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## **REPORT No. 185/23**

### **PETITION 1533-17**

REPORT ON ADMISSIBILITY

Q'EQCHI'S INDIGENOUS COMMUNITIES OF SANTA MARÍA CAHABÓN  
GUATEMALA

Electronically approved by the Commission on September 27, 2023

**Cite as:** IACHR, Report No. 185/23. Petition 1533-17. Admissibility. Q'eqchi's indigenous Communities of Santa María Cahabón. Guatemala. September 27, 2023.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Colectivo Madre Selva and Bernardo Caal Xól <sup>1</sup>
<b>Alleged victim:</b>	Q'eqchi's indigenous Communities of Santa María Cahabón
<b>Respondent State:</b>	Guatemala <sup>2</sup>
<b>Rights invoked:</b>	Article 3 (right to juridical personality), 7 (right to personal liberty), 8 (right to a fair trial), 13 (freedom of expression), 15 (freedom of assembly) and 25 (judicial protection) of the American Convention on Human Rights <sup>3</sup> in relation to article 1.1 (obligation to respect rights) <sup>4</sup> and other international treaties <sup>5</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>6</sup>**

<b>Filing of the petition:</b>	August 2, 2017
<b>Additional information received during the stage of initial review:</b>	December 6, 2017
<b>Notification of the petition:</b>	June 10, 2022
<b>State's first response:</b>	October 7, 2022 <sup>7</sup>
<b>Warning of potential archiving of the petition:</b>	March 30, 2016; April 29, 2019, and April 16, 2020
<b>Response of the petitioner party to the warning of potential archiving:</b>	October 7, 2019, and September 28, 2020
<b>Associated precautionary measure:</b>	613-17 (closure under study)

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (instrument of ratification deposited on May 25, 1978)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and international res judicata:</b>	No
<b>Rights declared admissible:</b>	Articles 7 (right to personal liberty), 8 (right to a fair trial), 25 (right to judicial protection) and 26 (progressive development) in relation to article 1.1 (obligation to respect rights)
<b>Exhaustion or exception to the exhaustion of domestic remedies:</b>	Yes, in the terms of Section VII

<sup>1</sup> According to the petition, Mr. Caal Xól acts as a neighbour from the municipality of Santa María Cahabón, department of Alta Verapaz, member and representative of the Q'eqchi' indigenous community.

<sup>2</sup> According to article 17.2.a) of the Rules of Procedure of the Commission, Commissioner Edgar Stuardo Ralón Orellana, a Guatemalan national, did not participate in the debate or decision of the current matter.

<sup>3</sup> Hereinafter "the American Convention" or "the Convention".

<sup>4</sup> The petitioner also alleges violations of self-determination, collective rights of indigenous peoples, the right to belong to indigenous communities, cultural identity, indigenous spirituality, health, protection of a healthy environment, association, assembly, freedom of expression and thought, autonomy and self-government, lands, territories and resources, development, peace, security and protection, and effective and adequate remedies.

<sup>5</sup> Right to Free, Prior and informed consent based on Convention 169 of the International Labour Organization (hereinafter "ILO Convention 169")

<sup>6</sup> The observations of each party were duly notified to the opposing party.

<sup>7</sup> The State requested an extension on September 8, 2022 due to the complexity of the petition.

**Timeliness of the petition:**

Yes, in the terms of Section VII

**V. POSITIONS OF THE PARTIES**

1. The petition was filed by the Madre Selva collective and Mr. Caal Xól (hereinafter "petitioners" or "petitioner party"), who allege the violation of the right to consultation of the Q'eqchi's indigenous communities of Santa María Cahabón, as a result of the concession to build two hydroelectric plants on the rivers that flow through their communities. On the other hand, they allege violations of judicial guarantees and protection in the criminal trial of Mr. Caal Xól, who is a human rights defender and indigenous leader.

*General approaches*

2. From the narrative and annexes provided by both parties, it is clear that the controversy denounced in the petition arises from the granting of two concessions to use the public domain on the Oxec and Cahabón rivers, and the subsequent construction of two hydroelectric power plants called Oxec and Oxec II. To provide context in this regard, the State reported extensively<sup>8</sup> on the administrative procedure for the approval of the two hydroelectric projects.

3. In 2012, Sociedad Anónima Oxec filed a request to use public property to install a hydroelectric power plant, in the Oxec River basin, in the municipality of Santa María Cahabón, in the department of Alta Verapazo. On August 7, 2013, the Ministry of Energy and Mines issued Resolution 3221,<sup>9</sup> through which it granted the definitive authorization for the installation of the hydroelectric power plant, in favor of the Oxec entity, empowering it to use the flow of the Oxec River, with an outlet on the Cahabón River, for a term of fifty years.

4. Subsequently, Sociedad Anónima Oxec II filed on May 2, 2014, an application to use public property to install a hydroelectric power plant in the Cahabón river basin in the municipality of Santa María Cahabón, department of Alta Verapaz. On February 12, 2015, the Ministry of Energy and Mines issued resolution 000500 and granted the definitive authorization for the installation of the hydroelectric power plant in favor of the entity Oxec II, empowering it to use the Cahabón river basin, for a term of 50 years.

