

REPORT No. 30/17
PETITION 1118-11
REPORT ON ADMISSIBILITY
MAYA Q'EQCHI' AGUA CALIENTE COMMUNITY
GUATEMALA
MARCH 18, 2017

I. SUMMARY

1. On August 19, 2011, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition submitted by the Indian Law Resource Center, the Maya Q'eqchi' Agua Caliente Community, and Rodrigo Tot (hereinafter "the petitioners") against Guatemala (hereinafter "Guatemala" or "the State"). The petition was filed in representation of the Q'eqchi' Mayan community in Agua Caliente (hereinafter "the alleged victim").

2. The petitioners argue that Guatemala violated the collective property rights to land and natural resources and the right to self-determination and self-governance of the Q'eqchi' Mayan community in Agua Caliente due to the lack of a special law recognizing these rights. They allege that existing laws have failed to recognize these rights and omitted the participation of indigenous peoples from processes and procedures regulating the adjudication of their lands, mineral exploitation on their territories, and approval of environmental impact studies for mining projects.

3. For its part, the State indicates that the individual and collective rights of indigenous peoples and communities are constitutionally guaranteed, and that measures of judicial protection are in place to protect their economic, social, cultural, and environmental interests. It maintains that "the State is the only one that can dispose of its properties and has the authority to grant mining licenses. It can therefore decide, pursuant to the laws regulating the subject, to grant mining concessions." In addition, it argues that the alleged victims have not exhausted domestic remedies for titling their lands and opposing the mining project.

4. Without prejudging the merits of the petition, after analyzing the pleadings of the parties and pursuant to the requirements established in Articles 46 and 47 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31 through 34 of the Rules of Procedure of the IACHR, (hereinafter the "Rules of Procedure"), the Commission decides to declare this petition admissible regarding the alleged violations of the rights enshrined in Articles 3 (right to juridical personality) 8 (right to a fair trial), 21 (right to property), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention, in connection with Articles 1(1) (obligation to respect rights) and 2 (duties to adopt provisions in domestic law) of the same instrument. The Commission also decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

5. The IACHR received a petition on August 19, 2011, and on February 5, 2015, it forwarded a copy of pertinent parts to the State, giving it three months to submit its comments, based on Article 30(3) of its Rules of Procedure. On May 7, 2015, the State's response was received. The response was forwarded to the petitioners on June 4, 2015.

6. The petitioners submitted additional comments on August 22 and 23, 2011; April 17, 2012; and November 11, 2013. These comments were duly forwarded to the State.

Precautionary measures

7. The IACHR recorded a request for precautionary measures in conjunction with this petition, as the petitioners initially alleged the existence of a grave situation that could cause irreparable damage to members of the Agua Caliente Community, Rodrigo Tot, and Carlos Antonio Pop Ac. On October 17, 2012, the IACHR granted precautionary measures to guarantee the lives and personal integrity of Carlos Antonio Pop Ac, Rodrigo Tot, and their families. Since then, both parties have provided the IACHR with updated information on several occasions.¹ In analyzing this petition, the IACHR notes that it will take into account the information provided during the precautionary measures procedure.

III. POSITION OF THE PARTIES

A. Positions of the petitioners

8. The petitioners allege that the Q'eqchi' Mayan community in Agua Caliente, also known as the "Agua Caliente Lot 9 Community," is part of the greater Mayan nation and located in the municipality of El Estor, Izabal Department, territory that it has possessed for more than two centuries and with which it maintains a special relationship of a spiritual, cultural, and material nature. They state that it is one of the most isolated communities within the mining area, located at the top of a mountain.

9. They state that the majority of its members only speak q'eqchi' and share the same spiritual, cultural, and social values. They note that the community has its own system for making decisions and is organized under self-determined sociopolitical structures. Its leader and representative is Rodrigo Tot, president of the Pro-Improvement Committee created by the community to conduct the administrative management of its lands.

Land titling procedure

10. The petitioners state that the laws and policies of the agrarian reform consider the indigenous community as "landless peasants" and its territory as "lands apt for agricultural exploitation" under the concept of "collective agrarian heritage," without recognizing the community's indigenous nature.

