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REPORT No. 206/22
PETITION 862-15
REPORT ON INADMISSIBILITY

ANA MARIA RODRIGUEZ ET AL.
HONDURAS

Electronically approved by the Commission on August 11, 2022.

Cite as: IACHR, Report No. 206/22. Petition 862-15. Inadmissibility. Ana Maria Rodriguez et al. Honduras. August 11, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Maria Consuelo Tomas Flores ¹
Alleged victim:	Ana Maria Rodriguez et al ²
Respondent State:	Honduras
Rights invoked:	The petition does not single out articles of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	April 27, 2015
Additional information received during the stage of initial review:	August 4, 2015; October 28, 2016; and April 11, 2017
Notification of the petition:	July 22, 2019
State's first response:	November 22, 2019
Additional observations of the petitioner:	February 20, March 5, October 20 and November 30, 2020; March 15, June 1, and July 21, 2021; July 21, August 8 and 30, 2022
Additional observations of the State:	August 20, 2020; May 14 and June 23, 2021; February 3, May 26 and June 15, 2022

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument of ratification deposited on September 8, 1977)

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

Duplication of procedures and international res judicata:	No
Rights declared admissible:	Not applicable
Exhaustion or exception to the exhaustion of domestic remedies:	No, in the terms of Section VI
Timeliness of the petition:	Not applicable

V. POSITIONS OF THE PARTIES

1. The petition under analysis is presented on behalf of fourteen inhabitants of the settlement called Mapachines, Arena, located in the department of Choluteca, alleging the refusal of the institutions of the State to grant them property titles over the lands that they have owned and worked, and where they have lived for more than two decades.

¹ Mrs. María Consuelo Tomás Flores, also an alleged victim, acts on behalf of the remaining thirteen alleged victims.

² The petition refers to fourteen inhabitants of the Mapachines settlement, Arena: 1. Maria Consuelo Tomas Flores; 2. Ana Maria Rodriguez; 3. Melvin Oved Hernandez; 4. Oscar Manuel Rivas; 5. Juan Bautista Baquedano; 6. Dilenia Carranza; 7. Arnoldo Onil Cruz Baca; 8. Claudia Cardenas; 9. Victoria Flores Sanchez; 10. Gonzalo Avila Pineda; 11. Oladina Varela Espinal; 12. Sergio Solano; 13. Maria Elena Izaguirre; and 14. Edilberto Baquedano.

³ Hereinafter "American Convention" or the "Convention".

⁴ The observations of each party were duly notified to the opposing party. Through various handwritten communications, the petitioner expressed its interest in the proceedings, the latter being dated June 27, 2022.

2. The petitioner party indicates by way of background that in 1999 each of the fourteen inhabitants paid the National Agrarian Institute (hereinafter the "INA") for the land they own, which make up lot 13 of the Mapachines settlement, Arena, department of Choluteca (hereinafter the "lot"). They state that the lot was registered with the Public Property Registry of Choluteca through a public deed granted in favor of the INA under entry 35, volume 760. They state that on March 10, 2010, the fourteen inhabitants applied to the Choluteca Regional Office of the INA the full titling of their lands.

3. On March 26, 2010, the INA issued Resolution 04-2010, with which said Institute allegedly obliged itself to grant the property titles to each one of the inhabitants within a period of no more than ninety days –the information provided by the parties does not include a copy or the content of said resolution, despite the fact that in a communication dated November 15, 2016, the IACHR requested the petitioner party a copy or the content of it. They point out that as a result of the non-compliance with titling of their lands within the established period, coupled with a climate of corruption in which INA officials were allegedly involved, the petitioners filed a complaint with the Office of the Special Prosecutor for Transparency and Combating Public Corruption (FETCCOP).

4. The file shows that on March 24, 2014, the FETCCOP dismissed the complaint, considering the following: i) the existence of a Cooperation Agreement (hereinafter the "Agreement") entered into on December 1, 2010 between the INA and the Property Institute, whose purpose was to regularize the land claimed by the petitioners, which determined the INA's obligation to transfer to the Property Institute the full ownership of the properties that would be subject to regularization through the Property Institute; ii) that the denial of the petitioners' requests by the INA was a consequence of the existence of the Agreement, coupled with the fact that the INA does not have the power to grant full ownership of the Property as it is located within the urban area of the city of Choluteca. In addition, said refusal was based on the fact that at the date of the titling requests there was a pending litigation over those lands before the Supreme Court of Justice –in this regard, the Commission observes that the alleged victims are not part of the aforementioned litigation–; and iii) from the investigations conducted, no criminal liability was found on the part of the INA public officials who processed the petitioners' titling applications.

5. The petitioners allege the INA's arbitrary refusal to grant them title to the land they have owned since 1999, arguing that the Institute is the current owner of the land and has sufficient powers to carry out such act in their favor, arguing that said refusal stems, mainly, from the personal interests of the public officials of the aforementioned Institute, as well as other government agencies. In addition, the petition cites other alleged irregularities committed to their detriment, such as the denial of access to the files with which they initiated the request for titling of their lands; the lack of veracity in the information provided by the INA to the petitioners regarding the processing of their application; and illegal visits to their lands by the Fourth Infantry Battalion.