5. In 2015 the Q'eqchi's communities of Santa María Cahabón, noticed the construction of the hydroelectric plants on the Oxec and Cahabón rivers. Because of this, they went to the municipality of Santa María Cahabón and the Human Rights Ombudsman's Office to request information. After learning about the implementation of the two hydroelectric projects, the petitioners filed domestic remedies in order to restore the community's right to consultation.

6. Thus, on December 11, 2015, Mr. Caal Xól filed a writ for the protection of constitutional rights (amparo) before the Supreme Court of Justice against the Ministry of Energy and Mines, against the authorization of the aforementioned concession licenses, arguing that the Q'eqchi's indigenous communities had not been consulted. The judgment was issued by the aforementioned court on January 4, 2017, which decided to put on hold the granting of both licenses and ordered the Ministry of Energy and Mines to respect the rights and guarantees of the petitioner party.

7. However, said Ministry and the entities Oxec and Oxec II appealed before the Constitutional Court on January 4, 2017. Thus, this court decided on May 26, 2017 to deny the appeal and confirm the first degree sentence; it ordered the Ministry of Energy and Mines to carry out the consultation established in International Labor Organization's Indigenous and Tribal Peoples Convention (ILO Convention 169), within a

<sup>8</sup> Since the subject matter of this petition is not controversial, the details of the aforementioned concessions are not covered in detail in this report.

<sup>9</sup> Ministerial agreement 260/2013 issued on August 7, 2013 by the Ministry of Energy and Mines which grants the definite authorization to Oxec to install the Hydroelectric Power Plants.

period of twelve months, in which the hydroelectric companies could continue their work as long as they submitted quarterly reports explaining the progress of the consultation.

8. As a last domestic remedy, the petitioner party filed on May 30, 2017, an appeal for clarification and extension, which was heard by the same Constitutional Court, and which, on June 6, 2017, resolved to deny because it considered that the judgment of May 26, 2017 was coherent, understandable and the pronouncement was not ambiguous.

9. The consultation process<sup>10</sup> ordered by the Constitutional Court was carried out with the indigenous peoples that inhabited the area contained in the watersheds.<sup>11</sup> Mainly, the State highlights that they worked with an academic and multidisciplinary technical team in different branches for the integration of the pre-consultation table,<sup>12</sup> that they were in contact with different authorities and that they convened the table through media with coverage in the municipality of Santa María Cahabón, in Spanish and Q'eqchi' language.

10. Once it was decided on the formation of the roundtable, it dictated the phases for the consultation process, namely: 1) confidence building, 2) transfer of information, 3) evaluation of information, 4) intercultural dialogue, and 5) agreements, monitoring and follow-up.

11. In the first phase, which began on October 10, 2017, representatives of the Community Development Councils, Auxiliary Mayors, Butlers, Education Committees, Elders, Catechists, Women's Committees, Health Commissions, Midwives, and Lead Representatives of the Maya Q'eqchies Communities located in the area of influence of the Oxec and Oxec II hydroelectric projects participated. Also in the first phase, an Interlocution Commission was created to elect representatives to participate in the implementation of the actions programmed for the implementation of the consultation of the Q'eqchi's communities.

12. During the third phase, a period of time was provided for the communities to hold internal assemblies to review, analyze, and discuss the information, and to identify the potential impacts on their way of life and customs. These meetings resulted in minutes that were sent to the representatives of the Ministry of Energy and Mining, in order to identify key issues and points, as well as to seek agreements between the State, the communities and the Oxec and Oxec II entities.

13. On November 24, 2017, a meeting was held that included members of the communities, the Ministry of Energy and Mines, and the Oxec and Oxec II companies, to identify technical, environmental, and social issues related to the development of the hydroelectric projects. Agreements were reached in the following areas: i) Peace building; ii) Environmental aspects; and iii) Sustainable development. Following this meeting, the document *Agreements for Peace and Sustainable Development of the Communities in the area of influence of the Oxec and Oxec II hydroelectric projects* was drafted. The document was translated into the Q'eqchi' language by the Academy of Mayan Languages of Guatemala.

#### *Arguments presented by the petitioner party*

14. The petitioner considers that the right to consultation of the Q'eqchi's communities was not respected, and that, although the Constitutional Court issued the judgment of May 26, 2017 collecting

<sup>10</sup> Regarding the consultation process ordered by the Constitutional Court, the elements were mostly compiled from what was indicated by the State, since the petitioner did not present the details of the consultation.

<sup>11</sup> The State notes: "[T]he consultation process was carried out in accordance with Convention 169 of the International Labor Organization -ILO- to the communities in the area of influence of the Oxec and Oxec II hydroelectric projects, which are located in the municipality of Santa María Cahabón, being the following: 1) Pequixul Village; 2) Caserio La Escopeta; 3) Caserio Sacta Sector; 4) Aldea Chacalte; 5) Caserio Sekatalkab; 6) Aldea Sacta; 7) Aldea Sepoc; 8) Aldea Seasir; 9) Aldea Salac; 10) Caserio Pulisibic; and 11) Caserio Tres Cruces El Mirador".

