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REPORT No. 33/20
PETITION 1458-11
REPORT ON ADMISSIBILITY

TRAVESÍA GARÍFUNA COMMUNITY
HONDURAS

Approved by the Commission electronically on February 25, 2020.

Cite as: IACHR, Report No. 33/20, Petition 1458-11. Admissibility. Travesía Garífuna Community. Honduras. February 25, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Organización Fraternal Negra Hondureña (Honduran Black Fraternal Organization) (hereinafter "OFRANEH")
Alleged victim:	Travesía Garífuna Community
Respondent State:	Honduras
Rights invoked:	Article 21 of the American Convention on Human Rights ¹ and other international treaties ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	October 26, 2011
Additional information received at the stage of initial review:	March 22 and November 20 and 28, 2012, August 22, 2013, February 5, 2014
Notification of the petition to the State:	June 26, 2017
State's first response:	December 21, 2017

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 (deposit of instrument of ratification made 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 <i>res judicata</i>:	No
Rights declared admissible	Articles 8 (right to a fair trial), 21 (right to property), 22 (Freedom of movement and residence) and 25 (right to judicial protection) of the American Convention, in relation to Articles 1.1 and 2 of the said treaty
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

V. FACTS ALLEGED

1. This petition denounces the international responsibility of the State of Honduras as a result of the failure of the National Agrarian Institute (hereinafter "INA") to recognize the ancestral territory of the Travesía Garífuna community in the context of the definitive title of ownership granted to the same community in 1997; the failure to recognize Barrio el Esfuerzo as part of the ancestral Garífuna territory; and the construction of rust piles on its territory by the municipality of Puerto Cortés, in violation of its right to collective property and prior consultation.

2. The petitioner argues that the Garífunas have inhabited the area known as "Travesía" since 1840, and definitively since 1887, almost a century after the arrival of the community of the island of Roatan. It claims that in 1912 the State of Honduras granted title #92, by which it recognized "Travesía" as 'communal' inalienable (*ejidal*) lands.

¹ Hereinafter "the American Convention" or "the Convention".

² Articles 1, 2, 6 and 14 of Convention 169 of the International Labor Organization.

³ The observations submitted by each party were duly transmitted to the opposing party.

3. The petitioner explains that as a state entity in charge of granting title to land in rural areas, the INA subsequently issued public title deeds #134 and #157 in 1966; and in 1967, public title deed #201, wherein it granted a variety of 'communal' inalienable lands in favor of the Puerto Cortés municipality, including lands recognized in the 1912 ejido title #92 to the Garífuna community. The petitioner describes how in 1997, the INA granted a "definitive property title" to this community in a place that has never been inhabited by community members and that does not coincide with the title granted in 1912 or with the lands located on a coastal range between the Alvarado Lagoon and the Caribbean Sea where the Travesía community has lived for more than a century, ignoring the link with the sea and rivers as an essential part of the Garífuna people's worldview. In this sense, the petitioner adds that 263.91 hectares of land granted to the Travesía community as a result of this last title deed is mostly a wetland located in a part of its functional habitat that does not offer minimum conditions for housing construction.

4. The petitioner argues that the INA has legally dispossessed the Garífuna lands because the Travesía Garífuna community did not fully and effectively participate in the land demarcation process and did not take into consideration the boundaries of the ancestral title, leaving the community unprotected against the handing over of Travesía beaches and Garífuna lands to tourism projects and foreigners by the municipality of Puerto Cortés. In particular, the petitioner points out that, although the members of the Travesía Garífuna community rejected the title when it was granted, INA staff merely stated that, if they did not receive the title, the community would be left without any.⁴ In this regard, the petitioner indicates that the aforementioned situation is part of a practice of systematic dispossession. In addition, the inclusion of the ancestral territories of most of the Garífuna communities in Honduras within the urban radius of the municipalities is part of a strategy promoted by the INA since the promulgation of the Municipalities Act in 1991, which has served to strengthen the municipalities to the detriment of the country's indigenous and black peoples. The petitioner argues that to date the State has failed to take measures to resolve, "the usurpation committed through the title granted by the National Agrarian Institute."

