

**REPORT N° 39/07**  
PETITION 1118-03  
ADMISSIBILITY  
GARIFUNA COMMUNITY OF CAYOS COCHINOS AND ITS MEMBERS  
HONDURAS  
July 24, 2007

**I. SUMMARY**

1. On October 29, 2003, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received a petition lodged by the Honduran Black Fraternal Organization (*Organización Fraternal Negra Hondureña* or OFRANEH; hereinafter "the petitioner") alleging the responsibility of the State of Honduras (hereinafter "Honduras" or "the State") for violating, with respect to the Garifuna Community of Triunfo de la Cruz and its members (hereinafter "the Community" or "the alleged victim"), the Garifuna Community of Cayos Cochinos, and the Garifuna Community of Punta Piedra, Articles 8, 21, and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in connection with Article 1(1) of that same international instrument and with Articles 7, 14, 15, and 23 of International Labour Organization Convention 169 (hereinafter "ILO Convention 169").

2. On December 19, 2003, the IACHR decided to divide the petition in three, one for each Garifuna community, and assigned each a different number. The petition from the Garifuna Community of Cayos Cochinos was assigned number 1118-03, and notice of this was duly given to the petitioner and to the State.<sup>1</sup>

3. The petitioner claims that the rights enshrined in Articles 1, 8, 21, and 25 of the Convention were violated to the detriment of the Garifuna Community of Cayos Cochinos and its members. OFRANEH claims these violations arose when, with the stated aim of protecting the natural resources found on the cays and the maritime waters surrounding them, the Government of Honduras used legal provisions and public force to promote the establishment of environmental protection organizations. However, since these organizations' programs were not drawn up with any consideration toward those who have traditionally inhabited the cays, they have led to the displacement of members of the Garifuna communities, who need to secure their means of subsistence from the land of the cays (farming and gathering) and from the surrounding waters (fishing and collecting seafood). This has consequently endangered those communities' survival. The petitioner claims that the situation has worsened with the uncertainty that has arisen regarding the challenged title deeds to three plots of land in Cayos Cochinos, with the shortcomings in the investigations into one person's disappearance, with the shooting of another individual, and with the abandoning on the high seas of two people, all of whom were members of the cays' Garifuna communities.

4. In contrast, the State argues that the petition is not admissible because the proceedings for recognizing and handing over the title deeds to the property claimed by the Garifuna communities in Chachahuate, Eastend, and Bolaños Cays have been finalized, and because the criminal prosecution of the members of the Honduran Navy who shot at Mr. Jesús Flores has not yet reached its conclusion, meaning that the domestic remedies provided by law have not been exhausted. The State offers no arguments regarding the allegations that community members were

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<sup>1</sup> On March 14, 2006, the IACHR published its Report on Admissibility N° 29/06 regarding Petition 906-03 (Garifuna Community of Triunfo de la Cruz and its Members).

abandoned on the high seas, or regarding the disappearance of one community member, or regarding the repression at the hands of the armed forces that the Garifunas claim to have suffered. Neither does the State present any arguments regarding the danger to these communities' survival.

5. Without prejudging the merits of the case, in this report the Commission concludes that the case is admissible pursuant to Articles 46 and 47 of the American Convention. The Commission therefore decides to notify the parties of this decision and to continue with its analysis of the merits as regards the alleged violation of Articles 8(1), 21 and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof, against the Garifuna Community of Cayos Cochinos and its members. Finally, the Commission resolves to publish this report in its Annual Report to the OAS General Assembly and to notify the parties.

## **II. PROCESSING BY THE COMMISSION**

### **A. General processing**

6. The Commission received the petition on October 29, 2003, and registered it as No. 1118/03. On January 30, 2004, it was conveyed to the State, along with a period of two months in which to submit any comments deemed relevant.

7. On March 26, 2004, the Commission received a note with comments from the State, which it forwarded to the petitioner on April 13, 2004.

8. On May 11, 2004, the Commission received the petitioner's remarks regarding those comments, along with a request for the petition to be ruled admissible, which was forwarded to the State on June 3, 2004.

9. The State's comments received on March 26, 2004, were again sent to the Commission on July 6, 2004; additional information from the State was received on August 9, 2005, and was forwarded to the petitioner on that same date.

10. The petitioner sent its reply to the State's submission on August 31, 2004, and this was forwarded to the State on October 7, 2004.

11. On October 21 and November 9, 2005, the petitioner insisted that the petition be ruled admissible.

12. On October 20 and 31, 2006, and on February 2, 2007, the Commission received additional information from the petitioner; this information was conveyed to the State on February 22, 2007, along with a 30-day deadline for returning any pertinent observations.

13. On February 9, 2007, the IACHR received additional documents regarding this case from the petitioner.

14. On March 20, 2007, the State requested an extension of the deadline set on February 22, and a 15-day extension was granted on May 18, 2007. Then, on June 4, 2007, the State submitted the pending comments.<sup>2</sup>

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<sup>2</sup> Officials of the Honduran government told the Executive Secretariat of the IACHR that they had had problems with their communications between June 1 and 4.

