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**REPORT No. 48/15**  
**PETITION 79-06**  
REPORT ON ADMISSIBILITY

YAQUI PEOPLE  
MEXICO

Approved by the Commission at its session No. 2044 held on July 28, 2015  
155<sup>th</sup> Regular Period of Session.

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Organization of  
American States

**REPORT No. 48/15**  
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**ADMISSIBILITY REPORT<sup>1</sup>**  
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**I. SUMMARY**

1. On January 26, 2006, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "Commission," or "IACHR") received a petition filed by Alberto Saldamando of the International Indian Treaty Council and the traditional authorities of some of the Yaqui People (hereinafter "the petitioners") on behalf of the Yaqui tribes Vícam, Pótam, Tórim, Ráhum, Huirivis, Bácum, Cócortit, and Belem, their members and future generations (hereinafter "the Yaqui People," "the People," or "the alleged victims"), against the State of Mexico (hereinafter "Mexico," "the State," or "the Mexican State").

2. The petitioners allege that the State of Mexico has violated the Yaqui People's right to collective property due to its partial recognition, dispossession, and failure to demarcate, set boundaries, and issue title to their ancestral lands; the lack of effective remedies to procure compliance with the obligation to respect indigenous collective property; the State's expropriation of previously recognized traditional territory; the dispossession and lack of access to waters belonging to Yaqui territory; the alleged granting of concessions and authorization for infrastructure projects without consultation or the required free prior and informed consent of the Yaqui People; and the non-existence of a legal framework appropriate to uphold the rights of indigenous peoples. The petitioners also maintain that the State adopted discriminatory measures against the Yaqui People that infringe upon their political rights, and it promoted a policy of agricultural development based on the massive application of chemicals that polluted Yaqui territory and caused serious harm to the Yaqui People's health. Consequently, the petitioners assert that Mexico has violated Articles 1, 2, 4, 7, 16, 17, 21, 23, 24, 25, and 26 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"); Articles 10, 11, 12, 16, 17, and 18 of the Additional Protocol to the American Convention in the Area of Economic, Social, and Cultural Rights (hereinafter the "Protocol of San Salvador"); Articles I, II, III, VI, VII, VIII, IX, XI, XIII, XIV, XVII, XVIII, XX, and XXIII of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration"); and Articles 6(2), 7(2) and 15(1) of Convention 169 of the International Labor Organization, to the detriment of the alleged victims, as well as various rights recognized in an array of international human rights instruments.

3. The State, on the other hand, alleges that on September 30, 1940, President Cárdenas enacted a resolution specifying the conditions under which the boundaries and demarcation of the lands recognized for the Yaqui People would be drawn, while on October 13, 1971, the State authorities and traditional governors of the eight Yaqui Peoples agreed to draw the boundaries and demarcation of the Yaqui territory under specific conditions. The State also indicates that on January 16, 1997 a new survey and demarcation exercise was conducted which led to the issuance of a definitive map, although there is no record that the survey and demarcation were performed. The State further indicates that the land recognized as being that of the Yaqui People has been subject to three expropriations through eminent domain, in accordance with the Constitution of Mexico. Furthermore, the State alleges that it is addressing the health issues in a comprehensive way, by conducting official studies to assess the health situation of the Yaqui population and by financing two water purification plant projects for the Pueblos of Pótam and Vícam. The State believes the demands of the Yaqui People are being addressed in the national sphere.

4. Without prejudging the merits of the case and after examining the positions of the parties, in keeping with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission

<sup>1</sup> In keeping with Article 17(2) of the Rules of Procedure of the Commission, Commission member José de Jesús Orozco, of Mexican nationality, did not participate in the debate or decision on this case.

finds the petition admissible for the purposes of examining the alleged violation of the rights established in Articles 4, 5, 8, 19, 21, 23, 24, 25 and 26 of the American Convention, in connection with Articles 1(1) and 2 of same, and Articles I, II, VII, XI, XVIII, XX, and XXIII of the American Declaration, to the detriment of the alleged victims. The Commission decides to notify the parties of this decision, publish it, and include it in its Annual Report to the General Assembly of the Organization of American States.

## II. PROCEEDINGS BEFORE THE COMMISSION

5. On January 26, 2006, the Commission received the petition and assigned it number 79-06. On September 11, 2006, the IACtHR requested information from the petitioners about the filing of domestic remedies since 2002, to which the petitioners responded in their communications dated September 25 and December 12, 2006. The petitioners submitted additional information on the petition on November 3, 2006, September 21,<sup>2</sup> November 18, and December 1, 2009, and February 1, May 31, October 29, and November 23, 2010, and January 2 and June 6, 2011. During 2008 and 2009 the petitioners sent communications to the IACtHR requesting information about the status of the petition.

6. On June 29, 2011, the IACtHR submitted the relevant parts of the petition to the State as well as information provided by the petitioners, and asked the State to submit its observations within two months. The State requested a one month extension for submission of its observations, which was granted. The State submitted its observations on November 14, 2011 and supported the petitioners' request that the IACtHR be placed at the disposal of the parties to begin the friendly settlement process.

7. The petitioners submitted additional information on March 7, March 20, and April 26, 2012. All of these communications were duly forwarded to the State for its observations. On May 30, 2012, the petitioners requested that a hearing be held during the 146<sup>th</sup> regular session of the IACtHR. On October 24, 2012, the IACtHR denied that request because of the numerous hearing requests it had received.

8. On November 18, 2013, the IACtHR sent a note to the petitioners granting them one month to express their interest in starting a friendly settlement procedure. On January 6, 2014, the IACtHR received a communication from the petitioners acknowledging receipt of the communication dated November 18, 2013. The Commission has received no further communication from the parties regarding this petition since January 6, 2014.