5. Likewise, the petitioner also indicates that, according to the certificates issued, the municipality of Puerto Cortés is unaware of the existence of el Esfuerzo Neighborhood as a part of the ancestral territory of the Travesía community, which it calls Barrio Buenos Aires, and considers it as belonging to the urban area of the municipality.⁵ The petitioner argues that a complaint was filed with the Puerto Cortés Municipal Department of Justice indicating "the existence of trespassers" who have been engaged in the illegal sale of land in Barrio El Esfuerzo, in which the Department of Land Use and Planning of the Municipality of Cortés has been involved. In this regard, the petitioner argues that the municipality denies the Garífuna community's right to collective property as part of a strategy to disregard the ownership of the inhabitants of El Esfuerzo and grant the land in favor of third parties who it says have engaged in illegal sales of these lands. The petitioner adds that recently this authority has accelerated the granting of property titles in the El Esfuerzo neighborhood.

6. The petitioner denounces the construction of rust piles by the municipality of Puerto Cortés, with the financing of the Inter-American Development Bank (hereinafter, "IDB") in an area bordering the Laguna de Alvarado, occupied by the El Esfuerzo. The petitioner alleges that the municipality of Puerto Cortés began planning the construction of the oxidation piles of the Port in 2000 and began construction in 2004, without prior, free and informed consultation. The petitioner indicates that since the beginning of the planning stage, the inhabitants of el Esfuerzo Neighborhood and the entire Travesía community expressed their rejection of these plans on multiple occasions. The petitioner states that on December 25, 2004, an complaint was filed with the Special Prosecutor for Ethnic Groups, against the mayor of Puerto Cortés, for abuse of authority in connection with the destruction of the area surrounding Laguna de Alvarado and the

⁴ In this regard, it argues that this argument together with the promise of future sanitation has been used by the INA to ensure that the communities "accept" the titles issued.

⁵ The petitioner maintains that the failure to recognize the El Esfuerzo neighbourhood as part of the ancestral territory was facilitated by the "legalization of the settlement named El Esfuerzo" and the adoption of a "list of beneficiaries of the area occupied by the settlement named El Esfuerzo" by the Municipal Corporation of Puerto Cortés on November 23, 2010.

imminent eviction of more than 80 families located in that area.⁶ In this regard, the petitioner maintains that the Office of the Attorney General for Ethnic Affairs has requested a report from the Office of the Attorney General for the Environment on several occasions, but it was not until April 2011 that the Office of the Attorney General for the Environment took up the initiative of inspecting the area as requested by the Office of the Attorney General for Ethnic Affairs. The petitioner also refers to a complaint filed with the municipality regarding the right of the Garífuna to prior consultation. The petitioner points out that, in response to the serious crisis facing the State in the application of justice, which places the indigenous peoples in a situation of vulnerability, more than 100 complaints have been lodged with the Office of the Ethnic Affairs Procurator concerning the Garífuna communities, which have not been resolved "in the belief that the Office of the Procurator is inoperative".

7. The petitioner indicates that there is still no report from the competent authorities on the consequences of the oxidations piles and alleges that, on the contrary, the municipality intends to implement a Land Management Plan based on the expansion of the Puerto Cortés' urban radius. This plan challenges the presence of the Garífuna community, on the grounds of Certificate 202, based on the public title deeds granted by the INA to the municipality of Puerto Cortés in 1966 and 67. The petitioner adds that as a result of these violations, the Travesía Garífuna community has suffered the environmental impact of its functional habitat and, despite the opposition and demonstrations, the usurpation of its territory by other settlements.