15. On June 13, 2007, the State's comments were conveyed to the petitioner, and the petitioner returned its comments to the IACHR on June 25, 2007.

#### **B. Starting a New Process**

16. Regarding the allegations on violations to the right of physical integrity based on the attack with fire arm perpetrated against the diver Jesús Flores in January 2001, according to the terms of Article 29(c) of its Rules of Procedure, the Commission decides to detach this section of the original complaint and to assign a new number to that, so the processing of this petition can be initiated as a separate file.

### **III. POSITIONS OF THE PARTIES**

#### **A. Petitioner**

17. In the complaint and in the additional information submitted, the petitioner describes the archipelago of Cayos Cochinos<sup>3</sup> as a place traditionally settled by a group of Garifuna communities since their arrival in Honduras in the late 18th century. It goes on to state that the maritime habitat is essential to the economy of the people of the islands' Garifuna communities. The petitioner reports that these communities have historically been able to extract, on a rational basis, food for subsistence, elements for their Dugu religious rites, materials intended for the construction of traditional housing, etc.

18. The petitioner claims that the community of Cayos Cochinos has for several years been facing serious problems: for instance, on their land and in the surrounding waters, outside agents, such as environmental organizations and foreign and domestic investors, have undertaken projects that affect the Garifuna communities – according to the complaint, with the backing of the authorities. The arrival of outsiders in the area appears to be related to the attractions offered by the cays' biodiversity and potential for tourism.

19. The petitioner states that their rights over these lands and waters were first violated in 1993, when a Swiss investor purchased Menor and Paloma Cays; other factors were the establishment of the *Sociedad de Inversiones Ecológicas S.A.* and of the Honduran Foundation for the Protection and Conservation of Cayos Cochinos, also known as the Honduras Coral Reef Fund (hereinafter "the Foundation"), and the adoption of Presidential Agreement 1928/93, by means of which Cayos Cochinos was declared a Natural Protected Area by the President of the Republic.

20. The petitioner also reports that the presidential agreement prohibited traditional fishing with bait and the collection of crustaceans from the waters surrounding Cayos Cochinos, ignoring the fact that those activities are the basic source of income and sustenance for the area's Garifuna communities.<sup>4</sup> The petitioner notes the following Government regulations that negatively affect the Garifuna people:

- a. The five-year ban on collecting wild animals or plants within the five nautical miles surrounding the archipelago.

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<sup>3</sup> "The Archipelago of Cayos Cochinos, located 19 miles northeast of La Ceiba, in the Caribbean Sea, in Honduras (Central America), is a group of two small islands, twelve sandy cays, and a low reef, surrounded by 75 km of sandbanks, adjacent to the north with a coral reef and three larger islands of the Roatán archipelago." (Description provided by the petitioner in submission of October 20, 2006.)

<sup>4</sup> With respect to the effects of the decree, the petitioner reports that protests and mobilizations by the indigenous peoples and black communities succeeded in forcing the Government to amend it: the ban on bait fishing was lifted, but the ban on collecting seafood, such as crustaceans, remained in place.

- b. The bans and regulations imposed on residents of the archipelago and coastal regions, and on tourists and the general population.
- c. The supervisory and oversight duties assigned to the Honduran armed forces for the conservation, protection, and gathering of natural resources.
- d. The fact that the scientific work has been entrusted to an international scientific institution.

21. The petitioner states that in 1994, the Garifuna communities began to suffer repression at the hands of the Navy; this was, in its opinion, a reflection of the concerns of the scientific and environmentalist organizations.

22. Among the human rights violations they have suffered, the petitioner notes that as a result of threats made by members of the Navy and pressure brought to bear by the international scientific agencies,<sup>5</sup> the Garifuna have been affected in the following ways:

- On occasions they have been forcibly displaced, in spite of the protests made by OFRANEH and the international nongovernmental organization FIAN.
- The Navy's systematic repression and harassment led to the disappearance of the fisherman Domitilio Cáliz Arzu<sup>6</sup> on January 15, 1995, and the abandoning, on the open sea, of Silvino Córdoba and Mariano Lino Rochez in February of that year.
- The attack on the diver Flores<sup>7</sup> in January 2001, after he was selected from among several divers by members of the Navy, accompanied by employees of the Cayos Cochinos Foundation; in the incident the diver was injured by gunshot wounds and subsequently received negligent treatment from medical services in the city of La Ceiba.

These three situations are compounded by the fact that even though they were duly reported,<sup>8</sup> they did not receive proper attention from the competent authorities.<sup>9</sup>

23. The petitioner claims that in 1997, a firm specializing in environmental matters, after carrying out the corresponding study, drew up the archipelago's Management Plan, which is geared toward ensuring the long-term scientific and social sustainability of the model.

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<sup>5</sup> The petitioners report that the international scientific institution's recommendations to the Government of Honduras include stringent protection of the environment, restrictions on human activities such as fishing and gathering seafood, and the implementation of management and monitoring systems.