11. They claim that on October 17, 1972, the Agrarian Transformation Act was adopted, creating the National Institute for Agrarian Transformation (Instituto Nacional de Transformación Agraria, INTA) and regulating the land titling procedure it established, requiring both indigenous and nonindigenous communities to pay a certain amount of money to receive title to the lands. They note that the Community began the land titling procedure before the INTA in 1974, and on February 25, 1985, a provisional land title was granted to recognizing the right to coownership of its 64 members individually, under the concept of "Collective Agrarian Property." They state that on July 18, 1998, the General Property Registry was informed that a number of pages had been removed from the Registry Book, including Page 96 of Book 21 containing the registration of the community's lands. They allege that these pages have not been replaced, preventing the lands from being properly titled.

12. Regarding this, they stated that on May 13, 1999, the Land Fund Act (FONTIERRAS) was approved to finalize the procedures pending before the INTA. On July 18, 2002, the community made its final payment to FONTIERRAS, thereby complying with all the requirements for official recognition of its ownership rights over the land. However, they allege that FONTIERRAS did not grant the title and required them to launch a voluntary judicial process to have the pages replaced.

¹ The IACHR received comments from the petitioning party on the request for precautionary measures on March 18, June 25, November 11, and December 19, 2013; February 17, 2014; and December 4, 2015. It also received comments from the State on the request for precautionary measures on December 21, 2012; January 7, March 13, October 2, and December 19, 2013; January 9, April 9, and October 1, 2014; and December 21, 2015.

13. The petitioners state that from 2004 to 2007, the community launched procedures three times before first instance civil courts to replace the pages, but had no success. According to the authorities, this was not the proper remedy, or the document they were using to accredit representation was not legible. They submit that on January 12, 2009, the community sought a writ of protection before the Civil and Commercial Appellate Court against the general director of FONTIERRAS for having required the community to act to replace the missing page. The writ of protection was rejected and in response to the community's appeal, on February 8, 2011, the Constitutional Court overturned the decision and ordered the authority in question to "request replacement of the corresponding page and pursue all actions, effects, remedies and obtain and propose suitable evidentiary measures until the court order to replace the registry page has been complied with."

14. The petitioners state that according to the Constitutional Court, although Agua Caliente has not received final title, it is understood that it will be identical in nature and content to the provisional title granted in 1985, which does not recognize the collective right of indigenous peoples to full control over the land and its natural resources. They state that the titling procedure is delayed and ineffective, as Agua Caliente began the procedures before INTA in 1974 and more than 35 years later it still has not received final title even though it has complied with all the requirements established by law, including full payment of a certain amount of the value of the land. They also add that the law's procedures and requirements do not meet the needs and capacities of indigenous communities because the administrative procedures must be carried out in Spanish in Guatemala City, not in the native tongue of the indigenous communities or in the place where they live.

15. They state that the rule of prior exhaustion of domestic remedies does not apply to Agua Caliente's right to collective control of its natural resources and the right to self-determination and self-governance because there is no legal proceeding under domestic law for establishing these collective rights for indigenous peoples. Finally, they allege discriminatory treatment at the hands of FONTIERRAS, as in 2006, another community called "Agua Caliente Sexan" asked that agency to replace pages missing from the General Property Registry so title to their lands could be issued. In that case, FONTIERRAS acted without delay and was able to replace the pages without requiring the community to take any action.

Granting of mining license

16. The petitioners indicate that on December 13, 2004, the Ministry of Energy and Mining granted a three-year exploration license to mining company EXMIBAL to explore for a variety of minerals on land belonging to 16 Q'eqchi' Mayan communities—including Agua Caliente—for a project called "Phoenix." The petitioners allege that the license was granted illegally, without prior consultation and without the consent of the communities affected. Because of this lack of recognition and lack of transparency in the public participation process (among other reasons) the Q'eqchi' communities met in a community assembly and decided to oppose the Phoenix project.

17. They state that in 2005, EXMIBAL transferred the rights of the license to the Compañía Guatemalteca de Níquel (CGN), and at the beginning of 2006, the CGN filed an environmental impact study on the Phoenix project with the Ministry of the Environment and Natural Resources (MARN). The petitioners state that according to the Regulations on Environmental Evaluation, Oversight, and Monitoring, the ministry must inform potentially affected communities of the study by publishing it in a newspaper so they can make comments or oppose it should they decide to.

18. They state that the MARN resolution approving the environmental impact study did not mention any of the comments submitted by the Q'eqchi' indigenous communities and organizations opposing the project even though they were filed on time and in the proper format. They added that they submitted two reports signed by the representatives of more than nine Q'eqchi' Mayan communities and by the Office of the Q'eqchi' Ombudsman rejecting the project based on its environmental effects on the forests and water resources, especially Lake Izabal, a water source on which the communities depend for their livelihood. They allege that this omission constitutes an act of discrimination that violates the right to participation and consultation of all the affected communities. They maintain that the study was not made available in the

Q'eqchi' language despite the fact that the majority of the communities do not speak Spanish, and that the newspaper that published it does not circulate in the area where the communities reside.