8. The State, for its part, argues that it has carried out activities aimed at complying with international obligations regarding the rights of indigenous and Afro-Honduran peoples over their ancestral lands. In this regard, it maintains that there has been no improper titling or usurpation of land against the Travesía Garífuna community located in the municipality of Puerto Cortés in the title issued in favor of the municipality of Puerto Cortés in 1912. It argues that, according to information provided by the National Agrarian Institute, there is an area titled in favor of the Travesía Garífuna community in addition to the area recognized and delimited as part of the community and other Garífuna communities in the Department of Cortés. It argues that the INA has observed due process guarantees prior to issuing the title deed in relation to the Travesía Garífuna community, under the concept of functional habitat established in the International Labor Organization Convention 169.

9. The State indicates that the INA effectively extended the titles of full ownership to the above-mentioned Municipal Corporation, with the aim of expanding the urban radius of that municipality and considering that its development has been carried out on the basis of the ejidos granted in due course by the President of the Republic. It maintains that the possession of these lands by many members of the Garífuna community has been irregular, and argues that in this municipality many citizens not belonging to the Garífuna community live together which was demonstrated in a socio-economic survey of Garífuna and non-Garífuna inhabitants as a sample of the real situation of the occupation of the areas in question.

10. The State considers that in the present case the petitioner's claims also directly affect third parties, such as citizens who do not belong to the Garífuna community and who also live in the areas claimed by the petitioner. The legal situation of these persons must therefore be heard and taken into account in order to avoid violations of judicial guarantees or a conflict between persons in the Garífuna community and third parties in good faith who have obtained their land through purchase and sale transactions with members of the same Garífuna community. It argues that it has been willing to support the communities despite complications due to causes beyond its control. In this regard, it argues that since December 19, 2011 there has been an agreement specifying, among other things, that a commission of the Garífuna communities and the Municipal Corporation of Puerto Cortés would meet with the INA to begin the recognition of the Garífuna ancestral lands, as there is a commitment of the Municipal Corporation of Puerto Cortés not to grant legal titles within the Garífuna communities without a signed authorization by the president of the *Patronato*.

⁶ It alleges that more than 80 families of the El Esfuerzo neighborhood were relocated in 2004 to the Colony known as New Hope, leaving at 20 the number of families that have totally opposed the strategy of the municipality. It argues that the Special Prosecutor for Ethnic Groups at the time summoned Mr. Lara and subsequently continued with the investigation of his successor, Mayor Allan David Ramos.

11. On the other hand, in relation to the oxidation piles in the Port, it indicates that a conflict developed, leading to the filing of several complaints in relation to the construction of 15 oxidation piles and the eviction of 84 families. In this regard, it argues that these piles are part of the Puerto Cortés sanitary sewerage project located within the urban perimeter that INA authorized through agreement No. 202 granted to the Municipal Corporation in 1984 and that they have an environmental license from the Natural Resources and Environmental State offices to operate the plant, with the environmental mitigation measures.

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

12. With respect to the exhaustion of domestic remedies, the Commission notes that the facts denounced in the present case are related to the recognition and effective protection of the collective property rights of the Garífuna community of Travesía. In this sense, the Commission reiterates the need within international law in general, and in Inter-American law specifically, for special protection for indigenous peoples and communities of African descent so that they may exercise their rights fully and equitably with the rest of the population. In particular, with regard to indigenous peoples and Afro-descendant tribal peoples, it is essential that States provide in accordance with the provisions of ILO Convention No. 169 and the American Convention on Human Rights, effective protection that takes into account their specific characteristics, their economic and social features, as well as their situation of special vulnerability, their customary law, values, uses and customs.

13. In the present case, the Commission observes that the State has not alleged the non-exhaustion of domestic remedies in relation to the two disputes, nor has it indicated whether there are adequate and effective remedies whose exhaustion would have led to the timely attention of this situation being demanded. It also notes that the petitioner presents documentation on various summonses and documents on proceedings against members of the community for eviction or removal from inhabited land and claims that they have filed several complaints with the Office of the Ethnic Affairs Prosecutor. With regard to the construction of the oxidation piles, the petitioner points out the filing of a complaint with the Office of the Special Prosecutor for Ethnic Affairs against the mayor of Puerto Cortés for abuse of authority in the face of the destruction of the environment of Laguna de Alvarado and the imminent eviction of more than 80 families; the various requests for reports from the Office of the Special Prosecutor for the Environment to the Office of the Special Prosecutor for Ethnic Affairs; and complaints to the municipal corporation.