<sup>6</sup> As reported in the daily *El Heraldo* on February 9, 1996, and February 16, 2001.

<sup>7</sup> The newspaper *El Heraldo* of February 1, 2001, published an article titled "Cayos Cochinos Foundation calls for silence after attack on fishermen," reporting that the diver Jesús Flores received at least five gunshot wounds to his left arm. In that article OFRANEH demanded an end to the harassment of the Garifuna population and asked for an investigation into the entry of fishing boats in the reserve area.

<sup>8</sup> Complaint lodged with Office of Internal Affairs of the Public Prosecution Service in Tegucigalpa on May 17, 2001.

<sup>9</sup> The petitioner reports, as an aggravating circumstance, the fact that diver Flores's case file was misplaced by the Public Prosecution Service and the General Investigation Directorate of La Ceiba.

24. The petitioner reports that the international scientific institution referred to above withdrew from Cayos Cochinos in 1998 and was replaced by an international environmentalist organization, which assumed control of the environmental protection projects underway in the cays. At the same time, the Government incorporated the cays into the "Mesoamerican Reef System," a project funded by the World Bank.<sup>10</sup>

25. In the complaint the petitioner describes how, as of March 2000, Garifuna fisherman began to allege that notwithstanding the bans imposed on them, the industrial harvesting of lobsters by factory ships was on the increase in Roatán Island, the consequence of which was a dramatic reduction in the area's maritime resources. In spite of public accusations made by the fishermen, the Garifuna fishers are held responsible for this situation, and not the industrial factory-fishing vessels.<sup>11</sup>

26. The petitioner adds that in 2003, the President of the Republic signed Decree 114/2003 which declared Cayos Cochinos a "Natural Maritime Monument" and established a "Management Plan" that, according to the petitioner, tacitly describes the presence of the Garifuna communities as harmful to the Natural Maritime Monument, based on such factors as the Garifunas' exercise of their property rights and the day-to-day subsistence activities and work of their communities; in addition, the Plan allows non-Garifunas access to title deeds over land on the cays.

27. In the complaint the petitioner claims that at present, Navy patrolmen on Foundation vessels, purportedly on the watch for drug smugglers, closely monitor the fishing activities and general day-to-day activities of the members of the Cayos Cochinos Garifuna communities, and that this creates a climate of repression and harassment affecting both the Garifuna locals and visitors and tourists. The petitioner's submissions insist that this oversight is not applied to the factory fishing ships or to the activities of private land-owners, in particular those who are foreign nationals who, the petitioner claims, receive preferential treatment.

28. The source of the Garifuna communities' problems, the petitioner claims, was the establishment of environmental sustainability plans that were recommended by the environmentalist organizations without carrying out proper consultations with the authorized representatives of the cays' Garifuna communities, the alleged victims in the application lodged with the IACHR. No consultations took place either before or during the establishment of the protected environmental reserve and, in addition, there has been no facilitation or promotion of environmental sustainability education among the inhabitants of the Garifuna communities. Consequently, the petitioner feels that an environmental protection plan has been imposed, in its opinion, without taking account of the existence of human beings inhabiting the recently declared protected area. In particular, it affects their peace and tranquility and other aspects of their quality of life: the Garifuna communities are now restricted in their ability to secure what they need for their survival and, consequently, instead of having seen an improvement in their living standards – as should have been the case with this expression of official concern for the environment where the Garifunas live

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<sup>10</sup> Regarding the World Bank's involvement in projects on Cayos Cochinos, the petitioner reports that the World Bank Inspection Panel is currently studying a complaint lodged by the Garifuna, in which they allege possible violations of the Bank's internal procedures in implementing those projects. World Bank officials have contacted the Executive Secretariat of the IACHR to request information about the current status of this petition.

<sup>11</sup> Press report, dated July 28, 2000, "Garifunas ask for their rights to be respected in Cayos Cochinos." This article states that while the local Garifunas on the cays are prevented from exploiting the maritime resources in order to protect the reserve, the factory ships are assisted in every possible way in working the area.

– a step backwards has been taken with respect to the Garifuna families’ right to enjoy a decent standard of living, particularly as regards their food, clothing, housing, and security.<sup>12</sup>

29. The petitioner adds that the environmental programs were preceded by environmental impact studies that they describe as deficient and harmful, involving the introduction of non-native species and thus altering the ecological balance of the cays. OFRANEH claims that these programs also ignored the fact that the deterioration of the coral reefs<sup>13</sup> is caused by the archipelago’s location at the mouth of the Río Papaloteca, which deposits sediment on the coral bank, leading to its decay and death. Thus, the destructive factor is not the presence of the Garifuna communities, and the damage is instead due to other external factors; their normal ways of living are not addressed, nor are the contributions the Garifuna communities have traditionally made to the existence of the cays – on the contrary, the implication is that those people’s activities are harmful to the environment.