<sup>12</sup> The State reports that in the integration of the pre-consultation roundtable, the following entities were officially requested to be appointed: "Oxec entity, Oxec I entity, the Municipality of Santa María Cahabón, the Departmental Development Council of the department of Alta Verapaz, the Ministry of Environment and Natural Resources -MARN-, the Ministry of Culture and Sports -MCD-, the Academy of Mayan Languages of Guatemala ALMG-, the Human Rights Ombudsman's Office -PDH-, the San Carlos University of Guatemala -USAC- and the Private Higher Education Council -CEPS-, University of San Carlos of Guatemala -USAC- and the Council of Private Higher Education -CEPS-".

arguments justifying the prior nature of the consultation, the rights of the communities continue to be violated because the hydroelectric plants are allowed to continue operating while the established term of one year to carry out the consultation with the communities is fulfilled.

15. The petition requested that the State *"take the corresponding actions to safeguard the right to consultation"*, which for the petitioner would consist of suspending the authorizations granted to the Oxec and Oxec II hydroelectric plants.

16. The petitioners clarify that in 2015, fifty-six communities of Santa María Cahabón, gathered in an assembly, decided to be represented by Mr. Caal Xól -they do not specify the circumstances of said assembly, nor the scope of this representation-. In addition, the petitioners present minutes of assemblies held on May 14 and 15, 2016, in which these indigenous Q'eqchi's communities of the municipality of Santa María Cahabón, Department of Alta Verapaz, delegate their representation to Bernardo Caal Xól. In these minutes the signatories indicate: *"we as a community have rights to demand the consultation because we are Guatemalans, the community delegates the representation, they are: Bernardo Caal Xól [...], to make decisions on matters related to the issue, both in the municipality and at the national level"*.

17. The petitioners also indicate that the judgment of the Constitutional Court issued on May 26, 2017, whereby the appeal filed by the Oxec and Oxec II companies was denied and a prior consultation was ordered to be carried out over a period of twelve months, *"is rejected by the Q'eqchi's communities of Cahabón, also by 32 representatives of the Indigenous Authorities of the entire country, and by the autonomous union federations that have representation in the ILO, civil and indigenous organizations of the country"*. Because during those twelve months the hydroelectric plants could continue to operate.

18. The petitioner also denounces that a smear campaign was carried out against Mr. Caal Xól and the Madre Selva collective - they do not specify by whom - consisting of false publications in newspapers and social networks, as well as defamatory news in a digital newspaper; they consider that this was intended to *"delegitimize the social struggle of the Q'ueqchi' indigenous community in defense of their rivers, which are sacred to them according to their Mayan cosmivision"*. In a document dated May 15, 2016, signed by members of Caserio Chaslaú, in addition to indicating that Mr. Caal Xól could represent them regarding their right to be consulted about the hydroelectric power plants, they indicate that he was being intimidated and threatened by other groups that are in favor of the hydroelectric power plants, such as *"the eleven communities near the hydroelectric powerplants"*.

19. Subsequently, they report that an arrest warrant was issued against Mr. Caal Xól, who was sentenced to six years in prison for the crime of aggravated robbery, and one year and four months for the crime of illegal detentions. They consider that there are shortcomings on the part of the Public Prosecutor's Office, the judge of the criminal instance, the sentencing court, and the resolution of the judges, which is serious since he is a human rights defender. -In this regard, the Commission notes that the petitioners did not provide specific details about the criminal investigation, trial and sentencing of Mr. Caal Xól, nor the exact dates of the decisions or before which courts they were carried out-.

20. Nevertheless, the petitioners state that the justice system of Cobán, Alta Verapaz, delayed the appeal process presented by Mr. Caal Xól's defense, arguing that the courts were closed due to the pandemic. Finally, the sentence was increased to seven years and four months. The petitioners indicate that the process is currently in the cassation phase, *"without progress due to attempts to co-opt the Supreme Court of Justice, appeals courts and the Constitutional Court itself by factional powers embedded in the State"*.

21. In a free search by the Commission, it was found that Mr. Caal Xól was accused of robbery and carrying out acts of violence against employees of a contractor company of Oxec on October 15, 2015; for these facts he remained three years in preventive detention,<sup>13</sup> and on November 9, 2018 he was sentenced to

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<sup>13</sup> Found in the Business and Human Rights Resource Centre, *"Guatemala: Defensor Bernardo Caal Xól continúa detenido tras 1245 días, por demanda de empresa Oxec; Naciones Unidas se pronuncia"*, July 29, 2021 available at [www.business-humanrights.org/es/últimas-noticias/guatemala-defensor-bernardo-caal-xól-continúa-detenido-tras-1245-días-por-demanda-de-empresa-oxec-naciones-unidas-se-pronuncia/](http://www.business-humanrights.org/es/últimas-noticias/guatemala-defensor-bernardo-caal-xól-continúa-detenido-tras-1245-días-por-demanda-de-empresa-oxec-naciones-unidas-se-pronuncia/) seen on August 7, 2023.

seven years and four months in prison for the crimes of illegal detentions with aggravating circumstances, for having retained consultants of the Oxec company; and aggravated robbery of goods of this company<sup>14</sup>. Therefore, Mr. Caal Xól's defense filed an appeal for cassation before the Supreme Court of Justice in September 2021, "to review the sentence for human rights violations, but the Criminal Chamber of the Supreme Court rejected it"<sup>15</sup>. In light of this, Mr. Caal Xól filed an amparo, which had not yet been resolved in 2022; however, on March 24, 2022, Mr. Caal Xól was released from the Cobán penitentiary for good behavior, but he continues to be convicted<sup>16</sup>.

