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**REPORT No. 167/20**  
**PETITION 448-12**  
REPORT ON ADMISSIBILITY

TERIBE INDIGENOUS PEOPLE  
COSTA RICA

Approved by the Commission electronically on July 2, 2020.

**Cite as:** IACHR, Report No. 167/20, Petition 448-12. Admissibility. Teriba Indigenous Group.  
Costa Rica. July 2, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Forest Peoples Programme and Council of Elders of the Bröran People
<b>Alleged victim:</b>	Teriba Indigenous Group
<b>Respondent State:</b>	Costa Rica
<b>Rights invoked:</b>	Articles 3 (right to judicial personality), 8 (right to a fair trial), 13 (freedom of thought and expression), 21 (right to property), 23 (political rights) and 25 (judicial protection) of the American Convention on Human Rights <sup>1</sup> in relation to its article 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects)

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	March 22, 2012
<b>Additional information received at the stage of initial review:</b>	March 28 and June 18 and 26, 2014
<b>Notification of the petition to the State:</b>	August 20, 2014
<b>State's first response:</b>	January 19, 2015
<b>Additional observations from the petitioner:</b>	April 24 and 29, 2015; and February 3 and November 9, 2016

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of the instrument of ratification made on April 8, 1970)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 3 (right to juridical personality), 8 (fair trial), 13 (freedom of thought and expression), 21 (right to property), 23 (political rights) and 25 (judicial protection) of the American Convention on Human Rights in relation to its article 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, on terms exposed on section VI
<b>Timeliness of the petition:</b>	Yes, on terms exposed on section VI

<sup>1</sup> Hereinafter "the American Convention".<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. The petition claims the international responsibility of the State of Costa Rica for the violation of the human rights of the members of the Teribe people (also hereinafter “the alleged victims”) upon the illegal massive occupation and lack of proper of delimitation of their traditional territory which they considered has deprived them from physical possession and security of its tenure; the imposition by the Association for Integral Development (hereinafter, the “ADI”) as the body that, by law, “represents” and “governs” the indigenous territory, which they consider a disregard of their own indigenous institutions and authorities as well as a limitation for the effective participation in the governance of their territory; and in connection to the El Diquís dam which they maintain, has been initiated without prior consultation to the Teribe People and without their effective participation. The petition also claims the absence of effective domestic remedies in the face of the continuous attempts by the victims and the continued disregard of the State for their rights. In this regards, the petitioners claim that the State has acted in detriment of the right to property of the indigenous people, to the effective participation, to due process, to judicial protection and to recognition of legal personality.

2. The petitioners describe that the Teribe People are composed of approximately 621 people who live in six communities within the traditional territory in the Province of Puntarenas, in southern Costa Rica. They point out that their traditional economy is based on subsistence, mainly using the resources of their forests and waters in a region with the highest poverty rate in the country. They point out that the Teribe People received in 1956 title to part of their traditional territory by means of Decree No. 34, which they indicate was amended in 2004. They argue that this last title issued considerably reduced the land unilaterally without consultation nor notification to the Teribe People and was granted under the Terraba Association Integral Development<sup>3</sup>. They explain that, as a result, a fragmentation of their titled lands took place, along with a lack of protection of their lands that were not legally titled. Consequently, the aforementioned led to an illegal massive occupation of their lands and a situation where the Teribe People are deprived effective possession and security of tenure of the full extent of their traditional lands in accordance with their own customs and traditions through their own institutions.

3. The petitioners refer to the project for the construction of “El Diquís” dam by the State electricity company, the Costa Rican Electricity Institute (hereinafter “ICE”). They claim that this large-scale project has significant impacts in that it would affect the use and enjoyment of their lands and generate the displacement of a part of the members of the indigenous people. They also allege that it would affect a great number of sacred, cultural and archeological sites, fundamental to their identity, cultural integrity and religious spiritual liberty seen as the pillars of the Teribe existence and identity since, among other elements, the dam would flood 10% of the titled lands and areas traditionally of their property. They point out that the State has declared the studies and the works of El Diquís Hydroelectric Project and its transmission works as “National Convenience and Public Interest” through Executive Decree No. 34312-MP-MINAE from March 6, 2008, and through it has granted “a high priority status” for the attainment of environmental and other related permits.