30. The petitioner says that “every effort must be made to allow the normal development of the customs and ways of living of the ethnic groups that inhabit the protected area, respecting their traditions, related ecological knowledge, and entire heritage in order to assist the realization of new development initiatives for those groups.”

31. Another problem highlighted by the petitioner is that of land title deeds. In that regard, the petitioner reports that following the request lodged by three Garifuna communities on December 7, 2000, the National Agrarian Institute (hereinafter “the INA”) issued a deed of full ownership on January 24, 2002, to the communities of the archipelago located on Chachahuate, Eastend, and Bolaños Cays, whose elders were legally recognized by the Secretariat of the Interior and Justice in resolutions adopted during 2002, and on the basis of which the Garifunas proceeded to request their registration with the Registrar of Real and Commercial Property of Roatán (hereinafter, “the Roatán Registrar”) in the Bay Islands. In spite of this high-level recognition, the registration was rejected by the Registrar of Real and Commercial Property of the Bay Islands Department on March 18, 2002, arguing that the INA had no authority to award commonly-held (*ejidal*) urban land belonging to the municipality of Roatán in the Bay Islands department. The legal

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<sup>12</sup> In a communication dated October 20, 2006, the petitioner enclosed the opinions of professions from different sectors who have conducted studies into various aspects of the relationship between the Garifuna locals and the protected area.

- Clearly the three communities that interact with the natural resources within the reserve constitute an example of social abandonment, where the most minimal services are nonexistent. The attitude of the inhabitants to the Biological Reserve, while positive, cannot be maintained unless the governments improve the current living conditions; thus, they cannot expect support for conservation when that implies accepting the management of resources without any alternative for development. In a zone as small as the Cayos Cochinos Protected Area, it will never be possible to balance the inhabitants’ incomes with the local job supply, and there are not many alternatives. The roots of the socio-ecological problem originate exclusively from the mainland, where the problem arises. (Hector Guzman, 1998)
- The investigation shows the existence of negative perceptions toward the Reserve and toward the conservation of natural resources in general. We attribute many of these perceptions to the way in which the Reserve was created, without involving the local inhabitants, in addition to the cultural patterns (Coelho, 1981) and, in general, low education levels and living standards of the Reserve’s residents.
- Local inhabitants are unsure about why and for whose benefit the protected area was created (Rundquist and Gotter, 2002). Finally, concerns exist regarding the future development of tourism, fearing that it may fall into foreign hands and bring no direct benefits to the communities.

<sup>13</sup> Described by the petitioner as the chief concern of the scientific agencies and environmentalist organizations working in the area.

representative of the INA lodged a complaint remedy against the Roatán Registrar and, later, the Appeals Court of La Ceiba upheld the rejection in a ruling dated September 2, 2002.

32. The petitioner also reports that it fought to defend ancestral territories and pursued the formalities necessary for title deeds to be issued,<sup>14</sup> but that the following obstacles arose:

- On January 24, 2002, the National Agrarian Institute (INA) awarded the Garifuna communities finalized title deeds over the Cochinos cays known as Bolaños, Chachahuate, and Eastend.
- On March 18, 2002, the Registrar of the Bay Islands Department refused to record the property deeds, arguing that the INA had no jurisdiction over commonly-held urban land belonging to the municipality of Roatán.<sup>15</sup>
- On April 19, 2002, the legal representative of the INA lodged a complaint remedy with the Court of Appeals in La Ceiba, Atlántida department.
- On September 2, 2002, the Court of Appeals in La Ceiba ruled the complaint remedy inadmissible and ordered that the finalized title deeds addressed by the appeal not be registered.
- On September 30, 2002, the same legal representative of the INA filed a remedy for subsidiary review and *amparo* relief.
- On November 15, 2002, the *amparo* remedy was referred to the Supreme Court of Justice for normal processing.
- On June 8, 2005, the Constitutional Chamber of the Supreme Court of Justice issued a judgment granting the request *amparo* remedy and referred the case file to the Court of Appeals in La Ceiba.
- On October 10, 2006, the La Ceiba Court of Appeals issued a judgment overturning the deed against which the complaint remedy was filed and ordering the Bay Islands Registrar to record the three finalized property deeds.
- On October 18, 2006, the Bay Islands Registrar was sent the judgment in order for him to proceed as ordered.
- On December 22, 2006, two individuals acting without due authorization from the Garifuna communities of Chachahuate and Eastend received the registration certificates for the deeds to the lands in question from the Regional Director of the INA through the offices of a "pro-government" NGO; the third registration was not handed over for reasons unknown, but rumors indicate that the registration was made out in the name of a limited corporation.

33. The petitioner says that on account of the uncertainty and delays in handing over the property deeds to the Cochinos cays known as Bolaños, Chachahuate, and Eastend, an

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<sup>14</sup> The petitioner attaches, as documentary evidence, the complaints lodged with public agencies since the land ownership problems in Cayos Cochinos began.