### Precautionary Measures

9. In their filing dated January 2, 2011, the petitioners asked the IACtHR to grant precautionary measures. On February 15, 2011 the IACtHR forwarded this request to the State and requested additional information. The petitioners presented additional information on the alleged situation on September 21, October 4, October 20, November 16, 2011 and January 5, 2012. The State, in turn, submitted observations on April 8, August 16, and October 13, 2011. These communications were duly notified to the parties for their observations, and additional information was requested as needed. The Commission continues to monitor the situation.

## III. POSITIONS OF THE PARTIES

### A. Position of the petitioners

10. The petitioners indicate that the Yaqui People have their own unique language, culture, and system of government, and that their status as an inherent, autonomous, and self-governing indigenous community has been recognized by the Mexican State. They also indicate that the current composition of government consists of eight Peoples (Vícam, Pótam, Tórim, Ráhum, Huirivis, Bácum, Cácorit, and Belem),

<sup>2</sup> In that message the alleged victims designated Professor James Hopkins as their representative before the IACtHR.

whose traditional authorities jointly handle the affairs of the Yaqui Nation.<sup>3</sup> According to the petitioners, in 2003 the eight Yaqui Peoples had a registered population of 26,231: 13,177 men and 12,954 women.

11. The petitioners state that the ancestral lands of the Yaqui People are in southeastern Sonora, Mexico. According to them, the Spanish Crown recognized more than 5 million hectares as belonging to the Yaquis. After that, there were periods of incursions by settlers, persecution policies, killings, massive deportations, and processes to set the boundaries of their territory. The petitioners indicate that Yaqui territory is intersected by and adjacent to four municipalities (Guaymas, Cajeme, Bacum, and San Ignacio Río Muerto), whose populations are primarily non-Yaqui. According to the petitioners, counting the land taken away by the State, Yaqui territory consists of approximately 600,000 hectares.

12. The petitioners state that on October 27, 1937, President Lázaro Cárdenas—without the consent of the traditional authorities of the Yaqui People—recognized and returned their land and water, without defining their boundaries. Later, on September 30, 1940, President Cárdenas signed a Decree (hereinafter the “Cárdenas Decree”) which established a set of boundaries for the territory of the Yaqui People and stipulated that every agricultural year, the Yaqui People could make use of up to half the water flow stored in the La Angostura dam/reservoir for irrigating their own lands.

13. According to the petitioners, the Cárdenas Decree rejected one of the main demands of the Yaqui People, which was to return the lands of the Cócorit and Bácum villages and other population centers and agricultural lands south of the Yaqui River. The petitioners indicate that as a result of that exclusion and their displacement from their ancestral lands, the traditional authorities govern the Peoples from the sacred hills Loma de Bacum (Bácum) and Loma de Guamuchi (Cócorit). They state that the sacred and historic sites, churches, and cemeteries in these communities are still used by the Yaquis, and that the authorities of the Federal Government, the state of Sonora, and the municipalities recognize those sites as ones traditionally used by the Yaqui People.

14. The petitioners stress that the Yaqui People have made more than 243 requests and met with all kinds of Mexican authorities in an effort to redress several grievances such as the lack of field studies and lack of demarcation of territory, surveys of boundaries or establishment of borders, the removal of non-Yaqui invaders, land confiscation, over-exploitation of pastureland in Yaqui territory by private ranchers, improvements to canals, and access to water, among others. However, the petitioners state that despite these multiple efforts made since 1940, the State has not fulfilled its obligation to delineate, demarcate, and issue them formal title to the traditional land of the Yaqui People.

15. Furthermore, according to the petitioners, the State has granted multiple concessions in Yaqui territory, including a toll highway, electricity and communications cables, shrimp farms, oil pipelines, gas pipelines, and aqueducts. The petitioners allege that some of those concessions were granted without consulting the Yaqui People, and have led to the continuous, unauthorized use of Yaqui territory by third parties, producing a negative impact on the Yaqui People and no benefit to them. For example, the petitioners state that the Yaqui People agreed to the construction of Federal Toll Highway 15 with the understanding that the Yaqui People would receive 10% of the total profits collected from the Empalme toll booth. However, they say that the State has made no payments to the Yaqui People. Similarly, the petitioners state that the Yaqui People agreed to the construction of the Yaqui-San Carlos aqueduct to provide water to the cities of Guaymas, Empalme, and San Carlos in exchange for infrastructure projects and the distribution of drinking water to 23 Yaqui cities. However, the petitioners allege that the State has not made any payment or provided any services to the Yaqui People.

16. The petitioners maintain that on January 10, 1997, without consulting the Yaqui People, President Ernesto Zedillo enacted an expropriation decree (hereinafter the “Zedillo Decree”) which validated an *ejido* (communal property ownership) over 431 hectares of irrigated land for six *ejido* groups. The petitioners also indicate that the Zedillo Decree authorized the Secretariat for Land Reform to make 2,257

<sup>3</sup> The petitioners indicate that each Yaqui Pueblo elects its governor for a one-year term.

hectares available to the State, primarily irrigated land, for the issuance of titles in terms suited to the occupants. According to the petitioners, the Zedillo Decree expropriated 2,688 hectares in areas known as La Cuchilla and Isleta I and II, and also dispossessed them of more than 40,499 hectares on vast tracts of land outside of La Cuchilla and Isleta I and II. The petitioners stress that the expropriation under the Zedillo Decree was not done for the public good, but rather to transfer and legalize the possession of Yaqui ancestral lands to private, non-Yaqui parties.