4. In particular, they argue that ICE has initiated feasibility assessment studies as well as environmental and social impact studies (hereinafter “EIAS”) of the dam which have detonated large amounts of activities in the Teribe territory, although they do not know the results of the EIAS or assessment studies. They add that the State has built infrastructure, including roads, a warehouse for heavy-duty machinery and the construction of housing for approximately 3,000 workers and their families, the excavation of tunnels that will be used for the dam and concessions have been awarded to extract materials for the construction on traditional soil. They insist that, in relation to all these activities, ICE has not consulted the Teribe people nor given information as to the general process nor the legal criterion they must follow. They assure that given the time elapsed, they suspect that El Diquís project has passed its first phase and the authorities have made no significant attempt nor have ensured the effective participation of the members of the Teribe indigenous people in spite of the protests highlighting their exclusion and many rejected requests of participation that have been considered premature.

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<sup>3</sup> The petition points out that the Terraba Association for Integral Development is a local government organism established by the State and that due to the 2004 reform on the title to the lands, is the owner.

5. The petitioners explain that, while ICE has stated that only a consultation is required and that it would not be binding in any case, the ADI filed a constitutional complaint on behalf of the Teribe people and its members on April 4, 2008, against articles 1, 4 and 8 of Executive Decree No. 34312-MP-MINAE before the Constitutional Chamber of the Supreme Court of Justice. Through this action, it alleged the State's failure to ensure the participation of the Teribe people in the decision-making regarding the Diquís dam and its connected infrastructure and questioned the State's ability to ensure such participation stressing the right to property and effective participation. The petitioners point out that on September 23, 2011, the Constitutional Chamber issued a ruling considering that the State had violated the rights of the Teribe people by not consulting with them and ordered the ICE to start and complete a consultation process within six months upon the publication of the ruling<sup>4</sup>. In this regard, the petitioner contends that although the ICE has still not complied with the text of this judgment, Teribe people consider it ineffective since it does not uphold the full scope of their right to effective participation in the decision-making and imposes an arbitrary limit in the period to complete the consultation.

6. They describe that this situation has been the subject of concern by the United Nations Committee on the Elimination of Racial Discrimination, which in 2010 and 2011 issued recommendations adopted under urgent and early alert proceedings and by the United Nations Special Rapporteur on Rights of Indigenous People<sup>5</sup>. They argue that although the State declared the suspension of its operations on Teribe lands following the visit of the United Nations Special Rapporteur, ICE continues with its operations on their traditional lands. They maintain that the attempts to resolve the situation and its effects at the domestic level have been useless due to the absence of effective domestic remedies and the continued disregard for their rights. They add that the attempts have also been affected due to, given the extended illegal presence of non-indigenous people, many strong supporters of the dam have assumed high positions of power in the ADI and in other community organizations which has generated conflicts and distrust between indigenous and non-indigenous people. Although they recognize the creation of the "High Level Commission for the Development of Río Grande Basin of the Térraba Program", they emphasize that it does not have indigenous members and more than anything else, they focus on state authorization for resource use.

7. On the other hand, the petitioners argue that the ADI exercises the exclusive legal personality on behalf of the indigenous people despite the fact that they are external structures that do not take into account indigenous traditions and customs. The power of the ADI deeply concerns the Teribe people, in particular as it refers to the Diquís dam project and any consultation process. In this regard, they indicate that there is no official mechanism through which the freely elected indigenous representatives may interact with the State, unless they are part of the ADI system. They describe that the ADI were as bodies that, by law, "represent" and "govern each indigenous territory" even though an overwhelming majority of indigenous peoples in Costa Rica rejects them because they deny their right to choose their own representatives in order to participate in decision-making processes. They claim that the imposition and operation of the ADIs has been matter of several complaints<sup>6</sup>, even filed by Teribe members.

8. In this regard, they refer to the constitutional complaint filed by Teribe members on May 22, 2009 versus articles 3, 4, 5, 6, 7 and 15 of the Indigenous Law Regulations published through Decree No. 8487-G, and Executive Decree No. 13568-C-G on the legal Representation of Indigenous Communities by Development Associations and as Local Government from April 30, 1982, which was reportedly declared inadmissible through ruling No. 2010018714 by the Constitutional Chamber of the Supreme Court of Justice on November 12, 2010. In the text of such decision, the judicial authority considered, among other elements, that the fact that the ADI be in charge of representing indigenous communities judicially and extrajudicially, as

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<sup>4</sup> The petitioners point out that, since the IDA was an active party in the constitutional complaint, they were notified of the ruling through the media and had only access to its summary online in spite of the fact that both the petitioners and the stakeholders have requested in more than one occasion the full extent of the ruling.