<sup>15</sup> Even though the formalities required for their registration in the Public Real and Commercial Property Register had been met.

opportunity has been established for open violations of the property rights over the ancestral lands inhabited by the Garifuna in Cayos Cochinos; this has left the Garifuna communities of those cays without protection, facilitating attacks and disappearances, and there is no evidence that the authorities have conducted investigations into these situations, even though the relevant complaints have been made.

34. One aggravating factor in this situation of defenselessness, says the petitioner, is the poverty in which the community members live and the unfavorable employment conditions they face; they therefore ask the Commission to pay particular attention to that circumstance, which affects their ability to secure their means of subsistence.

35. The petitioner reports that on September 28, 2006, a series of agreements were recorded in a memorandum of understanding signed by representatives of the Garifuna communities, the Honduran Black Fraternal Organization (OFRANEH), and representatives of various state agencies involved in the situations reported by the Garifuna communities, as a result of the one-week mobilization held in the vicinity of the National Congress to demand respect for the collective rights of their people. Particularly noteworthy was the agreement reached regarding the Cayos Cochinos situation, which reads as follows:

The immediate registration of BOLAÑOS, CHACHAHUATE, and EASTEND CAYS in the names of the Garifuna communities.

To comply with this item, the National Agrarian Institute, in conjunction with the Public Prosecution Service and members of OFRANEH, will conduct a review of the Roatán Property Register to investigate why the deeds issued to the Garifuna community have not been registered; the date of October 4 of this year is set for the purpose. In addition, as the agency issuing the deeds, the National Agrarian Institute undertakes to ensure that they are registered.

A review and redrafting of the management plan for the Cayos Cochinos National Park, with the full and informed participation of the area's communities.

To comply with this item it is agreed to hold a meeting on November 16 of this year on Cayo Chachahuate, to be attended by SERNA, COHDEFOR, INA, the OFRANEH community, the Cayos Cochinos Commission and Foundation, in order to review the management plan.

The immediate demilitarization of Cayos Cochinos, along with guarantees for the utmost respect for the residents' human rights; orders have been issued to the patrols and every step will be taken to continue with this.

The meeting between the Secretariat of Security, the Secretariat of Defense, and OFRANEH will adopt decisions regarding this point in order to define the security mechanisms to be implemented in Cayos Cochinos, with the inhabitants' agreement. The Secretariat of Security agreed to invite representatives of the Navy to this meeting.

36. On February 22, 2007, the petitioner reported that the agreement reached by means of this memorandum of understanding had succeeded in demilitarizing Cayo Chachahuate but that human rights impunities had not been eradicated; in addition, the Garifuna feared that the introduction of a new Management Plan would provide grounds for the abuses of the past to be repeated. OFRANEH claims that the Plan in question was negotiated, absent the participation of representatives of the cays' communities, by technicians from an international environmentalist organization and a number of fishermen, under the auspices of the Minister of Natural Resources, and that it imposes strict zoning restrictions on fishing activities.



37. A communication from the petitioner received on February 8, 2007, claimed that a person claiming to hold title deeds to beaches on Cayo Eastend predating those issued by Government had, since November 2006, been approaching the indigenous inhabitants with a firearm to prohibit them from extracting *fray*, which is used as bait for *yalatel*. The petitioner reports that this person told one of the fishermen "to be careful." The petitioner goes on to say that the community of Eastend is currently working on the development of an ecotourism project with volunteers from the Peace Corps and the Cayos Cochinos Foundation, to improve their way of life.

38. The petitioner requests that its complaint be ruled admissible, given the responsibility of the State of Honduras in violating Articles 1, 21, and 25 of the American Convention on Human Rights and Articles 7, 14, 15, and Article 23 of International Labour Organization Convention 169, in consideration of the following facts:

- The problems of the land deeds have not been satisfactorily resolved, in spite of the years that have passed, and the petitioner therefore requests that the State of Honduras provide redress consisting of the registration of Bolaños, Eastend, and Chachahuatate Cays in the names of the alleged victims – that is, the Garifuna communities – recognizing their functional habitat there.
- There has been no resolution of the complaints alleging human rights violations arising from the firearm attack on the diver Jesús Flores, and the petitioner therefore requests that the State of Honduras provide redress consisting of a fair indemnification for Mr. Jesús Flores.
- There has been no resolution of the complaints alleging human rights violations arising from the disappearance of Domitilio Cáliz Aarhus.
- The petitioner requests that the Management Plan of the Cayos Cochinos National Monument be redrafted, ensuring that it includes respect for the food supply and unqualified respect for the human rights of the cays' inhabitants.

39. The petitioner argues that when the domestic remedies are not efficient, the IACHR must become involved, and it states that in this case there is a continuous and evident violation of the human rights of the Garifuna communities that inhabit those of the Cayos Cochinos known as Bolaños Cay, Chachahuatate Cay, and Eastend Cay.