22. The petitioners report that the United Nations Special Rapporteur for Indigenous Peoples heard the case of Bernardo Caal and the Q'eqchi's communities in resistance and submitted a report on this situation;<sup>17</sup> Amnesty International also issued a statement on the case in 2019 and 2020<sup>18</sup>.

23. It should be noted that, in communications subsequent to the petition, the petitioner party lists a series of rights that it considers violated, namely: "self-determination, collective rights of indigenous peoples, to belong to indigenous peoples, to legal personality, to cultural identity, to indigenous spirituality, to health, protection of a healthy environment, association, assembly, freedom of expression and thought, autonomy and self-government, to lands, territories and resources, to development, to peace, to security and protection, to effective and adequate resources and to the right to consultation of indigenous peoples in accordance with the provisions of ILO Convention 169". However, the petitioners only mention that "the implementation of the Hydroelectric Projects affects them [the Q'eqchi's communities] in their free access to water, health and a healthy environment, due to the fact that the rivers are completely diverted from their natural course".

24. In 2021 communications, the petitioner indicates that the consultations with the Q'eqchi's communities have been carried out outside their territory and without the presence of indigenous representatives. Furthermore, that the 2017 ruling of the Constitutional Court has not yet been executed because the consultation guide has not been prepared and approved.

25. Finally, they indicate that Mr. Caal Xól denounced that the territory where the two hydroelectric plants were built had been fraudulently purchased, and that the Public Prosecutor's Office did not conduct any investigation. -There is no further information in the file on this point-

#### *Arguments presented by the Guatemalan State*

26. The Guatemalan State argues that the instant petition does not meet the admissibility requirements set forth in the American Convention and the Commission's Rules of Procedure. In particular, it indicates that there is: i) lack of personal competence; ii) lack of legitimacy of the petitioner to represent the

<sup>14</sup> Found in Amnesty International "Guatemala: Amnistía Internacional declara a Bernardo Caal Xol preso de conciencia", July 16, 2020 available [www.amnesty.org/es/latest/news/2020/07/guatemala-bernardo-caal-xol-presos-conciencia/](http://www.amnesty.org/es/latest/news/2020/07/guatemala-bernardo-caal-xol-presos-conciencia/) revised on August 7, 2023.

<sup>15</sup> Found in the Business and Human Rights Resource Centre, *Guatemala: Bernardo Caal Xol nunca debió pasar un día en prisión*. March 25, 2022 available [www.amnesty.org/es/latest/news/2022/03/guatemala-bernardo-caal-xol-should-never-have-spent-a-day-in-prison/](http://www.amnesty.org/es/latest/news/2022/03/guatemala-bernardo-caal-xol-should-never-have-spent-a-day-in-prison/) seen on August 7, 2023.

<sup>16</sup> *Ibid.*

<sup>17</sup> The petitioners presented in their annexes a report of the United Nations, issued by the Special Rapporteur on the rights of indigenous peoples, on her visit to Guatemala, which states: "At the Cobán Pretrial Centre, in Alta Verapaz, the Special Rapporteur visited a number of imprisoned indigenous representatives, including Bernardo Caal Xól, who indicated that he fears for his safety"; and also that "In the Q'eqchi' community of Sepoc in Alta Verapaz, she heard complaints about the impact that dams across the Cahabón River have had on the local communities' access to water and about the fact that the community leaders have been treated as criminals for their opposition. Permanent licences for the Oxec I and Oxec II hydroelectric power plants were issued without consultation with the communities. In April 2016, the Constitutional Court ruled in favour of an amparo plea submitted by a number of communities and ordered the Ministry of Energy and Mining to hold retrospective consultations but omitted to order a suspension of operations. This is not in conformity with international standards". Found in United Nations, General Assembly, Human Rights Council, 39th Session. "Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Guatemala" A/HRC/39/17/Add.3. August 10, 2018, p. 11 and 8, respectively.

<sup>18</sup> In an open letter to the Attorney General, the organization stated: "the criminal proceedings against Mr. Bernardo Caal were accompanied by violent stigmatization campaigns that sought to discredit his work and promote a negative or violent vision [...] the investigation by the Public Prosecutor's Office lacks foundation and was built on the mere negative assumption of Bernardo as a community leader". "Guatemala: Carta Abierta a la Fiscal General sobre el caso de Bernardo Caal". Amnesty International June 16, 2020. Found at <https://www.amnesty.org/es/documents/amr34/2678/2020/es/>, accessed August 7, 2023.

indigenous community; iii) lack of material competence; and iv) lack of characterization (fourth instance formula).

27. Regarding the lack of personal competence, the State affirms that in the instant petition there is insufficient information to determine the alleged victims with precision. It considers it important to locate the alleged victims in the admissibility phase and emphasizes that a determination of alleged victims cannot be made *"solely on the basis of a statement that they represent an entire community without even attaching evidence to support such a claim. On the contrary, the determination must be made in accordance with the highest standards of certainty, according to a clearly and precisely delimited factual platform"*.