19. The petitioners state that on January 13, 2006, environmental and indigenous organizations filed a writ of protection against the MARN before the Civil and Commercial Appellate Court questioning the study and highlighting the lack of prior consultation and the fact that information about the study was neither circulated in the area of the affected communities nor made available in the indigenous language. On April 17, 2006, the MARN granted the CGN an exploitation license for a term of 25 years under which the company holding it is required to begin work to exploit the deposit within 12 months. They indicate that on November 27, 2006, the presiding Civil and Mercantile Appellate Court of the Constitutional Court of Protection granted the writ of protection requested and ordered the ministry to resolve the lack of participation of the communities affected in a revised environmental impact study.

20. In sum, the petitioners allege that Guatemala violated their rights to collective control of the lands and natural resources and the indigenous peoples' rights to self-determination and self-governance in relation to the obligation to respect rights and the duty to adopt provisions and domestic law due to the lack of a law recognizing those rights, enshrined in Article 8, 21, and 25, in conjunction with Articles 1(1) and 2 of the Convention. They allege that existing laws have failed to recognize these rights and omitted the participation of indigenous peoples from processes and procedures regulating the adjudication of their lands, mineral exploitation on their territories, and approval of environmental and social impact studies for mining projects presented by proponents of mining projects.

B. Position of the State

Land titling procedure

21. The State alleges that the INTA, through Agreement 11-85 of February 25, 1985, ruled *pro indiviso* as Collective Agrarian Property in favor of the 64 peasants comprising the Agua Caliente Lot 9 community, a plot registered with the General Property Registry under number 1381 of page 96, book 21 North Group, for a price of 32,490.35 quetzales.

22. According to the document provided by the State, the Family Collective Agrarian Property adjudication proceedings were concluded in favor of the 64 members of the community, and the next step was to grant the public adjudication instrument to them. However, the book with the page registering the real property rights to the farm, page 96, was not found. It indicates that on July 17, 1998, the Registry filed the complaint received by the staff of the Registry Reform stating that when physically reviewing the books, it found pages missing, including from Book 21 of the North Group.

23. According to the documentation provided by the State, on August 5, 2011, FONTIERRAS appeared before the Eighth Civil Trial Court to begin "Voluntary Steps to Replace Pages and Entries Registering Real Property Rights," and on May 16, 2012, the court ruled in its favor and authorize the General Property Registrar of the Central Zone to proceed to replace registries 1, 5, and 6 of page 96. According to the final entry, the plot was registered as belonging to the State. The State indicates that on June 22, 2012, the Registry suspended the registration because it was not certain that entries 2, 3, and 4 of the page were replaced, and therefore, the successive tract could not be proven.

24. It indicates that on April 24, 2013, the Registry ordered the investigations to obtain the successive tract of the registry entry of the plot be exhausted. They went to the Directorate of State Property in the Department of Public Finances to obtain a photocopy of the entry from the year 1953. Research was also performed in the Property Registry Archive and the General Archive of Central America, confirming that neither place had documentation on the plot. The State concludes that FONTIERRAS acted effectively in its attempts to replace the page and entry of the original registration of ownership of real property rights over the plot.

25. The State argues that the individual and collective rights of indigenous peoples and communities are constitutionally guaranteed, and that measures of judicial protection are in place to protect

their economic, social, cultural, and environmental interests. However, it adds that there is still no legislation specifically protecting community land or the land of indigenous communities with title and recognition of ancestral possession. The regularization process thus ensures the existence, value, use, and enjoyment of their real property until it is delimited, demarcated, and titled.

26. The State notes that on March 31, 1995, it signed the Agreement on Identity and the Rights of Indigenous Peoples, and in 1996 it ratified ILO Convention 169. Also, it notes that the Political Constitution recognizes in Chapter II, Section 3 the rights of indigenous communities. It also indicates that the Land Fund Act regulates the practical matters of access to land for the comprehensive and sustainable development of indigenous peoples, the regularization of the process is to adjudicate State lands, the development of sustainable agrarian communities, and the strengthening of institutions to meet the aspirations of society and comply with the law.