<sup>5</sup> Report by the Special Rapporteur on the rights of indigenous people. The situation of indigenous people affected by the El Diquís hydroelectric project in Costa Rica. A/HRC/18/35/Add.8.

<sup>6</sup> Likewise, the petitioners submit information on the constitutional complaint raised by a neighbor of the Indigenous Reserve Salitre, against article 3 of the Executive Decree N. 8487-G of April 26, 1978 which was resolved through sentence No. 20002-02623 of the Constitutional Chamber of the Supreme Court of Justice on March 13, 2002. The text this ruling states that what such norm sets forth is not contrary to the Constitution in terms of liberty of association.

representative institutions of the inhabitants of the reserves, it is not contrary to the Constitutional Right. Upon the frequent allegation concerning Executive Decree N° 8487-G forcing to join a Community Development Association as a requirement to exercise rights and obligations, the Supreme Court concluded that the regulation does not compel belonging automatically to the Community Development Association and not being part of it does not entail other consequences that diminishing their participation in the adoption of indigenous decisions related to the administration of the indigenous reserve, over which there is a proprietorship of collective traits. It then established that article 3 of the Indigenous Law regulations, only specifies the kind of organization that responds to the bases set forth by the legislator in the Indigenous Law which serves as a guideline and, likewise, insisted that “it must not be forgotten that Community Development Associations – more so than any other juridical figure – is the one that most resembles the community nature of the traditional indigenous organization” reminding that “this kind of juridical structure allows this sector of the population to enjoy special benefits they would not enjoy with another kind of juridical structuration”.

9. The petitioners insist that, given the absence of effective judicial remedies to confront the imposition of the ADI, the indigenous people have tried to correct this situation by means of legislature by presenting the bill of autonomous development of indigenous people before the Congress. However, they explain although it was first presented for discussion in 1995 and kept pending in the legislature, the Executive Power withdrew it from discussion at the Legislative Assembly. They argue that one of the aims of the aforesaid bill would be to grant full autonomy, acknowledge their right to benefit from their own cultures and modify the existing institutions for the representation of the indigenous people by eliminating The National Commission of Indigenous Affairs (hereinafter “NCIA”) and replacing the ADI for territorial indigenous councils.

10. In addition, regarding the contradiction raised by the State about the constitutional complaint against articles 1, 4 and 8 of Executive Decree No. 34312-MP-MINAE, the petitioners insist that the ADI of the Teribe people is the holder of the land title and that it exercises juridical personality on behalf of the bröran people to vindicate the rights of the people and its members, in accordance with Costa Rica’s domestic law. In this sense it sustains that the petitioners as members of the Teribe and victims were part of the same action even if in disagreement with the competences of the plaintiff. Additionally, they say that the jurisprudence of the Inter American system does not need the petitioners to be the direct plaintiffs in order to exhaust domestic remedies.

11. The State manifests concern for the legitimacy of the people who file this petition since they fear it may not represent the entire Teribe people and that it does not know if such community was consulted to file it.

12. It affirms that a dialog, rapprochement and understanding scenario has been opened, regarding the realities and vision of indigenous people which, has included the retrieval of the lands, the indigenous forms of government and representation<sup>7</sup>, including what concerns the autonomous development bill of indigenous people. It describes the advances it has been developing in the country mainly since 2011 starting from a process impulse for the better and genuine comprehension from the institutional structure of indigenous people’s rights in the country and their effective protection. In particular on El Diquís dam project, the State claims that the ICE left the indigenous terraba territory in June 2011 when performed the technical closure of the activities and decided, as recommended by Special Rapporteur on Indigenous People, to only interact with the Teribe People when they expressly request so. Likewise, the State indicates that a High Level Committee has been constituted due to Executive Decree No. 38768 from December 19, 2014 in order to be in charge of the consultation on the project. It argues that this Committee was established with the aim to coordinate and support the execution of the “Development of Río Grande Basin of the Twrraba Program” which seeks to address in an integral manner the situation of the zone”.

13. The State considers contradictory that the petitioners base their petition on the constitutional complaint against articles 1, 4 and 8 of Executive Decree No. 34312-MP-MINAE filed by the de Integral

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<sup>7</sup> The State describes different efforts for dialogues with indigenous communities of Costa Rica, in particular through two concrete processes: following up recommendations from Special Rapporteur on Indigenous People’s Rights by involved institutions such as the Presidential Ministry and the Foreign Affairs and Cult Ministry, institutional rapprochement, in particular from some Ministries for the creation of concrete policies and measures which impact indigenous people.