17. The petitioners mention that the traditional authorities of Vícam and Pótam filed an *amparo* injunction against the Zedillo Decree, and the Eighth District Court in Hermosillo, Sonora issued an *amparo* decision and protection of federal justice at record No. 911/97.<sup>4</sup> According to the petitioners, in 2001 the authorities of Tórim, Belem, Ráhum, Huirivis, Bácum, and Cácorit joined the *amparo* proceedings. The petitioners indicate that the *amparo* proceeding was active from 1997 until September 13, 2002, when the *amparo* motion was fraudulently dismissed *en absentia*. According to the petitioners, the attorneys hired by the state of Sonora—in collaboration with Notary No. 25 of the city of Obregón—forged a power of attorney and said that it was granted by the Yaqui People. The petitioners state that at the time, the document had many irregularities, such as the absence of a seal for each of the Pueblos, the signature of “self-designated” traditional authorities who were not really authorities and were located in places other than the Holy Church of the Traditional Pueblos of the Yaqui People, and in another case they had fraudulently forged the signatures of the complainants in the original *amparo* motion.

18. The petitioners allege that the Court reviewed the matter without notifying the Yaqui People and without any of them present, and dismissed the *amparo* motion. The petitioners stress that the authorities of the Yaqui People were not notified of that decision and only learned of it on November 15, 2002 during a meeting held with the authorities of the State. In light of this, according to the petitioners, the traditional authorities submitted a formal appeal to FIFONAFE asking it to suspend delivery of the funds from the expropriation—funds that were never accepted by the Yaqui People—and demanded that an investigation be conducted by the Representative Office for the Development of Indigenous People, the General Agrarian Prosecutor, the National Water Commission, and the Secretariat for Social Development. This request remains unanswered.

19. The petitioners also indicate that on June 8, 2005, the traditional authorities were informed of the end of the *amparo* proceeding by the Secretariat for Land Reform, through the Office of the Under Secretary to Organize Rural Property. The petitioners state that the Secretariat for Land Reform has indicated that the Zedillo Decree “is final and legally immovable,” and that therefore “the only choice the Yaquis have is to accept compensation.” The petitioners believe that this final communication constitutes exhaustion of the available domestic remedies. The petitioners stress that the alleged victims, their attorneys, and the petitioners tried to obtain a copy of the *amparo* judgment file, and that this request was denied by the Court staff without any reason or explanation.

20. In addition, the petitioners state that one of the persistent problems has been access to and use of the Yaqui River waters. Thus, the petitioners indicate that the Cárdenas Decree was silent as to whether the rights of the Yaqui People applied to the water below the La Angostura dam/reservoir, or the water both above and below the dam if any new dams are built. The petitioners believe that the Cárdenas Decree safeguarded the concessions that were acquired federally or otherwise before 1937, to the detriment of the Yaqui People.

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<sup>4</sup> The information provided also shows that *amparo* proceeding 669/1998 was filed before the Seventh District Court of Obregón, Sonora. It is indicated that “the complainants in the indirect *amparo* proceeding 801/2009 lack legal standing and representation regarding the interests legitimately put forth by the traditional authorities. As representatives of the traditional authorities, we maintain that the complainants do not have jurisdiction over the funds that their institution administers under the name of the Yaqui Tribe. Additionally, the traditional authorities have never accepted the extinction of their territorial rights affected by the 1997 expropriation.” Note from James Hopkins to Ms. Maribel Concepción Méndez de Lara, Director General and Special Fiduciary Delegate, National Trust Fund for Ejido Development (FIFONAFE) dated May 17, 2010.

21. Furthermore, the petitioners allege that the provision of the Cárdenas Decree establishing that the Yaqui People could use up to half of the water stored in the La Angostura reservoir was never fulfilled. The petitioners indicate that in 1943, 1953, and 1964, respectively, the La Angostura, Álvaro Obregón or Oviáchic, and El Novillo dams were built on the Yaqui River. The petitioners state that the alleged victims were not consulted on these infrastructure projects, did not receive any type of compensation, nor were their rights to the water assured. According to the petitioners, these reservoir/dams plundered the waters of the Yaqui River, since the Yaqui People lost access to approximately 90% of the natural flow of that river. In particular the petitioners point out that during construction of the Álvaro Obregón or Oviáchic dam, water from the Yaqui River was diverted through an insufficient canal system that was specifically built to limit the flow of water from the river below the La Angostura dam. They also state that construction of this dam flooded the town of Buena Vista, causing that town to be relocated further within Yaqui territory and reducing Yaqui territory by approximately 10,000 hectares. The petitioners indicate that, consequently, the Yaqui People are forced to obtain limited access to water through a payment system created to benefit non-Yaqui users.

22. Additionally, the petitioners allege that the State has promoted a discriminatory system in the planning, maintenance, and development of the irrigation districts on both sides of the Yaqui River. According to the petitioners, the State should have built the irrigation district to irrigate 60,000 hectares on both banks of the Yaqui River—30,000 hectares on the left bank in the hands of non-Yaquis and 30,000 on the right bank for the Yaqui People. However, the petitioners indicate that in 1955, President Adolfo Ruiz Cortínez enacted a decree which created Yaqui River Irrigation District No. 41, and established that the Yaqui People would only be able to use 200 million cubic meters—only enough water to irrigate 20,000 hectares. Meanwhile, the irrigation district on the left bank of the Yaqui River would have 2.6 billion cubic meters. Moreover, the petitioners indicate that in the irrigation district corresponding to the Yaqui People, salinization of the land has been verified, cropland is uneven, there is a lack of drainage networks and canals that are improperly placed, poorly built, of insufficient capacity, and with significant leakage.

23. The petitioners indicate that despite the prosperity of the region, members of the Yaqui tribe continue to live in abject poverty. They also allege that the credit system implemented by the State resulted in non-Yaquis having almost complete control over agriculture in Yaqui territory.

24. The petitioners accuse the State of approving and allowing the intensive use of pesticides, herbicides, fertilizers, highly toxic organic phosphates and persistent organic pollutants (POPs) in the agricultural areas irrigated by the Yaqui River, including numerous tracts of irrigated and rented land adjacent to Yaqui residential areas, schools, and health clinics. The petitioners indicate that the State has failed to fulfill its duty to control and adequately regulate the use of these chemicals, and their use has caused massive soil erosion and water pollution.

