to assess this requirement is different from the one needed to establish a violation of Articles 8 or 25 of the Convention. It should be noted that the causes and effects that have prevented the exhaustion of domestic remedies in the instant case will be considered, to the extent that they are relevant, in any report on the merits adopted by the Commission to establish whether they do, in fact, constitute violations of the Convention.

2. Timeliness of the Petition

40. Pursuant to Article 46.1.b of the Convention, for a petition to be admitted it must be submitted within six months from the date on which the party alleging violation of his rights was notified of the final judgment exhausting domestic remedies. This rule is rendered inapplicable when the Commission finds that any of the exceptions to the prior exhaustion of domestic remedies rule, as enshrined in Article 46.2

[11] *Cf.* IA Court of HR. *Case of Juan Humberto Sánchez v. Honduras.* Preliminary Objections, Merits, Reparations and Costs. Judgment June 7, 2003, paragraph 112; *Case of Heliodoro Portugal v. Panama.* Preliminary Objections, Merits, Reparations and Costs. Judgment August 12, 2008, paragraph 115; and *Case of Valle Jaramillo et al v. Colombia.* Merits, Reparations and Costs. Judgment November 27, 2008, paragraph 157.

[12] IA Court of HR. *Case of the Gómez Paquiyauri Brothers v. Peru.* Merits, Reparations and Costs. Judgment July , 2004. Series C No. 110, par. 146; *Case of Myrna Mack Chang v. Guatemala.* Merits, Reparations and Costs. Judgment November 25, 2003. Series C No. 101, par. 275; and *Case of Juan Humberto Sánchez v. Honduras.* Preliminary Objections, Merits, Reparations and Costs. Judgment June 7, 2003, paragraph 186.

of the Convention, is applicable. In such cases, the Commission must determine whether the petition was lodged within a reasonable period of time in keeping with Article 32 of its Rules of Procedure.

41. As was noted in the foregoing paragraphs, the Commission concluded that in the instant case the exceptions set forth in Article 46.2, subsections a) and c) of the American Convention are applicable. Taking into consideration the continuous nature of the acts allegedly constituting a violation, the alleged ineffectiveness of several remedies and complaints that were filed, the supposed misplacement of the case file and documentation for the titling of the community property, and the filing of the request for precautionary measures on June 9, 2006, which was the basis for initiating the processing of the instant case, the Commission finds that the petition was lodged within a reasonable period of time.

3. Duplication of procedures and international res judicata

42. For a petition to be admitted, Article 46.1.c of the Convention establishes that the matter may not be "pending in another international proceeding for settlement" and Article 47.d of the Convention provides that the Commission shall not admit any petition that is "substantially the same as a petition or communication previously studied by the Commission or by another international organization." In the case file before us, there is no evidence of any of these circumstances of inadmissibility.

4. Colorable Claim

43. The Commission does not consider it appropriate at this stage of the procedure to determine whether or not the alleged violations occurred to the detriment of the alleged victims. For the purposes of admissibility, the IACHR need only, at this point in time, decide whether the allegations state facts which, should they be proven, would tend to establish violations of the American Convention, as provided in Article 47(b) thereof, and whether the petition is "manifestly groundless" or "obviously out of order," in accordance with paragraph (c) of the same Article. The standard for evaluating these requirements is different from the one used to judge the merits of a complaint. The IACHR must undertake a *prima facie* evaluation to determine whether the complaint demonstrates an apparent or potential violation of a right protected by the American Convention, but not whether such a violation occurred.[13] In the current stage, a summary review that does not prejudice or advance an opinion on the substance must be conducted. By establishing both an admissibility stage and a merits stage, the Commission's own Rules of Procedure reflect this distinction between the evaluation required for the Commission to declare a petition admissible and the one required to establish the existence of a violation attributable to the State.[14]

44. Moreover, neither the American Convention nor the Rules of Procedure of the Inter-American Commission on Human Rights requires petitioners to identify the specific rights allegedly violated by the State in matters submitted to the Commission, even though the petitioners may do so. However, it is the duty of the Commission, in following the system of legal precedents, to determine in its admissibility reports, what provision of relevant Inter-American instruments is applicable and could be concluded to have been violated, should the alleged facts be proven by means of sufficient evidence and legal argument.

45. The petitioner contends that the State is responsible for failure to recognize the right to collective property of the Community of San Juan; as well as for conducting acts that affected their property and possession, as a consequence of sales to private individuals, project concessions and the establishment of a natural protected areas. It also claims that private individuals with interests in the territory leveled threats, harassed and committed acts of violence, particularly targeting community leaders in the absence of any

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

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

effective response from the State. The Commission finds that, if proven, the facts alleged by the petitioner, could constitute a violation of the rights enshrined in Articles 5, 8, 21 and 25 of the American Convention, in connection with Article 1.1 of the same international instrument. The IACHR also finds that the allegations regarding the State's failure to adopt measures to ensure that community leaders are able to continue to defend the human rights of the Community, if proven, could constitute violations of Article 16 of the American Convention.

46. Additionally, the foregoing allegations pertaining to the extrajudicial execution of Gino Eligio López and Epson Andrés Castillo and the alleged partial impunity could tend to establish a violation of Article 4 of the Convention, in connection with Article 1.1 thereof; and of Articles 5, 8 and 25 of the American Convention, in connection with Article 1.1 of this instrument, to the detriment of their next-of-kin.

47. The Commission deems that the allegations concerning the adoption of laws and programs aimed at normalizing and titling property running counter to the recognition of territorial rights, such as the Law of Property, approved under Decree No. 82-2004 of June 29, 2004 and the Land Administration Program in Honduras, could tend to establish a violation of Article 2 of the Convention. Inasmuch as the claim does not appear to be groundless or out-of-order, the Commission concludes that the petition meets the requirements set forth in Articles 47.b and c of the American Convention.

V. CONCLUSION

48. Based on the foregoing considerations of fact and law, and without prejudice to the merits of the matter, the Inter-American Commission concludes that the instant case does meet the admissibility requirements set forth under Articles 46 and 47 of the American Convention and consequently,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find the instant petition admissible, as for the alleged violations of the rights protected in Articles 5, 8, 16, 21 and 25 of the American Convention in connection with Articles 1.1 and 2 of this instrument, to the detriment of the Garifuna Community of San Juan and its members.

2. To find the instant petition admissible as for the alleged violation of the right protected in Article 4 in connection with Article 1.1 of this instrument, to the detriment of Gino Eligio López and Epson Andrés Castillo; and Articles 5, 8 and 25 of the American Convention, in connection with Article 1.1 of this instrument, to the detriment of their next-of-kin.

3. To notify the parties of this decision.

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

Approved by the Inter-American Commission on Human Rights on the 5th day of the month of June, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President, José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.