## **B. State**

40. On March 26, 2004, the State submitted its comments regarding the complaint (and ratified them in a document received on July 6 of that year). It said that the alleged victim's claim that four years have gone by without the Government resolving the situation is not true, since, on January 24, 2002, the INA issued the finalized title deeds claimed by the Garifuna people for three of the Cayos Cochinos, covering areas of 0.55, 0.98 and 0.72 hectares, and recognizing the possession thereof that they had theretofore exercised.

41. It also claims that in contravention of the INA's decision, by means of a deed dated March 18, 2002, the Roatán Registrar refused to record these title deeds, using the argument that the INA did not have the authority to grant title deeds over land located within the urban limits of a municipality and that, according to the Roatán Registrar, the Cays of the Bay Islands constitute land of such a nature.<sup>16</sup>

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<sup>16</sup> In addition to the (legally) contradictory decision of the Roatán Registrar, the INA also argues that there were formal errors in the grounds used for its decision, in that in refusing to record the title deeds in the Garifunas' name, the

42. Additionally the State reports that it was the Government itself, through the National Agrarian Institute, that called the Roatán Registrar's attention to the legal and constitutional provisions and to the terms of the international treaties in force in Honduras regarding the preference that indigenous peoples have in the recognition of their ownership over lands that they can prove they inhabit or have traditionally occupied.

43. The State of Honduras also indicates it has made efforts to ensure the judicial recognition of the decisions of the National Agrarian Institute regarding the property deeds extended to the indigenous peoples of Cayos Cochinos. These efforts include the appeal against the decision of the Roatán Registrar filed with the Court of Appeals of La Ceiba, Atlántida, on April 19, 2002, and resolved negatively by that court in a judgment of September 2, 2002, and the *amparo* remedy filed against that judgment, lodged on November 20, 2002, and admitted by the Constitutional Chamber of the Supreme Court of Justice on May 17, 2004, which was also filed by the National Agrarian Institute.

44. The State claims that the Supreme Court of Justice, because one of the deadlines within the *amparo* remedy had passed, rejected the *amparo* suit filed by OFRANEH's representative, Ms. Gregoria Flores, on November 1, 2002.

45. In a communication received by the IACHR on June 4, 2007, the State says:

Regarding the allegations that the property rights of the Cayos Cochinos Garifuna communities were violated:

- This case involves no violations of Article 21 of the American Convention on Human Rights since Honduras has guaranteed the territorial rights of the three Garifuna communities, granting and registering the title deeds to their lands, and recording the deeds of the three cays covered by this complaint with the Bay Islands Property Register: Cayo Chachahuate and Cayo Eastend were registered on December 19, 2006, and Cayo Bolaños was registered on May 31, 2007.
- The Commission must rule this case inadmissible, since under Article 34 of the IACHR's Rules of Procedure, a case is inadmissible or out of order when supervening information or evidence is presented to the Commission.
- When the complaint was lodged the petitioner had not exhausted the available domestic remedies and, following their normal course, the processing of those remedies in Honduras yielded the results sought by the petitioner. Thus, it is concluded that the claims regarding possible violations of Articles 8 and 25 of the American Convention on Human Rights are not inadmissible since in the process whereby the title deeds were registered, the petitioner was heard with all due guarantees and within proper proceedings and had access to the necessary remedies, which proved effective.

Regarding the shooting of the diver Jesús Flores:

The January 27, 2001, attack on the diver Jesús Flores is being duly investigated: the three members of the Navy who were in the area where fishing was prohibited, in the

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...continuation

Registrar refers to the agreement whereby the urban limits of Roatán, Bay Islands, were expanded, quoting for the purpose an agreement number that was never published in the official gazette and that, in any event, deals with the appointment of the Minister of the Interior and Justice.

boat from which Mr. Paredes was shot in the forearm, and who later seized his oxygen tank, have been identified as Julio Chavez, Henry Aarhus, and Samuel Mejía.

- On March 5, 2001, the Attorney for Ethnic Groups and Cultural Heritage requested the arrest of the suspected perpetrators and that the commander of the Cayos Cochinos Naval Base hand over the weapons. Both actions were ordered immediately by the Magistrates' Court in La Ceiba, Atlántida department.
- On May 16, 2001, a fresh forensic medical examination was performed at the request of the Attorney for Ethnic Groups and Cultural Heritage, which confirmed Mr. Flores's injuries, the time he was incapacitated, and the limited functioning of his fingers. A recommendation was also made to determine the aftereffects and to ratify or expand his temporary incapacitation.
- Charges for criminal injuries were lodged on May 22, 2001, against Messrs. Julio Chavez and Henry Aarhus, based on the witness statements received, the investigations carried out, and a draft criminal accusation drawn up by the Special Attorney for Ethnic Groups.
- Since these were not complied with, the Special Attorney repeated the request and a fresh order for the weapons to be handed over was issued by the Magistrates' Court to the base commander on September 3, 2001; to date, this order has not been met. The Commander of the Cayos Cochinos Naval Base was summoned by the Court on June 23, 2003.
- At the request of the Special Attorney, the Magistrates' Court issued a new arrest warrant for the aforementioned suspects on June 12, 2003.
- On December 19, 2003, the Special Attorney sought a warrant for the arrest of Samuel Mejía, whom the victim had identified as the shooter. On December 15, 2003, a warrant was issued for the arrest of the soldiers Julio Chavez, Henry Aarhus, and Samuel Mejía.
- The Special Attorney for Ethnic Groups continues to monitor progress with the proceedings through the La Ceiba office, but none of the defendants have yet been arrested.