25. In particular, the petitioners indicate that environmental toxicology tests establish a clear pattern of ecological toxicity in the Yaqui population. The petitioners specify that members of the Yaqui tribe suffer from high rates of liver disease, skin problems, and respiratory and other problems. They also indicate that members of the Yaqui tribe have the highest rates of childhood leukemia and cancer in Mexico. The petitioners particularly note that Yaqui children suffer from neurological impairments and diseases such as severe leukemia, bone marrow aplasia, anemia, lymphoma and other blood diseases, damage to their reproductive organs, and atypical psycho-motor development. The petitioners indicate that Yaqui women suffer from miscarriages and that one quarter of Yaqui girls lack the mammary tissue required to breastfeed once they are adults.

26. The petitioners also allege that the Yaqui People and their traditional authorities—elected every year according to the internal laws, uses, and customs—are both *de jure* and *de facto* unable to participate in leading public affairs either directly or through freely elected representatives, or to have access—on an equal footing—to public office in their country. The petitioners indicate that since Yaqui territory is divided into five municipalities whose populations are primarily non-Yaqui, it is very difficult for people who take into account or respect the legal system, institutions and forms of organization, interests, and traditional values of the Yaqui People to get elected. The petitioners also indicate that the State continues

to fail to honor its obligations regarding public works and services, and that the exclusion of the traditional Yaqui authorities from the political process means that no one is advocating for their needs before the government agencies in charge of the public policies and programs that directly affect them.

27. Additionally, the petitioners indicate that the legal system of Mexico does not recognize the rights of the Yaqui People to use and enjoy their property according to their communal property system. According to the petitioners, under domestic legislation there is “no cause or legal action that recognizes the rights of an indigenous group to be free from the damages caused by POP poisoning, or to have their traditional land demarcated and receive recognition of rights to water and other resources.” The petitioners also state that while the Constitution establishes that “the law shall protect the lands of indigenous groups,” in practice, this right is illusory since “no law under the Mexican legal system provides a special system for regulating indigenous lands; its system of land ownership consists only of private, public, *ejido*, and communal property.”

28. As for exhaustion of domestic remedies, the petitioners argue that such requirement was met through the filing of the *amparo* motion before the Eighth District Court in the state of Sonora, which was officially denied in 2002 and reported to the victims in 2005, after which the petition was filed with the IACHR. The petitioners indicate that there are no other remedies pending for reinstatement of the Yaqui lands expropriated by the Zedillo Decree.

29. The petitioners also indicate that the exceptions established in Articles 46(2)(a) and 46(2)(b) of the American Convention apply, since under Mexican law, there are no mechanisms whereby the Yaqui People can seek Constitutional compensation. The petitioners indicate that the Constitution of 1917 afforded limited recognition to indigenous peoples as agricultural communities—causing the displacement of the indigenous traditional authorities—and that the 2001 amendment to the Constitution granted the power to recognize indigenous peoples to the federal states. The petitioners allege that the state of Sonora has intentionally breached its obligation to enact laws that would fully recognize the rights of the Yaqui People.

30. The petitioners also indicate that the exception established in Article 46(2)(c) is inapplicable, because the Yaqui People have made multiple diligent efforts through the domestic legal system to procure some compensation, however these have been fruitless. There is now a situation of unwarranted delay in responding to the Yaqui People’s attempts to assert their rights.

31. Based on the foregoing, the petitioners allege that the State violated the rights to life, liberty and security, health, property, cultural integrity, to a healthy and safe environment, and the right to consultation. The petitioners indicate that the State violated Articles 1, 2, 4, 7, 16, 17, 21, 23, 24, 25, and 26 of the American Convention; Articles 10, 11, 12, 16, 17, and 18 of the Protocol of San Salvador; Articles I, II, III, VI, VII, VIII, IX, XI, XIII, XIV, XVII, XVIII, XX, and XXIII of the American Declaration; and Articles 6(2), 7(2) and 15(1) of Convention 169 of the International Labor Organization to the detriment of the alleged victims, as well as various rights recognized in an array of international human rights instruments.<sup>5</sup>

## B. Position of the State

32. The State maintains that according to the provisions of Article 27 of the Constitution of Mexico, the Yaqui People have their own legal standing and assets, and own the lands with which they have been endowed or those that they have acquired by any other means. According to the State, on October 30, 1937, the President of the Republic, Lázaro Cárdenas, published in the Official Gazette an agreement establishing the basis for resolving the land problem in the Yaqui region. The state indicates that said agreement did not establish a specific plot of land but simply delimited a general territory, located on the

<sup>5</sup> International Covenant on Civil and Political Rights; International Convention on the Elimination of all Forms of Racial Discrimination; United Nations Convention on the Rights of the Child; United Nations Declaration on the Rights of Indigenous Peoples; Proposed American Declaration on the Rights of Indigenous Peoples; Universal Declaration of Human Rights; 1985 Vienna Convention for the Protection of the Ozone Layer; 2001 Stockholm Convention on Persistent Organic Pollutants.

right bank of the Yaqui River and the “Yaqui Sierra.” The State also indicates that on September 30, 1940, President Cárdenas issued a resolution which specified the points indicating the boundaries and delimiting the lands known as the Yaqui territory—very generally describing a polygon—but not specifying its area.

33. The State indicates that on October 13, 1971, the state authorities and the traditional governors of the eight Yaqui Peoples agreed to set the boundaries and delimit the Yaqui territory under specific conditions. The State indicates that, based on the map authorized in 1940, the parties agreed that Yaqui territory included approximately 474,555 hectares. However, according to the State, there is no record that such survey and demarcation was ever done.