28. It indicates that nowhere in the facts narrated by the petitioner are villages, cantons or hamlets identified as forming part of the so-called Q'ueqchi' Indigenous Community, and that, on the contrary, this could be determined within the consultation process carried out by the State, in which eleven communities located in the area of influence participated. The State also indicates that, in cases where the alleged victim is an indigenous people, this fact can be determined based on geographic or territorial characteristics, but that in the instant petition no mention was ever made in this regard. Furthermore, it indicates that the petitioner never stated that it was impossible to identify the alleged victims.

29. Regarding the petitioner's lack of standing, the State considers that there is no evidence in the case file that would allow Mr. Bernardo Caal Xól to determine the veracity of his representation of the alleged victims. The State requests that the Commission require the necessary means of proof, according to the uses, customs and forms of organization of the community, to ensure that Mr. Caal Xól is really acting in defense of the interests of the community.

30. It emphasizes that, in relation to the eleven communities that participated in the consultation process, Mr. Caal Xól does not appear among them. It even indicates that the leaders of the eleven communities themselves expressed their rejection of the petitioner, stating: *"Mr. Mayor, we make it known that Mr. BERNARDO CAAL, [...] is not welcome in our communities, as are members of MADRESELVA [...] who only come to create division in our communities and we demand that they please do not come again. [They] have directly harmed our communities, psychologically and morally, since they are treating us as delinquents, saying that we have sold lands that do not belong to us, which is totally false [...] we do not want the intervention of other campesino and non campesino organizations with negative leaders who organize demonstrations [...] against the Oxec hydroelectric plants"*<sup>19</sup>.

31. Within an annexed document submitted by the State, dated May 5, 2016 and signed by "Eleven Oxec Surrounding Communities, Pro-Improvement Group, Cahabon A. V." and the "Community Development Council, town aldea Seasir, Cahabon, A.V.", neighbors of the communities in the areas surrounding the hydroelectric plants, state that since 2012 they have reached agreements with the Oxec and Oxec II entities, which has led to the development of their communities. The signatories express their rejection of *"the intervention of organizations [...] with negative leaders who are dedicated to organizing demonstrations, creating divisiveness among us peasants [they ask] to avoid further demonstrations by organizations such as Madre Selva [...] who are dedicated to creating divisiveness among us and also provoke violence"*<sup>20</sup>. Therefore, and considering what was expressed by the representatives of the communities neighboring the hydroelectric power plants, the State considers that the lack of legitimacy and representativeness of the eleven communities located in the area of influence has been fully demonstrated; and that not only do they not recognize the representation of

<sup>19</sup> Found in the annex submitted by the State: Memorial dated March 16, 2016 addressed to the Mayor of the Municipality of Santa María Cahabón, and signed by members of the communities La Escopeta, Pulisibic, Tres Cruces, Sepoc, Secatalcab, Pequixul, Sacta, Sacta Sector 8, Chacalte, Seasir and Salac, which contains a series of proposals and petitions addressed to the Municipality of Santa María Cahabón, department of Alta Verapaz and related to the two hydroelectric plants, the series of agreements that the communities have reached with Oxec, and external persons who, according to the signatories, would be intervening and disturbing the peace. .

<sup>20</sup> Found in the annex submitted by the State: Memorial of May 5, 2016 addressed to the mayor of the municipality of Santa María Cahabón, and signed by members of the communities La Escopeta, Pulisibic, Tres Cruces, Sepoc, Secatalcab, Pequixul, Sacta, Sacta Sector 8, Chacalte, Seasir and Salac, made as a follow-up to the petition of March 16, 2016.

Mr. Caal Xól and the Madre Selva collective, but they have demonstrated their dissatisfaction with their participation, and therefore request that the petitioner's representation be accredited.

32. The State also requests the inadmissibility of the petition for lack of material competence, inasmuch as the petitioner indicated that the State was responsible for violating the right to consultation of the indigenous peoples in accordance with ILO Convention 169, which is a treaty external to the Inter-American System.

33. Likewise, the State considers that due to a mere disagreement with the decision of the Constitutional Court, the petitioners intend that the Commission review the judgment of May 26, 2017. Thus, the State reasons that the petitioner seeks that the Commission act as an appellate court, violating the principle of subsidiarity. The State highlights that the petitioner, after the decision of May 26, 2017, filed an appeal for clarification and amplification on May 30, 2017, which was resolved by the Constitutional Court on June 6, 2017, indicating that the challenged pronouncement was not ambiguous, because it had been resolved in the same interpretive line in accordance with what was claimed, and the proper legal application, and that *"it is not obscure because its terms are clearly understandable; nor is it contradictory, inasmuch as the points of the decision assumed are coherent among themselves"*.

34. Therefore, the State indicates that the judgment of May 26, 2017, which specified the scope of the writ of constitutionality is grounded and resolved in accordance with domestic law<sup>21</sup>, in addition, that this judgment not only confirmed the judgment of the Supreme Court of Justice, but also modified it, seeking to carry out a consultation mechanism in accordance with ILO Convention 169 and international standards in force. It also emphasizes that the consultation process concluded satisfactorily and *"the result is found in the agreements reached by all parties. In this way, Guatemala complied with its obligation to protect the human rights that were allegedly violated at the time, mainly the right to consultation of the indigenous peoples"*.