27. With regard to the requirements of exhaustion of domestic remedies, the State notes that the petitioners did not launch a special sentence execution proceeding under its obligation to act—that is, it did not take legal action to comply with the order issued by a competent authority to replace the missing page. It alleges that given FONTIERRAS' failure to register their property, the petitioners have the legal authority to take action before the country's jurisdictional bodies to press their claim and establish the corresponding responsibility for the alleged violation of the community's rights. It also adds that they could bring a civil suit for reparation of damages through the ordinary courts, as provided for in Article 96 of the Civil and Mercantile Procedural Code, which would seek to establish whether damages took place and, if so, establish the corresponding compensation.

Granting of mining license

28. The State indicates that on November 3, 2005, the announcement was published in Spanish and q'eqch' indicating that the complete case file on the environmental impact study of the CGN mining project was in the MARN's offices and the offices of the Izabal departmental offices, and that it would be available to those interested in making observations, comments, and expressing opposition from November 4 to December 1, 2005. It adds that the organizations Fundación Defensores de la Naturaleza, FUNDAECO, Asociación Estoreña para el Desarrollo Integral, and Asociación Amigos del Lago, provided their opinions, which were taken into account in the resolution that approved the study. It indicates that in 2007, a study was submitted to "Update and Expand the Nickel Processing Plant of the Phoenix Mining Project, El Estor, Izabal," which was approved via resolution N° 1311_2007/ECM/LP.

29. With regard to prior consultation, the State maintains that Articles 15 of the Mining Act and 33 of the Regulations on Environmental Evaluation, Oversight, and Monitoring require the environmental impact study be made public prior to granting the exploitation license, and this was done. It indicates that "although this is not the ideal consultation mechanism, according to the [ILO] Convention it does constitute a mechanism for providing prior information so anyone can oppose it should they feel it necessary." The State argues that the CGN complied with the requirements to grant the license.

30. The State maintains that although the community's right to oppose the project expired, they have other mechanisms available such as constitutional *amparo* appeals and summary stay of dangerous works through a civil proceeding if they believe there is some threat to collective or common rights. It also indicates that domestic mechanisms are available for raising opposition should residents be unhappy with the launching of business enterprises in rural areas. It notes that the Mining Act regulates procedures for raising opposition before the General Mining Directorate, which include filing environmental impact studies and technical reports with the MARN and holding a hearing.

31. Regarding the failure to publish the environmental impact study, the State indicates that the petitioners can file a complaint alleging disobedience of a public official over the failure to comply with the order to take the community's participation into account, in keeping with Articles 50 through 54, 78, and 185 of the Amparo, Habeas Corpus, and Constitutionality Act.

32. It concludes that the State is the only one that can dispose of its properties and has the authority to grant mining licenses. It can therefore decide, pursuant to the laws regulating the subject, to grant mining concessions, considering that those holding the licenses do not own the properties in question.

33. In conclusion, the State contends that, based on the lack of exhaustion of domestic remedies, the petition is inadmissible and asks the IACHR to declare as much.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

34. The petitioners are in principle empowered by Articles 44 of the American Convention and 23 of the Rules of Procedure to submit petitions before the Commission. The petition indicates an alleged violation of the rights enshrined in the American Convention to the detriment of individual persons whose rights the State of Guatemala committed to respecting and guaranteeing on May 25, 1978, the date on which it deposited its ratification instrument. As a consequence, the Commission has *ratione personae* jurisdiction to examine the petition. Likewise, the Commission has *ratione loci* competence to hear the petition insofar as the petition alleges violations of rights that would have taken place within the territory of Guatemala.

35. The Commission has *ratione temporis* competence, as the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State on the date on which the facts alleged in the petition would have taken place. Finally, the Commission has *ratione materiae* competence due to the fact that the petition refers to alleged violations of human rights protected under the aforementioned instrument.

B. Admissibility requirements

1. Exhaustion of remedies under domestic law

36. Articles 46(1)(a) of the American Convention and 31(1) of the Rules of Procedure require the prior exhaustion of the remedies available in domestic jurisdiction—in keeping with the generally recognized principles of international law—as a requirement for the admission of the claims presented in the petition. The purpose of this requirement is to allow domestic authorities to hear cases of alleged violations of protected rights and, where appropriate, to resolve the situation before it is brought before an international authority. For their part, Articles 46(2) of the Convention and 31(2) of the Rules of Procedure stipulate that the requirement to exhaust domestic remedies is not applicable when i) 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; ii) 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 iii) there has been an unjustified delay in the ruling on the aforementioned remedies.