34. According to the State, over the years various problems have arisen in the Yaqui territory with occupants and campesinos in six *ejido* groups. Consequently, the State alleges that on December 21, 1996, an agreement was signed with the governors of the Yaqui People whereby the alleged victims purportedly acknowledge they would not exercise ownership over 96,869 hectares located “within what the Yaqui People have considered to be their traditional territory.” Similarly, the State maintains that it agreed to carry out the resolution starting with the “natural points,” and regarding the 96,869 hectares not in the possession of the Yaqui People, it was agreed to grant compensation through a contingency fund. The State indicates that the Yaqui People made a commitment to respect the fact that some of the titled plots were then located within the polygon of the map authorized in 1940.

35. The State maintains that consequently, on January 16, 1997, a new survey and demarcation exercise was conducted, starting with the definitive map from 1940, establishing geographically referenced points and using more precise measuring methods than those which had been used in 1940 and 1971. The State indicates that with those methods an area of 459,017 hectares was delimited—that is, 15,538 hectares less than that which was recorded in 1971 and a variation within the tolerance parameters contemplated by administrative law. The State indicates that based on those studies, a final map was drawn. This document meets the legal requirements to conclude that the area of the Yaqui People’s property consists of 459,017 hectares, minus the areas expropriated later.

36. In this regard, the State indicates that the area recognized by the Yaqui People has been the object of expropriation through eminent domain, in accordance with the Constitution of Mexico. Specifically, the State points out that three expropriation decrees were issued: a) on June 12, 1987, an expropriation decree was published for the construction of a rural clinic operated by the Mexican Institute of Social Security (IMSS) on a plot measuring 509 square meters, executed on November 5, 1991; b) on December 21, 1991, an expropriation decree was published for construction of an IMSS clinic on an area of 1,600 square meters, executed in November of 1992; and c) on January 10, 1997 (Zedillo Decree) there was an expropriation by eminent domain of a 2,688 hectare plot, specifying that 431 hectares were in the possession of various *ejidos* established according to the agrarian procedure, and 1,647 hectares for irrigation, as well as 609 hectares of summer pastureland that was in the possession of various people. This decree was executed on January 31, 1997. The State clarifies that the land expropriated through eminent domain was 2,688 hectares and not 40,000 hectares, as alleged by the petitioners.

37. According to the State, the amount of compensation (\$40,406,884.88 Mexican pesos) was deposited in the National Trust Fund for *Ejido* Development (FIFONAFE). The State indicates that due to differences in the election of their governors, the Yaqui People have not collected the compensation, and it has therefore compounded some interest which is available for their withdrawal once the legal requirements are met.

38. In addition, the State alleges that it has conducted official studies and has considered external studies to assess the health situation of the Yaqui People. In particular, the State maintains that the National Institute of Ecology (INE) diagnosed the POPs in the Yaqui Valley and determined that the concentrations of POPs in the soils and sediments were generally lower than those reported in the international literature. Furthermore, the State indicates that INE is monitoring POPs in the blood of 60 women of reproductive age in the area.

39. The State also indicates that based on outside studies, the National Water Commission did a sampling of water supply sources. It corroborated that in the community of Pótam and Vícam Pueblo there were concentrations of arsenic higher than those allowed by Mexican law. But the State points out that in Yaqui territory there is access to bottled drinking water at a price of around 10 pesos for 20 liters, and that in order to ensure access to potable water in the short term, the National Commission for the Development of Indigenous Peoples finances two water purification plant projects with systems of reverse osmosis to be operated by the communities of Pótam and Vícam Pueblo. The State asserts that it is addressing these health problems with a comprehensive approach, and that studies are being conducted which in the medium term will provide a scientific basis to guide public policy in the area, in order to safeguard the health of the Yaqui tribe members.

40. As regards domestic remedies, the State indicates that the first time the representatives of the Yaqui People went to the courts it was because they felt that the eminent domain asserted in the Zedillo Decree was unwarranted, so they filed an *amparo* motion in the Eighth District Court of the state of Sonora, which ruled on November 13, 2002 that there had not been any violations of Constitutional rights. The State alleges that in light of this decision, the Yaqui people failed to exercise their right to appeal, and therefore the decision was upheld.

41. The State maintains that the second time the Yaqui People filed a motion was before the Eighth District Court of the state of Sonora, but on that occasion it was to claim payment of the compensation provided for in the Zedillo Decree. According to the State, this Court turned the matter over to the First Administrative District Court in Mexico City for jurisdictional reasons. The State indicates that the court with jurisdiction decided to dismiss the case. The alleged victims then filed an appeal, whose resolution is still pending.

42. The State alleges that first, the petitioners stated that they were dissatisfied with the Zedillo Decree and for this reason they filed an *amparo* motion, which was not granted; but that decision could have been appealed. In addition, the State argues that the petitioners tacitly consented to the expropriation decree, because they filed a motion to receive financial compensation for the expropriation established in that decree.

43. According to the State, these circumstances are sufficient to verify the legality of the current boundaries of the Yaqui territory and show that judicial remedies have been available to the Yaqui People, "as was demonstrated by the remedies filed and the pending appeal." The State additionally mentions that a standing inter-institutional roundtable was established to address the issues of the Yaqui People. The roundtable includes various government secretariats: Gobernación; Environment and Natural Resources; Social Development, Health, and the Economy; Land Reform; Agriculture, Livestock, Rural Development, Fishing, and Food; as well as the National Water Commission and the National Trust Fund for *Ejido* Development. In conclusion, the State believes that the grievances of the Yaqui People are being addressed in the national sphere. Therefore, it asks the IACtHR to "closely monitor the agreements reached between the parties, in order to achieve a comprehensive solution to the problem."