Development Association of the Terraba Indigenous Reserve, which they say is an organizational structure questioned by the very petitioners. It considers that the petition was filed in a sudden and premature manner since it affirms the 6 month period for its filing had not been fulfilled and, also, the petitioners did not know the lengths of the pronouncement when filing it, while ADI was notified on June 27, 2012 and the petition was filed before the Commission on March 22, 2012.

14. It affirms that despite that the constitutional complaint constitutes one of the legal avenues of Constitutional justice, it does not address an individual damage but the satisfaction of a general interest, and it is not a contradictory process. In this sense, it observes that the challenged norms concerned a specific project that for the stage and progress it was in, in the Constitutional Chamber's criteria, the alleged violation would not have been produced at the time of the filing since the consultation to indigenous people was still timely being granted a deadline to carry on the consultation process so that the State would not postpone in any way, the participation of indigenous people.

15. Additionally, it claims lack of exhaustion of domestic remedies since the alleged victims would have the apply for amparo available for inactivity as effective remedy, indictment and of broad legitimacy and there is also a contentious proceeding pending filed by the ADI against the ICE before the Contentious Administrative and Civil Court of Finance which would be under way on a high priority and has a high connection with general facts regarding El Diquís project that are claimed by the petitioners.

16. Lastly, the State argues the affectation of its right to defense since it considers it is being required to determine he facts, without being informed on the aspects that would go into scrutiny and even, without pointing out if some statements by the petitioners fit within the matters over which the Commission has competence.

## **VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

17. The Commission notes that the facts claimed in the present case include, yet are not limited to, lack of proper acknowledgement of ancestral territory, the major scale El Diquís project as well as the imposition of the figure of the Integral Development Associations. In regard of the project for El Diquís dam, the IACHR takes note that in representation of the Teribe, a constitutional complaint was filed against different articles of the Executive Decree No. 34312-MP-MINAE resolved on September 23, 2011 by sentence of the Constitutional Chamber of the Supreme Court and an apply for amparo before the Constitutional Chamber, declared inadmissible through sentence No. 06045 from April 22, 2009<sup>8</sup>. In relation to the latter, the IACHR observes that the recurrent alleged the violation of article 6 of the Agreement No. 169 of the International Labor Organization since the ICE did not carry out the consultation to the community corresponding to El Diquís Hydroelectrical Project, prior to performing the studies for it. The Commission notes that some of these judicial actions were filed in favor of the Teribe people in order to question or annul the project of El Diquís dam by a local organism that - in accordance with the petitioners' claims and not challenged by the State- holds, by law, its juridical representation. Notwithstanding the claims by the petitioners, the Commission observes those are suitable remedies to settle the alleged claims referred to in the petition. Likewise, regarding the figure of the IDA, the Commission gathers submitted information regarding the constitutional complaint resolved by sentence No. 2010018714 on November 12, 2010. In return, the State does not refer to the current status or the result of measures implemented through dialog efforts implemented before 2015 or of the status of the consultation ordered by the Constitutional Chamber through sentence from September 23, 2011.

18. The Commission has sustained that the analysis of requirements foreseen in articles 46 and 47 of the Convention must be done in light of the current situation at the time of ruling on the Admissibility or inadmissibility of the complaint since it's fairly frequent that, during the procedure, there may be changes

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<sup>8</sup> In the text of the sentence, the Constitutional Chamber of the Supreme Court considered that amparo is premature, since it refers to a future and uncertain situation, since it is not known for sure whether the construction will take place or not "its construction and development is not even defined yet" and "the corresponding permits have not even been requested yet"



concerning the exhaustion of domestic remedies<sup>9</sup>. Also, the IACHR reminds that in regard to indigenous people, the jurisprudence of the Inter American system has established that “it is indispensable that the States grant effective protection that considers their own particularities, their economic and social characteristics, as well as their situation of special vulnerability, their common law, values, uses and customs”<sup>10</sup>. In light of the information and allegations by the parties the Inter American Commission observes that the alleged victims have raised the central matters of the present petition before authorities of the State. Also, notes that although the State argues the existence of other remedies, does not object on the lack of suitability of those filed by the alleged victims. In this sense the IACHR observes that the alleged victims exposed the matter through adequate and valid alternatives and the State had the chance to address the matter in its jurisdiction. Therefore, the Commission concludes that the present petition complies with article 46.1.a of the American Convention<sup>11</sup>.