37. Regarding the land titling process, the petitioners allege that there is no legal process to establish the collective rights of indigenous peoples. The State maintains that it provides measures of judicial protection to safeguard the economic, social, cultural, and environmental interests of indigenous communities, but there is still no legislation specifically protecting the land of indigenous communities. The regularization process thus ensures the existence, value, use, and enjoyment of their land until it is delimited, demarcated, and titled. It also argues that the community did not launch a special sentence execution proceeding to replace the missing page nor did it file a civil suit for damages.

38. The Commission recalls that the procedures to title indigenous or tribal communal lands must be effective and must allow the affected communities to bring them, not solely private individuals.² In that sense, the mere possibility of recognizing rights through certain judicial processes cannot replace the actual

² IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, OEA/Ser.L/V/II.Doc. 56/09, December 30, 2009, para. 365.

recognition of those rights.³ It also observes that in this case, the petitioners pursued a number of judicial actions to replace the missing pages, with no results. The Commission therefore concludes that in this case, an exception applies to the requirement of exhausting internal remedies established in Article 46(2)(a) of the American Convention and 31(2)(a) of the Rules of Procedure as regards the titling process for the land of the Agua Caliente Community.

39. As far as the granting of the mining license and the environmental impact study, the petitioners hold that on January 13, 2006, environmental and indigenous organizations filed for a writ of *amparo* against MARN before the Civil and Commercial Appellate Court questioning the study and highlighting the lack of prior consultation and the fact that information on the study was neither circulated in the area of the affected communities nor made available in the indigenous language. On November 27, 2006, the presiding Civil and Mercantile Appellate Court of the Constitutional Court of Protection granted the writ of protection requested and ordered the ministry to resolve the lack of participation of the communities affected in a revised environmental impact study.

40. The State maintains that although the community's right to oppose the project expired, they have other mechanisms available such as constitutional *amparo* appeals and summary stay of dangerous works through a civil proceeding if they believe there is some threat to collective or common rights. The State also points to the existence of procedures for raising opposition before the General Mining Directorate, provided for in the Mining Law. Regarding the failure to publish the environmental impact study, the State indicates that the community can file a complaint alleging disobedience of a public official over the failure to comply with the order to take the community's participation into account.

41. The Commission has indicated with regard to prior consultation that the condition of timeliness means the information must be provided sufficiently in advance of any authorization or beginning of negotiations, taking into account the consultation process and the time required for indigenous communities in question to make decisions. In this regard, it has also been established that access to relevant information is necessary for accessing judicial remedies, as the lack of information on corporate operations can make it very difficult for affected people or communities to collect the evidence necessary to pursue legal actions. Thus, a lack of access to or failure to disclose information can harm the right to effective judicial protection.⁴

42. Based on the documentation provided by the petitioners, the Commission observes that on December 2, 2005, almost one month after the publication of the study, Gerardo Tzalam Caal filed a complaint with MARN alleging that he had not been aware of the existence of the study because the newspaper in which it was published does not circulate in his community. When he failed to receive a response, on January 17, 2006, he filed for a writ of *amparo* against the general director of MARN. It was granted on November 27, 2006, and MARN general director was ordered to notify the November 5, 2006, resolution to not admit the petition filed on December 2, 2005, for being filed extemporaneously. Therefore, according to the information available, the merits of the claim filed by Mr. Tzalam Caal less than one month after the publication of the study were never examined.

43. Regarding the State's argument that a challenge procedure was enshrined in the Mining Law, the Commission finds that it has not resulted in a remedy that is accessible to the community given that it must be submitted within 30 days and, according to the petitioners, the community did not immediately have access to it.

44. Taking this into account, the Commission therefore concludes that in this case, an exception applies to the requirement of exhausting internal remedies established in Article 46(2)(b) of the American Convention and 31(2)(b) of the Rules of Procedure.

³ IACHR, Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System, OEA/Ser.L/V/II.Doc. 56/09, December 30, 2009, para. 85.

⁴ IACHR, Indigenous Peoples, Afro-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities OEA/Ser.L/V/II.Doc. 47/15, December 31, 2015, paras. 108 and 115.