#### **IV. ANALYSIS OF ADMISSIBILITY**

##### **A. The Commission's competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae***

44. Under Article 44 of the American Convention, the petitioners are entitled to lodge petitions before the Commission. The alleged victims are the Yaqui Pueblos of Vícam, Pótam, Tórrim, Ráhum, Huirivis, Bácum, Cócort, and Belem and their tribal members,<sup>6</sup> whose rights under the American Convention the Mexican State has undertaken to respect and uphold. The Commission notes that Mexico has been a party to

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<sup>6</sup> The Yaqui People are an organized community located in a specific geographical place, whose members may be individually identified. See, *inter alia*, IACtHR, Report No. 63/10, Garifuna Punta Piedra Community and its members (Honduras), March 24, 2010, para. 32; Report No. 141/09, Diaguita Agricultural Communities of the Huascos-Altinos and the members thereof (Chile), December 30, 2009, para. 28; Report No. 62/04, Kichwa People of Sarayaku and its members (Ecuador), para. 47.

the American Convention since March 24, 1981, the date of deposit of its instrument of ratification. Therefore, the Commission is competent *ratione personae* to review the petition.

45. The Commission observes that the petitioners are alleging facts that have taken place over the past eight decades, that is, from 1937 to the present day. Regarding the alleged facts that occurred before 1965, the Commission does not have competence *ratione temporis* to review them since its competence to review individual petitions only began that year. Therefore, the IACtHR has competence *ratione temporis* only to review allegations subsequent to 1965. In this regard, it shall examine, in light of the American Declaration, claims regarding alleged facts that occurred between 1965 and March 24, 1981, the date on which the Mexican State deposited its instrument of ratification of the American Convention. The Commission recalls that for those States that have not yet ratified the American Convention, as States Party to the Charter of the OAS they have undertaken to respect the fundamental rights set forth in the American Declaration, which is a source of international obligations. Finally, the facts that are alleged to have occurred while the American Convention was in force or whose effects continued after the Convention went into effect, shall be examined in light of the Convention.

46. The Commission has competence *ratione loci* to examine the petition because it alleges violations of rights protected by the American Convention purported to have taken place under the jurisdiction of Mexico, a State Party to it.

47. Finally, the IACtHR has competence *ratione materiae* because the petition alleges violations of human rights protected by both the American Declaration and the American Convention. Considering that both the Inter-American Court of Human Rights and the Commission have ruled that the American Declaration is a source of international obligations for the OAS Member States,<sup>7</sup> and that some of the alleged facts occurred prior to and continued after March 24, 1981, the Commission may apply the American Declaration and the American Convention concurrently.<sup>8</sup>

48. The Commission also observes that the petitioners allege violation of Articles 10, 11, 12, 16, 17, and 18 of the Protocol of San Salvador. In this regard, the Commission reiterates that Article 19.6 of the Protocol of San Salvador establishes a limited competence clause, whereby the organs of the inter-American system may only hear individual petitions related to violations of the rights established in Articles 8(a) and 13 of said treaty.<sup>9</sup> Therefore, the Commission lacks competence *ratione materiae* to make a decision on an individual petition regarding potential violations of Articles 10, 11, 12, 16, 17, and 18 of the Protocol of San Salvador, although they may be taken into account as sources of interpretation. Similarly, as regards the alleged violations of Convention 169 of the ILO and the other international human rights instruments cited, the Commission reiterates that it does not have competence to make decisions on instruments adopted outside the inter-American system. However, the IACtHR may use both international instruments to guide interpretation of the obligations under the American Convention, in light of its Article 29.<sup>10</sup>

49. However, it is pertinent to indicate that the factual allegations relating to alleged violations under Articles 10, 11, 12, 16, 17 and 18 of the Protocol of San Salvador will be considered in the characterization section of this report in relation to Article 26 of the American Convention.

<sup>7</sup> See, *inter alia*, IA Court of HR, Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of Man in light of Article 64 of the American Convention on Human Rights, July 14, 1989, Ser. A. No. 10 (1989), paras. 35-45.

<sup>8</sup> IACtHR, Report No. 58/09, Petition No. 12.354, Admissibility, Kuna de Madungandí and Embera de Bayano Indigenous Peoples and their members (Panama), April 21, 2009, para. 28.

<sup>9</sup> See, *inter alia*, IACtHR Report No. 76/09, De La Oroya Community, (Perú), August 5, 2009, para. 54; IACtHR, Report No. 102/09, Pensioners of the National Agricultural Development Bank (BANDESA) (Guatemala), October 29, 2009, para. 24; Report N° 38/09, National Association of Ex-Employees of the Peruvian Social Security Institute et al. (Peru), March 27, 2009, para. 69.

<sup>10</sup> See, *inter alia*, CIDH, Report No. 87/12, Maya Kaqchikel Communities of Los Hornos and El Pericón I and their members (Guatemala), November 8, 2012, para. 32; Report No. 29/06, Garifuna Community of "Triunfo de la Cruz" and its members (Honduras), March 14, 2006, para. 39; Report No. 39/07, Garifuna Community of Cayos Cochinos and its members (Honduras), July 24, 2007, para. 49.

## B. Other admissibility requirements

### 1. Exhaustion of domestic remedies

50. Article 46(1)(a) of the American Convention states that in order for a petition lodged before the Inter-American Commission to be admissible, pursuant to Article 44 of the Convention, domestic remedies must have been pursued and exhausted according to generally recognized principles of international law. The requirement of prior exhaustion applies when appropriate and effective remedies are available to redress the alleged violation. In this vein, Article 46(2) specifies that this requirement is not applicable 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.