35. The State considers that there are no arguments for the facts narrated to demonstrate and prove a violation of the rights of the alleged victims, either by action or omission of the State; and that there are no factual elements to determine violations to the Q'ueqchi's communities. The State also states that there has been a process of permanent dialogue between the communities, the Oxec and Oxec II entities, and the Ministry of Energy and Mining. In addition, the representation of the communities and their form of organization has been respected at all times; and that they have been given access to all information, in Spanish and Q'ueqchi, related to the approval process of the Oxec and Oxec II projects.

36. Therefore, the State concludes that the eleven communities within the area of influence participated freely, legitimized and approved the consultation process carried out. Furthermore, the State considers that the rights alleged by the petitioner have already been reestablished for the Q'ueqchi's Communities of the municipality of Santa María Cahabón.

## **VI. PRIOR CONSIDERATIONS ON THE REPRESENTATION OF THE ALLEGED VICTIMS**

37. In the present case, there is a controversy regarding the legitimacy of the petitioner, the Madre Selva Collective and Mr. Bernardo Caal Xól. The State questions whether they are really acting on behalf and for the benefit of the indigenous communities in the vicinity of the hydroelectric projects of the Oxec and Oxec II dams.

38. In this regard, the Commission notes that the State bases its questioning on the fact that there is a group of eleven communities in the vicinity of these hydroelectric projects that are apparently in agreement with them and are receiving certain benefits from the companies that are carrying them out. In this regard, and as reflected in this report, the State provides two documents in which these eleven communities repudiate the internal actions of the Madreselva Collective and Mr. Bernardo Caal Xól, because they understand that they go

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<sup>21</sup> In accordance with Article 67 of Decree Number 1-86 of the Congress of the Republic, Law of Amparo, Habeas Corpus and Constitutionality, which establishes: *"Content of the resolution. The Constitutional Court in its resolution shall confirm, revoke or modify what was resolved by the first degree court, and in case of revocation or modification, it shall make the pronouncement that corresponds in law"*.

against their interests. However, it is equally clear from the information in the case file that those who have sought to represent the petitioners have not been the eleven communities neighboring the hydroelectric power plants, but a larger and different group, other communities present in the municipality of Santa María Cahabón, department of Alta Verapaz, which, according to them, would be harmed in their rights by the construction and operation of these hydroelectric projects.

39. Therefore, the Commission considers that there is no legal controversy regarding the quality of the representation exercised by the petitioners, since they do not intend to act on behalf of the eleven communities that the State claims do not wish to be represented, but rather on behalf of other communities, for which the Commission has information that would support the claim that the petitioners represent them.

40. In this regard, it is pertinent to recall that both the legal instruments of the Inter-American system and the bodies responsible for their application establish a less formalistic conception with respect to the accreditation of the petitioners by the alleged victims, in the case system established by the American Convention on Human Rights. In this sense, Article 44 of this treaty, in accordance with Article 23 of the Rules of Procedure of the IACHR, establishes that: *"Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party"*. In this regard, the IACHR has established that:

In contrast to other systems for the protection of human rights, the Inter-American system allows various kinds of petitioners to submit petitions on behalf of victims. In fact, the wording of Article 44 is very open, allowing any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, to lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State party, without requiring, as does the European system or the United Nations Committee on Human Rights, that they be victims as such, i.e. that they have a direct or indirect personal interest in the adjudication of the petition. The victim's authorization is not required, nor do the petitioners have to submit powers of attorney from the alleged victims<sup>22</sup>.

41. Thus, it is reiterated that in the petition, Mr. Caal Xól indicates that he is a resident of the municipality of Santa María Cahabón, department of Alta Verapaz and a representative member of the Q'eqchi indigenous community. Likewise, he submits a copy of *"the minutes celebrated by the Q'eqchi's indigenous communities of the municipality of Santa María Cahabón, Department of Alta Verapaz, in which they delegate their representation to Bernardo Caal Xol"*, dated May 14 and 15, 2015. Said minutes contain signatories from the municipality of Santa María Cahabón; particularly from the villages Chimoxán, Sepoc, hamlet Chaslaú, Chiaslau, Chatela, Chimoxán, hamlet Vista Hermosa, hamlet Sebas I and Sebas II community la Nueva Esperanza, hamlet Reforma Rumpoc, hamlet Gualibaji, hamlet Xalitzal, hamlet Semococh la Crest, hamlet Agua Caliente and Nuevo Agua Caliente, hamlet El Palmar, hamlet Chicoc I, hamlet Nueva Concepción Chatela, Julhix hamlet, Sesaquiquib Chimox hamlet, Chuijbelen agrarian parcel, Sepos community, Secanante village, Xaliha Chamil hamlet, Las Tres Cruces, El Álamo, Sepur, Asención, Chajbul Chicokol, Chipor hamlet, Cacpecal Chisip, Sehuc hamlet, Nuevo Tzulben, Río La Bendición<sup>23</sup> and in these they ask for a popular or community consultation on the hydroelectric projects.

