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**REPORT No. 133/24**  
**PETITION 1366-13**  
ADMISSIBILITY REPORT

MAYAN Q'EQCHÍ COMMUNITIES OF CHICANCHIU CHIPAP,  
CHIOCX, CHISEK, CHITEM, SAMASTUM, SESEP, AND YUTBAL,  
GUATEMALA

Approved electronically by the Commission on September 3, 2024.

**Cite as:** IACHR, Report No. 133/24. Petition 1366-13. Admissibility. Mayan Q'eqchi Communities of Chicanchiu Chipap, Chiocx, Chisek, Chitem, Samastum, Sesepe, and Yutbal. Guatemala. September 3, 2024.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	National Coordinator of Widows of Guatemala
<b>Alleged victim:</b>	Mayan Q'eqchi Communities of Chicanchiu Chipap, Chioxc, Chisek, Chitem, Samastum, Sesep, and Yutbal
<b>Respondent State:</b>	Guatemala
<b>Rights invoked:</b>	Articles 8 (right to a fair trial), 21 (right to property), and 25 (right to judicial protection) of the American Convention on Human Rights <sup>1</sup>

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

<b>Filing of the petition:</b>	August 21, 2013
<b>Additional information received at the stage of initial review:</b>	August 26, 2013 and May 23, 2017
<b>Notification of the petition to the State:</b>	July 30, 2018
<b>State's first response:</b>	November 28, 2018
<b>Additional observations from the petitioner:</b>	March 9, 2023
<b>Notice of the possible archiving of the petition:</b>	February 9, 2023
<b>Petitioner's response to the notification regarding possible archiving of the petition:</b>	March 9, 2023

**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 instrument of ratification on May 25, 1978)

**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 (right to a fair trial), 13 (freedom of thought and expression) 21 (right to property), 23 (right to participate in government), 25 (right to judicial protection), and 26 (economic, social, cultural, and environmental rights) of the American Convention
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

<sup>1</sup> Hereinafter, the "American Convention" or "the Convention."

<sup>2</sup> The observations of each party were duly forwarded to the opposite party.

## V. FACTS ALLEGED

### Allegations made by the petitioner

#### The petitioning party

1. The petitioner disputes that the State authorized the construction of a hydroelectric plant that affects the territory where the alleged victims reside without having consulted them beforehand. It claims that, although the Constitutional Court issued a judgment in its favor, it has not yet been complied with.

2. The alleged victims are indigenous communities belonging to the Maya Q'eqchi' people, located on the banks of the Lanquín River, in the municipality of San Agustín Lanquín, in the department of Alta Verapaz. These people depend on small-scale agriculture and fishing for their subsistence; for this reason, they are said to have customary rights to use and access the river's waters.

3. In 2008, the private company Corrientes del Río S.A. initiated the first steps to implement the "Entre Ríos" hydroelectric project, which foresees the construction of an 8.25 MW hydroelectric power plant on the confluence of the Lanquín and Chianay rivers. For this purpose, the project requires the construction of a seven-meter-high diversion dam on these rivers to generate the necessary pressure for the production of electric power by means of turbines.

4. On December 10, 2008, the legal representative of Corrientes del Río S.A. requested approval of the environmental impact assessment study for the aforementioned project and, days later, on January 28, 2009, the Ministry of the Environment and Natural Resources authorized it without any consultation procedure with the affected communities. Likewise, on October 21, 2009, the aforementioned company requested the use of public property in the process of installing the hydroelectric plant, specifically the use of the flows of the Lanquín and Chianay rivers. On March 26, 2010, the Energy Development Department of the General Directorate of Energy determined that the request complied with all the requirements of the internal regulations. On this basis, on August 4, 2010, the Ministry of Energy and Mines issued Ministerial Agreement No. 146-2010 approving the use of public property by Corrientes del Río S.A.. The petitioner alleges that none of these decisions were consulted with the alleged victims.

5. The alleged victims learned about the project indirectly in August 2010, when workers from Corrientes del Río S.A. placed stakes with red flags on their land. Subsequently these people also built a fence of approximately 40 m<sup>2</sup> without asking permission from the communities, denying them access to the Lanquín River.

6. Faced with this situation, on October 1, 2010, the Community Development Councils of Chicanchiú Chipap, Chiocx, Chisek, Chitem, Samastum Sesep and Yutbal filed an amparo action against the Ministry of Energy and Mines, arguing that the right to prior consultation was not respected when issuing the aforementioned agreement. They claimed that the hydroelectric project would affect their communities due to the loss of river flow, endangering unique species of flora and fauna in the area, and limiting their freedom of movement due to the appropriation of community land.