51. In tandem, Article 31(3) of the Rules of Procedure of the IACtHR establishes that when the petitioner argues one of the exceptions to exhaustion of domestic remedies found in Article 46(2) of the Convention, the State must demonstrate that the domestic remedies have not been exhausted, unless this is apparent from the case file. Similarly, to decide whether the allegations made by the petitioners should be found inadmissible due to non-exhaustion of remedies available under domestic law, the Commission refers to the basic principles governing the nature of the remedies to be exhausted under the inter-American system—that is, whether they can appropriately redress the violation of a legal right, and whether they can actually produce the effect for which they were created.<sup>11</sup>

52. The Commission notes that the facts alleged in the instant case include but are not limited to: the Zedillo Decree, which, *inter alia*, refers to effective protection of the Yaqui People's right to collective property; the State's obligations stemming from indigenous peoples' right to collective property; fulfillment of the State's duties regarding the right to consultation and, where appropriate, free, prior and informed consent; the right to receive a reasonable share of the benefits from projects implemented in Yaqui territory; and the availability and observance of due process rights in domestic proceedings to ensure such rights are upheld. The Commission similarly observes that for several decades, the alleged victims have made numerous appeals to the State authorities and have raised the central issues in this petition. Therefore the Commission believes that the State has had multiple opportunities to resolve the substantive issue, which is effective protection of the human rights of the Yaqui People.

53. However, as the State acknowledges, "there is no record that the survey and demarcation were performed." The State also limits itself to indicating in general terms that "the Yaqui People have their own legal standing and assets, and own the lands with which they have been endowed or those that they have acquired by any other means," and that "judicial remedies have been available to the Yaqui People, 'as was demonstrated by the remedies filed and the pending appeal.'" But the State did not submit precise or detailed information about the adequate and effective remedies that the petitioners could have used to demand fulfillment of the State's obligations to uphold the rights of indigenous peoples.

54. The Commission observes that the alleged victims repeatedly requested the recognition and protection of their rights before the presumably competent authorities. However, they found no adequate or effective mechanisms to assert their rights. Consequently, the IACtHR understands that Mexico did not make available to the alleged victims any remedy to protect the rights they alleged to have been violated. Under Article 46(2)(a) of the American Convention, this circumstance constitutes grounds for an exception to the rule on exhaustion of domestic remedies.

55. As particularly regards the Zedillo Decree, the IACtHR observes that the petitioners indicated that the *amparo* motion was dismissed in 2002 in a process tainted with fraud, and they were not formally

<sup>11</sup> See, *inter alia*, IA Court of HR, Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C No. 4, para. 63-66; Exceptions to Exhaustion of Domestic Remedies (Articles 46(1), 46(2)(a) and 46(2)(b), American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 34-36.

informed of this decision until 2005. The State, in turn, alleges that the petitioners were dissatisfied with the expropriation decree of January 10, 1997 and therefore filed an *amparo* remedy, which was unsuccessful in accomplishing their objectives, and that said decision could have been appealed. The State also alleges that the petitioners expressed tacit consent with the expropriation decree since they filed a motion seeking economic compensation for the expropriation under the aforementioned decree. The Commission notes that the petitioners allege that it was not possible to obtain a copy of the internal proceedings related to the *amparo* motion, and that the State also failed to provide such information to the Commission. The Commission also observes that the Zedillo Decree is “final and legally immovable.” The alleged fraud around the dismissal of the *amparo* motion was never investigated by the State authorities, according to the State itself. In such circumstances, the IACtHR finds that there has been unwarranted delay in the domestic proceedings, a further reason that the exception provided in Article 46(2)(c) of the American Convention applies.

56. It should be noted that Article 46(2), given its nature and purpose, is a rule whose content stands alone *vis à vis* the substantive rules of the Convention. Therefore, the determination of whether exceptions to the rule on exhaustion of domestic remedies are applicable to the case at hand, should be done prior to and separate from an analysis of the merits of the case, because it relies on a standard of evidence different from that used to determine whether there has been a violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that hindered exhaustion of domestic remedies in the instant case shall be analyzed, where relevant, in the report the Commission adopts on the merits of the case, to verify whether there have in fact been violations of the Convention.

## 2. Timeliness of the petition

57. According to the provisions of Article 46(1)(b) of the Convention, for a petition to be admitted it must be filed within six months of the date on which the interested party was notified of the final decision handed down within the national jurisdiction. This rule does not apply when the Commission determines that one of the exceptions to the rule on exhaustion of domestic remedies set forth in Article 46(2) of the Convention applies. In such cases, the Commission must determine whether the petition was presented within a reasonable time, according to Article 32 of its Rules of Procedure. To this end, the Commission must consider the date of the alleged violation and the circumstances of each case.

58. According to the information provided by the parties, the IACtHR notes that the alleged facts that gave rise to this petition still exist—particularly those stemming from the alleged expropriation of part of the Yaqui People’s land in 1997. In light of these considerations, the Commission concludes that the petition filed on January 26, 2006 was filed within a reasonable time and that therefore, the admissibility requirement regarding timeliness of the petition has been satisfied.

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

59. Article 46(1)(c) establishes that the admissibility of a petition is subject to the requirement that the matter not be “pending in another international proceeding for settlement.” Article 47(d) of the Convention stipulates that the Commission shall not admit any petition that is “substantially the same as one previously studied by the Commission or by another international organization.” In this case, the parties do not allege, and it does not emanate from the record, that either of these circumstances of inadmissibility exists.