6. In its response, the State explains that the property was acquired by the INA through expropriation made to Banco de Occidente. It holds that the fourteen inhabitants formed the peasant group called the Associative Company of Production Peasants "Exitos de ANACH", and that in the expropriation process, the leaders of Exitos de ANACH covered the property located in the municipality of Choluteca, deciding to parcel out the land without consultation, since it is a property intended solely for agricultural purposes, selling said parceled-out properties through private documents to low-income residents, thus forming the marginal neighborhood called Aldea Mapachines, Arena.

7. Likewise, it points out that the Agreement entered into on December 1, 2010 between the INA and the Property Institute had the purpose of regularizing the property of the Mapachines neighborhood, Arena, in addition to establishing the obligation of the INA to transfer in favor of the Property Institute full ownership of the lots to be submitted to a titling process by the Property Institute. It details that on September 20, 2011, the INA donated to the Property Institute three pieces of land located in the town of Tapaire, department of Choluteca, the donation deed being registered under number 5 of volume 1826 in the Property Mortgages and Preventive Annotations of the Real Estate and Mercantile Registry of Choluteca.

8. On the other hand, it maintains that the petition is inadmissible due to failure to exhaust the available domestic remedies. In particular, it explains that the Property Law is the norm that regulates the actions aimed at the individualization, titling and registration of real estate, and consequently, the petitioners had to exhaust the legalization process for the adjudication and definitive titling of the lands that they own. It points out that although the fourteen inhabitants submitted applications to the INA for title to their land, the aforementioned Institute's function is to provide land through freehold property titles in favor of Cooperatives and Associative Companies, but it does not have the power to grant property titles in favor of residents for housing purposes, for which said requests were declared inadmissible.

9. In the same sense, it notes that five legal mechanisms are established at the domestic level to regularize real estate: i) elevation of registered beneficial ownership and full ownership; ii) acquisitive and extinguished prescription of real rights; iii) individualization of rights registered in community property or joint ownership; iv) expropriation for public necessity; and v) comparable to the beneficial ownership for the occupation of ejidal, national or fiscal real estate and its consolidation of full ownership title, all of which are the responsibility of the General Directorate of Property Regularization of the Property Institute. The latter mechanism is the one appropriate for this case, in accordance with the provisions of article 75 of the Property Law, which establishes that: "*individuals who are occupying rural or urban properties located on national or fiscal lands for a continuous period of not less than ten (10) years, will be titled by the Property Institute, as long as they are not included in public domain spaces or other affectations for common benefit or for reasons of public utility*".

10. The State continues to explain that in the event of disagreement with the decision of the Property Institute, once the aforementioned mechanism "v)" has been initiated, the petitioners would have the possibility of filing an appeal within three days of notification of the resolution before the Resources Superintendency of the Property Institute, thus exhausting the administrative procedure; and, subsequently, they would have at their disposal the administrative litigation route, which is the ideal route to examine the legality of the acts derived from the entities of the public administration.

11. The State affirms that the Property Institute holds title to the lot alleged by the petitioners, urging them to appear before it in order to initiate the pertinent actions to regularize the real estate of which they claim ownership of. For its part, the Property Institute, within the scope established by the State, stated that:

As an institution that holds the ownership of the properties occupied by the interested residents, we show our consent and willingness to continue with the legal process that corresponds by law, but we request that the residents show their collaboration and willingness to submit to the competence of the Property Institute, as established in the Property Law and the report referred to above, issued by the General Directorate of Property Regularization.

12. In response, the petitioners disown their affiliation to the Associative Company of Production Peasants "Exitos de ANACH"; affirming again that the lot continues to be the property of the INA, which is why they have not processed the titling of their lands before the Property Institute.

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

13. The object of this petition is the alleged lack of access to state institutions by the petitioners in order to obtain title deeds to the lands they have occupied for more than two decades, alleging the arbitrary refusal by the National Agrarian Institutes to grant the corresponding titles.

14. In the present case, the Commission recalls that the requirement of prior exhaustion of domestic remedies is intended to allow the national authorities to become aware of the alleged violation of a protected right and, if appropriate, to resolve the situation before it is heard by an international body⁵.

15. In relation to the allegations referring to the alleged arbitrary acts by public officials of the National Agrarian Institute, from the information provided by the parties, the IACHR confirms that the petitioners did not file any of the claims set forth in this petition before the domestic jurisdictional bodies, under the argument that there would be institutional instability, coupled with a climate of corruption in which the state institutions competent to carry out the aforementioned process of titling their lands were allegedly involved. In this regard, the petitioner has not provided evidence or arguments that allow it to be deduced that such interference has made it impossible for them to resort to the domestic jurisdiction due to the alleged unreasonable arbitrariness of the competent authorities.

16. On the contrary, as indicated by the State, the state institutions, specifically, the Property Institute states that it is at the disposal of the petitioners to begin the land titling process in their favor, requesting them to initiate the aforementioned procedures before that Institute, maintaining that it is the owner of the lands owned by the fourteen inhabitants and; therefore, the competent authority to grant full ownership titles in favor of each of the petitioners.

17. Based on the information provided, and the fact that it is clearly observed that the petitioners have not exhausted domestic judicial remedies, the IACHR concludes that this petition does not meet the requirement established in Article 46(1)(a) of the American Convention.

VII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; 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 11th day of the month of August, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Roberta Clarke, and Carlos Bernal Pulido, Commissioners.

⁵ IACHR, Report No. 82/17, Petition 1067-07. Admissibility. Rosa Ángela Martino and María Cristina González. Argentina. July 7, 2017, para. 12