14. For purposes of admissibility, the IACHR notes that the State invokes an agreement in force between the Garífuna communities and the Municipal Corporation of Puerto Cortés since December 19, 2011, regarding the recognition of Garífuna ancestral lands. It explains that there is a commitment by the Municipal Corporation of Puerto Cortés not to grant legalization titles within the Garífuna communities without having the authorization of the community signed by the president of the board, and also, in relation to the oxidation piles in the Port, the State indicates that several complaints have been filed in relation to the construction of 15 oxidation piles and the eviction of 84 families, without providing further information on the status of these complaints.

15. In consideration of the foregoing, the IACHR understands that the alleged victims have been making representations to State authorities raising the central issues of this petition to protect their territory, but considers that they did not have adequate mechanisms to demand the requested territorial protection from the State. In this regard, the Inter-American Court of Human Rights (hereinafter "Court" or "Inter-American Court") has determined that "the protection of property, in the terms of Article 21 of the Convention (...) assigns to States the positive obligation to adopt special measures to guarantee to the members of indigenous and tribal peoples the full and equal exercise of the right to the territories they have traditionally used and occupied."⁷ In sum, the IACHR understands that Honduras has not made available to the alleged victims a remedy that would allow them to protect the right allegedly violated, which, in terms of

⁷ I/A Court H.R., Case of the Saramaka People. v. Suriname. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 91.

Article 46(2)(a) of the American Convention, constitutes one of the exceptions to the rule of exhaustion of domestic remedies.

16. With respect to the deadline for submission, the Commission notes that the petition was received on October 6, 2011 and that the facts of the claim have been ongoing since 1997, and the effects of the alleged denial of justice continue to date. Therefore, in view of the characteristics of the present case, the Commission considers that the petition was submitted within a reasonable period of time and that the admissibility requirement as to timeliness must be considered satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

17. In the present case, the Commission reiterates that the corresponding judicial instruments do not require the petitioners to identify the specific rights that have allegedly been violated by the State in an issue submitted to the Commission, although the petitioners are entitled to do so. It is for the Commission, based on the jurisprudence of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable and could be violated if the alleged facts are proven by sufficient elements.⁸

18. The Commission notes that the present petition includes allegations regarding the partial recognition, the dispossession of their ancestral territory as well as the alleged lack of participation in the demarcation process, the absence of effective remedies to achieve compliance with indigenous collective property obligations, and the alleged authorization for the construction of oxidation piles without prior consultation and the eviction of more than 80 families from the Garifuna community. In view of these considerations, and after examining the factual and legal elements presented by the parties, the Commission considers that the petitioner's allegations are not manifestly unfounded and require a study of the merits, since the facts alleged, if corroborated as true, could characterize violations of Articles 8 (judicial guarantees), 21 (right to property), 22 (right to movement and residence), and 25 (judicial protection) of the American Convention, in relation to Articles 1(1) and 2 of that treaty.

19. With respect to the petitioners' allegations on the violation of other international treaties, the IACHR lacks competence *ratione materiae* to consider violations of the rights contained in treaties beyond the Inter-American System, notwithstanding the fact that it may resort to the standards established in other treaties in order to interpret the provisions of the Convention under Article 29 thereof.⁹

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 21, 22 and 25 of the American Convention, in relation to Articles 1.1 and 2 of the said treaty; and

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 25th day of the month of February, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

⁸ IACHR, Report No.71/17, Petition 271-07. Admissibility. Jorge Luis de la Rosa Mejía and others. Colombia. June 29, 2017, para. 56.

⁹ IACHR, Report No. 26/17, Petition 1208-08. Admissibility. William Olaya Moreno and Family. Colombia. March 18, 2017, para. 9.