7. However, on September 26, 2011, the Supreme Court of Justice declared the lawsuit inadmissible, stating that the actions of the Ministry of Energy and Mines did not violate the right to consultation, since they acted in accordance with internal regulations. In this regard, the court emphasized that "*the procedure for consultation [...] is regulated in the Regulations of the General Electricity Law, which indicates that [the aforementioned ministry] is the authority in charge of publishing in the Diario de Centro América and in another of greater circulation, the request for authorization of the entity Corrientes del Río, Sociedad Anónima, for the installation of the so-called Entre Ríos hydroelectric plant*".

8. The alleged victims appealed this decision, and on February 5, 2013 the Constitutional Court declared the appeal partially founded. However, this instance did not order the suspension of the project, but only ordered that "*the Ministry of Energy and Mines formally receive the result of the consultation made to the applicant communities and verify its content, [in order to analyze] the possibility of reaching agreements with the applicant communities, in relation to the protection of the flora and fauna of the area where the project will be developed, specifying the potential risks and impacts and the compensatory effects to which the company Corrientes del Río, Sociedad Anónima, is obligated for the possible damages that could be caused to the applicant communities during the construction of the Entre Ríos hydroelectric power plant*". This decision was notified to the plaintiffs on February 21, 2013.

9. The petitioner points out that, despite the issuance of the aforementioned constitutional ruling, to date the authorities have not carried out any consultation with the communities nor have they proceeded to review the authorization of the hydroelectric project. These omissions would keep the alleged victims in a situation of defenselessness.

10. In sum, the petitioner alleges that, from the beginning of the "Entre Ríos" project, the authorities did not consult the communities regarding any of the decisions that authorized it; that the design of this project did not take into consideration the social, environmental and legal impact on the alleged victims; that these omissions are the result of the lack of a legal and institutional framework to respect and guarantee the right to prior consultation of the indigenous peoples; that the ruling of the Constitutional Court has not been complied with by the authorities; and that, in short, this ruling does not order what is essential, which is to obtain the consent of the affected communities.

### **The Guatemalan State**

11. For its part, Guatemala argues that the petition is inadmissible for failure to exhaust domestic remedies, because in its opinion the communities submitted the petition to the IACHR before the authorities had sufficient time to comply with the decision issued by the Constitutional Court on February 5, 2013. Also, that the alleged victims did not use the administrative litigation channel, which was the ordinary mechanism to challenge the validity of Ministerial Agreement No. 146-2010, which authorized the company Corrientes del Río S.A. to use public property. Therefore, it considers that the case does not comply with the requirement of exhaustion of domestic remedies established in the American Convention.

12. It alleges that in the event that the IACHR declares that the alleged victims have exhausted domestic jurisdiction, the petition is also inadmissible because it was filed out of time, since the petitioner sent its brief on August 21, 2013, 183 days after the notification of the judgment of the Constitutional Court. It argues that, although there is no provision in the inter-American system that defines the number of days that a month covers, the usual rule is to consider that this time frame is equivalent to thirty days; and, therefore, the six-month period provided for in Article 46(1)(b) of the Convention is 180 days. Based on this, Guatemala considers that this petition was filed three days after the time limit provided for in the aforementioned article.

13. Finally, it asserts that the facts alleged do not characterize a human rights violation attributable to it. It argues that the petitioner seeks to have the IACHR act as a fourth judicial instance, reviewing the decisions of the national courts that acted within its competence. In this regard, it explains that the Legislative, Judicial and Executive bodies are working to regulate the application of the consultation process provided for in ILO Convention 169 and to comply with the orders of the Constitutional Court. It also informs that the hydroelectric project "Entre Ríos" is currently suspended and it is not known if it will be continued or definitively abandoned by the promoter company.

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

14. The Commission notes that the main purpose of the petition is to challenge both the lack of prior consultation and the repercussions of the first stages of construction of the hydroelectric project on the territory and resources of the alleged victims. To this end, the petitioner argues that it exhausted domestic remedies with the ruling of the Constitutional Court. However, the State argues that domestic jurisdiction has not been exhausted, since: i) the petition was filed before the authorities could comply with the judgment of the Constitutional Court; and ii) the contentious administrative remedies were not used to assert the right to prior consultation and to challenge the validity of Ministerial Agreement No. 146-2010.

15. Regarding the State's questioning of the fact that the presentation of the petition was formalized before domestic remedies could be considered exhausted, the IACHR reiterates its constant position, according to which the situation that must be considered to determine whether domestic remedies have been exhausted is the one that exists at the time of deciding on admissibility<sup>4</sup>. This criterion gives the authorities the opportunity to resolve the situation denounced in the domestic sphere. In this sense, more than 11 years after the judgment was issued, the State has not presented updated information regarding whether the consultation ordered by the Constitutional Court has actually been carried out.