19. As for the time for filing, the Commission concludes that the decision that put an end to the procedural steps internally was adopted on September 23, 2011 and the petition was filed on March 22, 2012, which is why the Admissibility requirement of suitable time for filing is to be considered fulfilled.

## VII. ANALYSIS OF COLORABLE CLAIM

20. The IACHR notes that the facts claimed in the petition were informed to international organisms of human rights protection, which communicated with the State Costa Rica. The Commission insists that in order for a case to be considered with duplication or international judged matter, apart from identity of subjects, object and aim, the petition is required to be under consideration, or have been ruled, by an international organism which has competence to adopt decisions on specific facts contained in the petition, and measures pointing to the effective resolution of the discussion in question<sup>12</sup>. The Commission deems that the Special Rapporteurs of United Nations when making observations and requesting information of a situation in particular, do not adopt decisions nor measures aiming to settle disputes as the current one. Likewise reminds that as set by the IHR Court, while “proceedings of Reports of universal human rights organisms, as well as the early alert procedure and urgent action of the CERD, do not have the same object, purpose nor nature than the contentious competence of the Inter American Court”<sup>13</sup>. In this sense, the Commission considers that requirements to configure inadmissibility of the petition do not apply, based on articles 46.1.c y 47.d of the Convention.

21. The Commission observes that the present petition includes claims as to the lack of proper acknowledgement of the ancestral territory of the Teribe people, the limitation to the effective and reasonable participation in decision making and in administration of the traditional territory particularly in relation to projects developed on it, the unawareness for their own indigenous institutions and authorities in virtue of the imposition of the Association for Integral Development, the formulation and start of activities by the ICE in connection to El Diquís dam without having guaranteed the timely and proper access to information and a free and informed previous consultation, and the absence of proper and effective domestic judicial remedies. Upon these considerations and after examining the element of fact and law exposed by the parties the Commission regards that the claims by the petitioner are not expressly baseless and require a merits study since the facts alleged, if proven true, may constitute violations to articles 3 (right to juridical personality), 8 (fair trial), 13 (freedom of thought and expression), 21 (right to property), 23 (political rights) and 25 (judicial protection) of the American Convention on Human Rights in relation to its articles 1.1 and 2, regarding the members of the Teribe indigenous people.

<sup>9</sup> IACHR, Report No. 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Urtusuástegui. Mexico. July 29, 2016, par. 33.

<sup>10</sup> IACHR, Report No. 141/09. Petition 415-07. Admissibility. Diaguita agricultural community of the Huascoalinos and its members. Chile. December 30, 2009, par. 45; and IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, par. 12

<sup>11</sup> IACHR, Report No. 47/18, Petition 975-07. Admissibility. Jasper McDonald Hamilton. Costa Rica. May 4, 2018, par. 12.

<sup>12</sup> IACHR, Report No. 67/15, Petition 211-07. Admissibility. Jorge Marcial Tzompaxtle Tecpile and others. Mexico. October 27, 2015, par. 34.

<sup>13</sup> IHR Court. Case of Saramaka People. Vs. Surinam. Preliminary Exceptions, Merits, Repairs and Costs. Sentence November 28, 2007. Series C No. 172, par. 54 and 55.

22. Likewise, the Commission observes the argument of the State in terms of the legitimacy of the petitioners to file the present petition. In this regard it points out that according to the available information, 14 indigenous people “members and leaders” of the Teribe people as well as two indigenous organizations file the initial Petition. In this sense, the Commission has concluded that the active legitimacy in the case of claims before the Commission are known for their amplitude and flexibility, while article 44 of the Convention allows any person or group of people, or non-government entity legally acknowledged in one or more states members of the Organization, to file complaints of alleged violations of the Convention without demanding them to have authorization from the alleged victims or that file legal representation powers for them<sup>14</sup>.

### **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 3, 8, 13, 21, 23 and 25 of the American Convention on Human Rights in relation to its articles 1.1 and 2;

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 2nd day of the month of July, 2020.  
(Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitíño, and Julissa Mantilla Falcón, Commissioners.

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<sup>14</sup> IACHR, Report No. 71/16, Petition 765-09. Admissibility. Q’oq’ob Community of the Municipality of Santa María Nebaj, Guatemala. December 6, 2016, par. 23.