46. The State says that Honduras recognizes the rights of the Garifuna communities and that there are no pending commitments regarding the claimed titled deeds. With respect to the incident involving Mr. Flores, Honduras believes that domestic remedies have not been exhausted, that domestic law is still operating, and that the criminal proceedings are still underway. Consequently, the case must be ruled inadmissible.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. Competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae* of the Inter-American Commission**

47. The petitioners – that is, OFRANEH, representing the Garifuna communities of the Cayos Cochinos known as Bolaños Cay, Chachahuat Cay, and Eastend Cay, and the members thereof – are empowered by Article 44 of the American Convention to lodge complaints with the IACHR. With reference to the State, the Commission notes that Honduras has been a state party to the American Convention since September 8, 1977, when it deposited its instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint.

48. The Commission has competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. The IACHR also has competence *ratione temporis* since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred. Finally, the Commission has competence *ratione materiae* since the complaint describes violations of human rights protected by the American Convention.

49. Regarding the petitioner's request in the complaint that the IACHR declare that the State of Honduras violated ILO Convention 169, the Commission lacks jurisdiction over that matter; however, it may and must use it as a guideline for the complementary interpretation of obligations under the Convention pursuant to the terms of Article 29 of the IACHR.

## **B. Other requirements for admissibility**

### **1. Exhaustion of domestic remedies**

50. Article 46(1) of the American Convention on Human Rights states that for a petition or communication lodged in accordance with Articles 44 or 45 to be admitted by the Commission, it is necessary "(a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."<sup>17</sup> That same article states that the provision contained in section 1(a) shall not apply when: (a) 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; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

51. Both the Court and the Commission have held, on repeated occasions, that "under the generally recognized principles of international law and international practice, the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means."<sup>18</sup>

52. In the case at hand, the State claims that the petition is inadmissible because domestic remedies have not been exhausted: one of the alleged violations – the unwarranted delay in handing over the property deeds for the land on the three cays – has already been satisfactorily resolved by the Honduran authorities, and a decision is still pending in the criminal proceedings, which began in March 2001 and must be allowed to follow their course.

53. In contrast, the petitioner asks that the petition be admitted based on the exception provided for in Article 46(2)(c) of the Convention and in Article 31(2)(c) of the IACHR's Rules of Procedure, on the grounds of the Honduran justice system's unjustified delay in providing protection for the lives and persons of the members of the Cayos Cochinos Garifuna community. The petitioner claims that the actions they were able to take domestically have not been effective, which has

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<sup>17</sup> See: I/A Court H. R., Exceptions to the Exhaustion of Domestic Remedies (Articles 46(1), 46(2)(a), and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Ser. A No. 11, paragraph 17.

<sup>18</sup> See: IACHR, Report No. 5/04, Petition 720-00, Admissibility, Eduardo Kimel, Argentina, February 24, 2004, paragraph 31; I/A Court H. R., *Judgment in the Case of Viviana Gallardo et al*, November 13, 1981, Ser. A No. G 101/81, paragraph 26.

meant an ongoing violation of the right of the Cayos Cochinos Garifuna community to peacefully enjoy the territory that the State itself has awarded them.

54. As has already been stated, the rule requiring the prior exhaustion of domestic remedies is intended to serve the interests of the State in that it keeps it from responding for its actions before an international venue until it has had the opportunity to resolve the situation internally. In the case at hand, the State claims that the issuing of a criminal judgment is still pending, in which only one of the many problems described – the alleged violation of Article 5 – is involved.

55. It should first be noted that as regards the property rights over the lands of the Garifuna communities that inhabit the Cayos Cochinos known as Bolaños, Chachahuate, and Eastend Cays, the Commission understands that there is no dispute regarding the corresponding communities' legal ownership. However, the Commission notes that there is another dispute regarding to whom the Real and Commercial Property Registrar of Roatán, Bay Islands, gave the certificate of registration of the finalized title deeds awarded in 2002 by the National Agrarian Institute (INA) and confirmed by the Constitutional Chamber of the Supreme Court of Justice in its resolution of the *amparo* remedy of June 8, 2005.

56. In addition, there is still another dispute regarding the right to the effective enjoyment of the land owned by the Garifuna communities that inhabit those three cays and the adjacent areas.

57. The State has not argued a failure to exhaust domestic remedies with regard to those two disputes, nor has it said whether there are any effective and adequate remedies that, had they been pursued, would have led to the situations in question receiving prompt attention. Thus, the Commission holds that the requirements set out in Article 46 of the Convention have been satisfied.