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

42. For the analysis of the exhaustion of domestic remedies in the instant case, the IACHR recalls that, according to its consolidated and reiterated practice, in order to identify the appropriate remedies that should have been exhausted by a petitioner before resorting to the Inter-American system, the first methodological step in the analysis consists of distinguishing the different claims formulated in the

<sup>22</sup> IACHR, Report N. 92/03 (Inadmissibility). Petition 0453/01, Elías Santana and others, Venezuela, October 23, 2003, par. 45 and subsequent.

<sup>23</sup> There are seven documents are illegible.

corresponding petition in order to proceed to their individualized examination<sup>24</sup>. In the present case, the petitioners have presented several claims before the Commission<sup>25</sup>, however, they have not offered sufficient information to be able to examine them adequately, leaving two main claims: (i) violation of the right to consultation of the Q'ueqchi' indigenous community, derived from the granting of two concessions over the basin of two rivers that are part of their community, for the use and construction of two hydroelectric plants; and (ii) allegations of a smear campaign against the petitioners and of a criminal proceeding with vices and unwarranted delay against Mr. Caal Xól, for his capacity as a human rights defender and indigenous leader.

43. Thus, with respect to point (i) of the object of the petition, the Commission observes that the State has not argued the lack of exhaustion of domestic remedies, nor has it indicated whether there are adequate and effective remedies whose exhaustion would have led to timely attention to this situation. On the contrary, both the State and the petitioners agree that the judgment of the Constitutional Court of May 26, 2017, would be the last remedy; with respect to which the petitioners filed an appeal for clarification and extension before the Constitutional Court itself, which was denied on June 6, 2017. Along these lines and taking into account that the petition was filed on August 2, 2017, the Commission concludes that this end of the petition complies with the requirement provided in Article 46(1)(a) of the American Convention and that the deadline for submission requirement provided in Article 46(1)(b) of the American Convention is also met.

44. On point (ii) regarding the alleged smear campaign against the petitioners, and the allegedly flawed criminal proceedings, unwarranted delay, prolonged pretrial detention and excessive punishment, in retaliation for the activism of Mr. Bernardo Caal Xól, the IACHR notes that the State did not present arguments regarding the lack of exhaustion of domestic remedies; and ultimately did not refer to the issue, only noted that Mr. Caan Xól was not accepted as a representative of the Q'ueqchi's indigenous communities. However, considering that the alleged media harassment would have begun, at least, since 2017 when the petition was filed, and the criminal proceeding against Mr. Caal Xól would still be open without any of the parties, particularly the State, having provided information that would make it possible to establish that it was concluded with a final executed judgment, the Commission considers the exception provided in Article 46(2)(c) of the American Convention applicable, due to the unwarranted delay in the development of this judicial proceeding. This determination has effects for the present admissibility analysis and does not constitute a prejudgment on the merits of the petition. Furthermore, that the allegations of media harassment and flawed criminal proceedings against an alleged human rights defender and indigenous leader, would have effects until the present, and being that the present petition was filed in 2017, the Commission considers that it was filed within a reasonable period of time in the terms of Article 32.2. of its Rules of Procedure.

## VIII. ANALYSIS OF COLOURABLE CLAIM

45. The present petition, in its parts that are admissible under Section VII of this report, includes allegations of lack of participation by the Q'ueqchi' indigenous community in the granting of a concession to build a hydroelectric power plant and use the river basin in which their community is located. The State, however, asserts that the communities that would participate in the complaint before the Commission -and therefore the alleged victims- have not been adequately identified; it also argues that the petitioner lacks legitimacy, since it did not present documents to justify its representation; that there is a lack of personal

<sup>24</sup> To illustrate this the following reports of the IACHR can be consulted: Report No. 117/19, Petition 833-11, Admissibility. Freed workers of the Boa-Fé Caru plantation. Brazil, June 7, 2019, pars. 11, 12; Report N. 4/19, Petition 673-11. Admissibility. Fernando Alcánatar Figueiredo and Laci Marinho de Araújo. Brasil. January 3, 2019, aprs. 19 and subsequent; Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017, par. 12; Report No. 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, pars. 26, 27; Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, pars. 15-16; Report No. 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, pars. 12 and subsequent; Report No. 167/17. Admissibility. Alberto Patistán Gómez. Mexico. December 1, 2017 pars. 13 and subsequent; Report No. 114/19. Petition 1403-09. Admissibility. Carlos Pizarro Leongómez, María José Pizarro Rodríguez and next of kin. Colombia. June 7, 2019 par. 20.

<sup>25</sup> The petitioner alleges violations of: right to self-determination, collective rights of indigenous peoples, right to belong to indigenous peoples, right to juridical personality, right to identity and cultural integrity - right to indigenous spirituality, to health, to the protection of a healthy environment, to association, assembly, freedom of expression and thought - right to autonomy or self-government; right to lands, territories and resources; right to development; right to peace, security and protection, and the right to effective and adequate remedies.

jurisdiction with respect to the allegations of violations of ILO Convention 169; and that there is a lack of characterization and doctrine of the fourth instance.