16. In relation to the second question presented by Guatemala, the Commission recalls that the requirement of exhaustion of domestic remedies does not imply that the alleged victims have the obligation to exhaust all possible remedies available to them. In this regard, the IACHR has held that if the alleged victim raised the issue through any of the valid and adequate alternatives under the domestic legal system and the State had the opportunity to remedy the issue in its jurisdiction, the purpose of the international standard is fulfilled<sup>5</sup>. In the present case, the Commission observes that the judicial instances that heard the amparo petition affirmed their competence to analyze the controversy raised and declared that the requirements for the proceeding were met, providing a legal solution to the issue raised. On this basis, the Commission concludes that the alleged victims used the appropriate remedies and, therefore, exhausted domestic jurisdiction with the judgment of the Constitutional Court of February 5, 2013. Based on the foregoing, the petition meets the requirement established in Article 46(1)(a) of the Convention.

17. Finally, regarding the time period for filing the petition, the Commission notes that the Constitutional Court notified its decision on February 21, 2013, and that the petitioner filed this petition on August 21, 2013. Although the State argues that this is untimely because it was filed 183 days after the notification of the referred judgment, the constant and historical interpretation of the IACHR on the requirement provided in Article 46(1)(b) of the Convention has been to understand that this establishes a term of six months, regardless of the number of days each one has. Based on this, the Commission concludes that this claim also complies with the stipulations of said provision.

## VII. ANALYSIS OF COLORABLE CLAIM

18. First, the Commission reiterates that the standard of evaluation at the admissibility stage differs from that used to rule on the merits of a petition; the IACHR must make a *prima facie* evaluation at this stage to determine whether the petition establishes the basis for a violation, possible or potential, of a right guaranteed by the Convention, but not to define the existence of a violation of rights. This determination on the characterization of violations of the American Convention constitutes a primary analysis, which does not imply prejudging the merits of the case. For purposes of admissibility, the Commission must decide whether the alleged facts can be characterized as a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order" under Article 47(c) of the American Convention.

19. For purposes of analyzing the current dispute, the IACHR emphasizes that the obligation to conduct prior, free, and informed consultation derives from the American Convention itself, in a combined reading of the rights established in Articles 13, 21, and 23 thereof.<sup>3</sup> In addition, the Commission has indicated that in the case of activities carried out by the State, or under its authorization – through, for example, bid solicitation, assignments, or sale – that would have a significant impact on the use and enjoyment of this right, it is necessary for the State to ensure that the affected peoples have information on the activities that would affect them, that they have the ability to participate in the various process for making the respective decisions and, additionally, should have access to protection and judicial guarantees in cases where they feel that their rights are not being respected.<sup>4</sup> In addition, the Commission recalls that the obligation to conduct consultation cannot be likened to the standard procedure of notification nor understood as a one-off action, but rather it must be an ongoing process of information that makes it possible to resolve situations of disadvantage and imbalance of power (see *supra* para. 93).<sup>5</sup>

20. Based on information in the file, the Commission believes that there should be more in-depth analysis in the merits phase as to whether the State complied with the referenced parameters when the initial permits were granted for implementation of the “Entre Ríos” hydroelectric project. In addition, although the Constitutional Court partially agreed with the alleged victims and ordered the conduct of a consultation process, there is dispute regarding whether that judicial mandate complies with the standards of the inter-American system and whether the measures ordered have been implemented to date.

21. In view of these considerations, and after examining the factual and legal evidence presented by the parties, the Commission believes that the allegations of the petitioner are not manifestly groundless and require an in-depth study, as the facts alleged, should they be corroborated, could characterize violations of Articles 8 (right to a fair trial), 13 (freedom of thought and expression), 21 (right to property), 23 (right to participate in government), 25 (right to judicial protection), and 26 (economic, social, cultural, and environmental rights) of the American Convention, to the detriment of the communities indicated as the alleged victims in this report.

## VIII. DECISION

1. To declare this petition admissible with regard to Articles 8, 13, 21, 23, 25, and 26 of the American Convention.

2. To notify the parties of this decision; continue with analysis of the merits of the question; and 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 3<sup>rd</sup> day of the month of September, 2024. (Signed:) Roberta Clarke, President; Arif Bulkan, Andrea Pochak, and Gloria Monique de Mees, Commissioners.

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<sup>3</sup> I/A Court HR, Case of the Garífuna Community of San Juan and its members v. Honduras. Preliminary objections, Merits, Reparations, and Costs. Judgment of August 29, 2023, Series C No. 496, paras. 119-126.

<sup>4</sup> IACHR, Claim before the Inter-American Court of Human Rights in the case of the Kichwa Indigenous People of Sarayaku and their members against the State of Ecuador, Case 12.465. April 26, 2010, para. 121.

<sup>5</sup> U.N., Human Rights Council. Report of the Special Rapporteur on the Rights of Indigenous Peoples, Rights of Indigenous Peoples, 45<sup>th</sup> session, A/HRC/45/34, June 18, 2020, para. 50; and A/HRC/24/41, para. 67.