45. The invocation of exceptions to the rule of exhaustion of domestic remedies set forth in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights set forth in the Convention, such as the guarantee of access to justice. However, Article 46(2), by its nature and purpose, is a provision whose content is autonomous *vis-a-vis* the substantive provisions of the Convention. Therefore, the determination of whether exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be carried out prior to and apart from the analysis on the merits of the matter, as it depends on a standard of examination that is different from the one used to determine a possible violation of Articles 8 and 25 of the Convention. It should be noted that the causes and affects preventing the exhaustion of domestic remedies will be analyzed in the report adopted by the Commission on the merits of the dispute in order to establish whether violations of the American Convention have taken place.

2. Deadline for submitting the petition

46. Articles 46(1)(b) of the American Convention and 32(1) of the Rules of Procedure establish that for a petition to be admissible by the Commission, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. In the claim under analysis, the IACHR has established that the exception to the exhaustion of domestic remedies applies, pursuant to Article 46(2)(a) and 46(2)(b) of the American Convention and 31(2)(a) and 31(2)(b) of the Rules of Procedure. In this regard, Article 46(2) of the Convention and 32(2) of the Rules of Procedure establish that in the cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

47. The petition before the IACHR was received on August 19, 2011, and the alleged facts material to the claim began on February 25, 1985, with the granting of a provisional title to members of the Agua Caliente Community. Those facts continued with the alleged compliance with requirements to receive official recognition of the right to ownership of the land on July 18, 2002, the effects of which extend to the present day. Therefore, in view of the context and the characteristics of this case, the Commission finds that the petition was presented within a reasonable period of time and that the admissibility requirement on the submission deadline is satisfied.

3. Duplication of international proceedings and international *res judicata*

48. The case file does not indicate that the issue addressed in the petition is pending before any other international proceeding, nor that it repeats a petition that has already been heard by this or any other international body. Accordingly, the grounds for inadmissibility established in Articles 46(1)(c) and 47(d) of the Convention and 33(1) and 33(1)(b) of the Rules of Procedure are not applicable.

4. Characterization of the facts alleged

49. For the purposes of admissibility, the Commission must decide if the facts alleged represent a violation of rights as stipulated in Articles 47(b) of the American Convention and 34(a) of the Rules of Procedure, or if the petition is “manifestly groundless” or “obviously out of order,” pursuant to Articles 47(c) of the American Convention and 34(b) of the Rules of Procedure. The criteria for analyzing admissibility differs from the criteria used to analyze the merits of the petition, as the Commission only performs a *prima facie* analysis to determine if petitioners establish that the violation of rights guaranteed by the American Convention on Human Rights is apparent or possible. This is a summary analysis that does not involve prejudging or issuing a preliminary opinion on the merits of the matter.

50. Likewise, the applicable legal instruments do not require the petitioner to identify the specific rights that the State is allegedly violating in the case submitted to the Commission, although the petitioners may do so. It falls to the Commission, on the basis of the system’s case law, to decide in its admissibility reports which provision of the relevant inter-American instruments is applicable and whose violation could be established if the allegations are proven on the basis of sufficient evidence.

51. In sum, the petitioners allege that Guatemala violated their rights to collective ownership of the lands and natural resources and the indigenous peoples' rights to free determination and self-governance in relation to the obligation to respect rights and the duty to adopt provisions and domestic law due to the lack of a law recognizing those rights. They also allege that existing laws have omitted the participation of indigenous peoples from processes and procedures regulating the adjudication of their lands, mineral exploitation on their territories, and approval of environmental and social impact studies filed by the proponents of the mining projects.

52. The State holds that the individual and collective rights of indigenous peoples are constitutionally guaranteed, and that measures of judicial protection are in place to protect their economic, social, cultural, and environmental interests. It maintains that although there is still no legislation specifically protecting the lands of indigenous communities, the regularization process ensures their use and enjoyment of it until it is delimited, demarcated, and titled. It also expresses that only the State can dispose of its goods and grant mining licenses.

53. In view of the elements of fact and law presented by the parties and the nature of the matter under consideration, the IACHR finds that should they be proven, the facts alleged by the petitioner could represent violations to the rights protected in Articles 3, 8, 21, 24, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof.

V. CONCLUSIONS

54. Based on the considerations of fact and law described herein and without prejudging the merits of the case, the Inter-American Commission concludes that this petition meets the admissibility requirements established in Articles 31 through 34 of the Rules of Procedure and 46 and 47 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible regarding Articles 3, 8, 21, 24, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 of the American Convention on Human Rights.
2. To notify the parties of this decision;
3. To continue with the analysis of the merits of this matter; and
4. To publish this ruling and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 18th day of the month of March, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President, Paulo Vannuchi and James L. Cavallaro, Commissioners.