## 4. Colorable claim

60. The Commission finds that it is not appropriate at this stage of the proceedings to decide whether the alleged violations of the alleged victims’ rights actually occurred. For the purposes of admissibility, the IACtHR must simply decide whether facts have been presented which, if proven, would tend to establish violations of the American Convention, as stipulated in its Article 47(b), or whether the petition “is manifestly groundless or obviously out of order,” as described in clause (c) of that Article. The criteria for

evaluating such circumstances are different from those required to make a decision on the merits of a petition. The IACtHR must conduct a *prima facie* assessment and determine whether the petition tends to establish an apparent or potential violation of a right protected by the American Convention, but not establish whether such violation actually exists.<sup>12</sup> At this stage it is appropriate to conduct a summary analysis that does not establish pre-judgment or advance an opinion on the merits. The Rules of Procedure of the Inter-American Commission, by establishing an admissibility stage and a separate merits stage, reflect this distinction between the evaluation the IACtHR conducts to declare a petition admissible, and that which it conducts to establish whether a violation attributable to the State has occurred.<sup>13</sup>

61. In addition, neither the American Convention nor the Rules of Procedure of the IACtHR require petitioners to identify the specific rights alleged to be violated by the State in a matter brought before the Commission, although petitioners may do so. The Commission, applying the case law of the system, is to determine in its admissibility reports which provisions of the relevant inter-American instruments are applicable and may have been violated if there is sufficient evidence to prove the alleged facts. In this case, in addition to the Articles indicated by the petitioners, the Commission shall analyze the alleged facts in light of Articles 5, 8, and 19 of the American Convention.

62. The Commission observes that the petitioners make various types of allegations, which cover events alleged to have occurred over the past eight decades. As was indicated in the section on competence, the IACtHR only has the authority to analyze alleged violations that may have occurred since 1965.

63. The IACtHR notes that the main allegation by the petitioners revolves around the alleged expropriations of part of the previously recognized traditional lands of the Yaqui People conducted under the Zedillo Decree of 1997, as well as the alleged violations of the right to due process during the *amparo* proceedings against said decree. If proven, these alleged facts may constitute violations of rights established in Articles 8, 21, and 25 of the American Convention, in connection with its Articles 1(1) and 2.

64. In addition, the Commission observes that the petitioners make other more general allegations that may be grouped into three categories. First, the petitioners stake claims regarding the partial recognition, and failure to demarcate, set boundaries, and issue title to their ancestral lands; the lack of a legal framework to uphold the rights of indigenous peoples; the lack of effective remedies to fulfill obligations regarding indigenous collective property; the dispossession and lack of access to waters belonging to Yaqui territory; and the alleged granting of concessions and authorization for infrastructure projects without prior consultation. These facts, if proven, may constitute violations of the rights recognized in Articles 8, 21, 24, and 25 of the American Convention, in connection with Articles 1.1 and 2 therein, as well as Articles XVIII and XXII of the American Declaration with respect to events that allegedly occurred between 1965 and the entry into force of the Convention in Mexico.

65. The second category is the alleged discriminatory treatment in the provision of credit and public services and infrastructure; the planning, maintenance, and development of irrigation districts within Yaqui territory which may constitute violations of the rights recognized in Article 24 of the Convention in connection with Article 1.1 therein and Article II of the American Declaration; and the alleged division of Yaqui territory into five municipalities with primarily non-Yaqui residents. These may constitute violations of rights established in Article 23 of the American Convention, in connection with Article 1(1) of same and Article XX of the American Declaration.

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<sup>12</sup> See, *inter alia*, IACtHR, Report No. 128/01, Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of “*La Nación*” Newspaper (Costa Rica), December 3, 2001, para. 50; Report No. 4/04, Rubén Luis Godoy (Argentina), February 24, 2004, para. 43; Report No. 32/07, Juan Patricio Marileo Saravia et al (Chile), April 23, 2007, para. 54.

<sup>13</sup> See, *inter alia*, IACtHR, Report No. 31/03, Mario Alberto Jara Oñate et al (Chile), March 7, 2003, para. 41; Report No. 4/04, Rubén Luis Godoy (Argentina), February 24, 2004, para. 43; Petition 429-05, Juan Patricio Marileo Saravia et al (Chile), April 23, 2007, para. 54; Petition 581-05, Víctor Manuel Ancalaf Laupe (Chile), May 2, 2007, para. 46.

66. The third category of allegations involves the alleged deaths and/or serious health problems the alleged victims are purported to have suffered due to the acts or omissions of the State regarding environmental pollution that particularly affects children. These may constitute violations of the rights established in Articles 4, 5, and 19 of the American Convention, in connection with Article 1(1) of same, and Articles I, VII, and XI of the American Declaration.

67. Fourthly, it is noted that the Commission considers important to analyze at the merits stage, in the light of Article 26 of the American Convention, the petitioners' allegations regarding the impact on the right to health of the members of the Yaqui people that may have generated the alleged violations in the access to uncontaminated water, the poverty that affects them and the alleged widespread use of agro-toxic or chemicals next to their traditional territories, and also in areas adjacent to their crops and water for irrigation, which in general have polluted their natural environment and natural resources for their subsistence. The refer considerations taking in account the special situation of children and adolescents; and women, adults and persons with disabilities.

68. Finally, the Commission finds that the petitioners have not presented sufficient evidence to establish, *prima facie*, potential violations of Articles 7 and 16 of the American Convention, or Articles III, VI, VIII, IX, XIII, XIV, and XVII of the American Declaration.

## V. CONCLUSION

69. Based on the foregoing arguments of fact and law and without prejudice to the merits of the matter, the IACtHR concludes that the instant case satisfies the admissibility requirements set forth in Articles 46 and 47 of the Convention, and therefore

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:

1. To find the petition before us to be admissible as to Articles 4, 5, 8, 19, 21, 23, 24, 25 and 26 of the American Convention, in connection with Articles 1(1) and 2 of same, and under Articles I, II, VII, XI, XVIII, XX, and XXIII of the American Declaration.

2. To find the petition before us to be inadmissible as regards alleged violations of Articles 7 and 16 of the American Convention, and Articles III, VI, VIII, IX, XIII, XIV, and XVII of the American Declaration.

3. To notify the parties of this decision.

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

Done and signed in the city of Washington, D.C., on the 28<sup>th</sup> day of the month of July, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; Felipe González, Rosa María Ortiz, and Tracy Robinson, Commissioners.