58. In consideration whereof and bearing in mind the multiple complaints made regarding the problems faced by the alleged victims in the case at hand, the Commission believes that prior exhaustion requirement has been met as regards the enjoyment of the property rights.

## **2. Timeliness of the petition**

59. Article 46(1)(b) of the American Convention provides that one requirement for a petition to be admissible is that 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." Article 46(2) of the American Convention provides that the terms of Article 46(1)(a) do not apply when: (a) 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; (b) 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 (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

60. Since the land ownership dispute was ultimately resolved in October 2006, and given the decision made on the dispute regarding the protection and effective enjoyment of the right to a collective property, the Commission deems that the petition was lodged on a timely basis as regards the right of property.

61. The Commission consequently holds that the requirement contained in Article 46(1)(b) of the Convention is not applicable in the instant case and that it was lodged within a

reasonable time, pursuant to Article 32 of its Rules of Procedure, given the characteristics of the facts and the processing status of the judicial process.

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

62. Under Article 46(1)(c) of the Convention, one of the admissibility requirements is that “the subject matter of the petition or communication is not pending in another international proceeding for settlement.”

63. The Commission understands that the substance of this petition is not pending in any other international proceeding for settlement, and that it is not substantially the same as any petition previously studied by it or by another international body. It consequently concludes that the requirement contained in Article 46(1)(c) has been met.

### 4. Characterization of the alleged facts

64. In establishing the admissibility of a petition, the Commission must determine whether the facts described therein tend to establish a violation of rights protected by the American Convention, as required by Article 47(b), or whether the petition must be rejected as manifestly groundless or obviously out of order, pursuant to Article 47(c).

65. The facts alleged in the case at hand in connection with the Garifuna communities that occupy Cayos Cochinos could constitute violations of Articles 8.1, 21 and 25 of the American Convention on Human Rights, in conjunction with Articles 1(1) and 2 thereof. The Commission has on repeated occasions stressed the need, in international law in general and inter-American law specifically, for special protection so that indigenous peoples and communities of African descent can enjoy their rights in full and in equality with the rest of the population.<sup>19</sup> Similarly, the Court has ruled that States must grant indigenous peoples effective protection that takes into account their particularities, their economic and social characteristics, their special vulnerability, and their customary laws, values, uses, and customs.<sup>20</sup>

66. The Commission believes that the claims regarding their inability to use and enjoy the legally recognized land, to pursue their traditional activities for subsistence and for the exploitation of the natural resources in that territory and adjacent areas, and the lack of prior consultation regarding the legal regime, permissible activities, and environmental protection of those territories and adjacent areas could constitute a violation of Article 21 of the Convention, in conjunction with Article 1(1).

67. The Commission believes that if the petitioner’s claims are proven true, they could constitute a violation of the rights enshrined in Articles 8(1), 21 and 25 of the American Convention, in conjunction with Articles 1 and 2 thereof. It consequently concludes that the requirement contained in Article 47(b) of the Convention has been met.

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<sup>19</sup> IACHR, Resolution on “Special protection for indigenous populations. Action to combat racism and racial discrimination,” cited in: IACHR, Yanomami Case, Report 12/85, Annual Report of the IACHR 1984-85, paragraph 8; Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser.L/V/II.62, Doc. 10 rev. 3 (November 29, 1983); IACHR, Second and Third Reports on the Situation of Human Rights in Colombia, 1993, 1999; Proposed American Declaration on the Rights of Indigenous Peoples, adopted by the IACHR at its 95<sup>th</sup> regular session, February 26, 1997, Annual Report of the IACHR 1997, Chapter II; IACHR, Report on the Situation of Human Rights in Ecuador, OEA.Ser.L/V/II.96.Doc.10 rev. 1, April 24, 1997, Chapter IX; IACHR, Report No. 40/04, Case 12.053, Merits, Mayan Indigenous Communities of Toledo District, Belize, October 12, 2004.

<sup>20</sup> I/A Court H. R., *Case of the Indigenous Community Yakye Axa*. Judgment of June 17, 2005, Series C No. 125, paragraph 63.

**V. CONCLUSIONS**

68. The Inter-American Commission concludes that the petition is admissible, under the exceptions provided for in Article 46, paragraph 2, sections (a) and (c) of the American Convention, based on the foregoing considerations of fact and law and without prejudging the merits of the case.

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS****DECIDES:**

1. To declare this case admissible as regards the alleged violations of the rights protected by Articles 8(1), 21 and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof.

2. According to the terms of Article 29(c) of the Rules of Procedure of the Commission, to detach the section of the original complaint related to the alleged violations to the right to physical integrity and to assign a new number to that, so the processing of this petition can be initiated as a separate file.

3. To give notice of this decision to the parties.

4. To continue with its analysis of the merits of the complaint.

5. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 24<sup>th</sup> day of the month of July, 2007.  
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Freddy Gutiérrez, Commissioners.