46. Regarding the allegations of lack of characterization, the State indicates that the consultation process with the Q'eqchi's communities was carried out in accordance with international standards, particularly in compliance with ILO Convention 169; Likewise, that during the phases of the consultation process, the representatives of the Q'eqchi's communities were in agreement with what was decided throughout these procedures; that the information was provided in Spanish and Q'eqchi'; and that the representatives of eleven indigenous communities, inhabitants of the area where the two rivers are located, were always included. Regarding the fourth instance formula, the State considers that the petitioners intend to have the judgment of May 26, 2017, issued by the Constitutional Court reviewed, due to the fact that it was not resolved in accordance with the petitioners' expectations, which, if the petition were admitted, would violate the principle of subsidiarity.

47. Thus, faced with these allegations of lack of characterization and fourth instance, the Commission reiterates that, for purposes of admissibility, it must determine whether the alleged facts could characterize a violation of rights in accordance with Article 47(b) of the American Convention, whether the petition is "manifestly groundless" or whether it is "obviously out of order" in accordance with Article 47(c). The criteria for evaluating these requirements differ from those used to rule on the merits of a petition. Thus, within the framework of its mandate, the Commission has the competence to declare a petition admissible if it refers to domestic proceedings that could violate rights guaranteed by the American Convention. In other words, in light of the aforementioned conventional rules, in accordance with Article 34 of the Commission's Rules of Procedure, the analysis of admissibility focuses on the verification of such requirements, which refer to the existence of elements that, if true, could *prima facie* constitute a violation of the American Convention<sup>26</sup>.

48. In cases such as the present one, the Commission reiterates the need in international law in general, and in inter-American law specifically, for special protection for indigenous peoples and Afro-descendant communities, so that they may exercise their rights fully and equally with the rest of the population. Particularly with regard to indigenous peoples, in accordance with the provisions of ILO Convention 169 and the American Convention on Human Rights, it is essential that the States grant effective protection that takes into account their specific characteristics, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values, uses and customs<sup>27</sup>.

49. Similarly, it is considered important to delve into the allegations regarding the indigenous leader Q'eqchi' in view of his status as an indigenous leader and human rights defender and the alleged prior intimidation through the media and social networks; also, considering the special obligation of States to ensure that people can freely exercise their activities of promotion and protection of human rights without fear that they will be subjected to any violence<sup>28</sup>. As would be the arbitrary use of the *ius puniendi* of the State as a mechanism of repression against the work of human rights defenders.

50. In accordance with these considerations, and after examining the factual and legal elements presented by the parties, this Commission considers that the allegations of the petitioner are not manifestly unfounded and require a study of the merits, since the lack of participation of all the affected Q'eqchi's communities could characterize violations of Articles 7 (personal liberty), 8 (right to a fair trial), 25 (right to judicial protection), and 26 (progressive development) of the American Convention, in relation to its Article 1. 1 (obligation to respect rights) to the detriment of the Q'eqchi's communities of Santa María Cahabón and Mr. Caal Xól, in the terms of this report.

51. It should be noted, with respect to the State's allegation of a lack of determination of the alleged victims and of the Q'ueqchi' community in general, that in the instant case the petitioner does identify

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<sup>26</sup> IACHR. Report N. 143/18, Petition 940-08. Admissibility. Luis Américo Gonzales. Peru. December 4, 2018, par. 12 and IACHR, Report N. 293/20, Petition 434-09. Admissibility. Gabriel Ulises Valdez Larqué and next of kin. Mexico, October 13, 2020, par. 22.

<sup>27</sup> IACHR, Report N 47/23. Petition 1880-11. Admissibility. Members of the Mapuche community. Chile. April 18, 2023, par. 14.

<sup>28</sup> I/A Court H.R., Case of Huilca Tecse v. Peru. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121., par.

specific indigenous communities as presumably affected by the alleged facts, which are clearly located geographically and of which the names of some of their representatives are also known. In addition, as the Inter-American Court has clarified, in the proceedings of contentious cases before the Inter-American System, as a general rule, the final individualization of the alleged victims must be made in the merits stage before the IACHR, which must be established in the report that the latter issues in the terms of Article 50 of the American Convention.<sup>29</sup>

52. Regarding the petitioner's claim in the complaint that the State violated ILO Convention 169, it is recalled that the Commission lacks competence in this regard, without prejudice to the fact that it can and should use it as a guideline for the interpretation of treaty obligations, in light of the provisions of Article 29 of the Convention<sup>30</sup>.

## **VII. DECISION**

1. To declare the present petition admissible in relation to articles 7, 8, 25 and 26 in relation to article 1.1; and

2. To notify the parties of this decision; to continue with the analysis on the merits of the current matter and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 27<sup>th</sup> day of the month of September 2023. (Signed:) Margarete May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice president; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón and Carlos Bernal Pulido, Commissioners.

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<sup>29</sup> I/A Court H.R., Case of Habbal et al. v. Argentina. Preliminary Objections and Merits. Judgment of August 31, 2022. Series C No. 463. Par. 23; I/A Court H.R., Case of Vereda La Esperanza v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 341., par. 32. This criteria is established in article 35 of the Rules of Procedure of the Inter American Court of Human Rights.

<sup>30</sup> IACHR, Report N. 29/06, Petition 906-03. Admissibility. Garifuna Community Triunfo de la Cruz and its members. Honduras, March 4, 2006, par. 39.