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REPORT No. 150/21
PETITION 172-15
REPORT ON ADMISSIBILITY

RAPA NUI PEOPLE
CHILE

Electronically approved by the Commission on July 14, 2021.

Cite as: IACHR, Report No. 150/21, Petition 172-15. Admissibility. Rapa Nui People. Chile. July 14, 2021..

I. INFORMATION ABOUT THE PETITION

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| Petitioner | Ciro Colombara López, Branislav Marelic Rokov, Jennifer Alfaro Montecinos, Alberto Hotus Chávez, and Erity Teave Hey |
| Alleged victim | Rapa Nui People |
| Respondent State | Chile ¹ |
| Rights invoked | Articles 1 (obligation to respect rights), 2 (domestic legal effects), and 21 (right to property) of the American Convention on Human Rights ² |

II. PROCEEDINGS BEFORE THE IACHR³

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| Date of filing | January 23, 2015 |
| Additional information received at the stage of initial review | April 16, August 28, and October 8, 2015; April, 13, 2016; and February 20, 2017 |
| Notification of the petition | April 25, 2017 |
| State's first response | October 12, 2017 |
| Additional observations from the petitioner | September 18 and 27, and November 15, 2017; February 12, 2018; and October 1, 2020 |
| Additional observations from the State | November 12, 2017; and August 15, 2020 |
| Precautionary measure | PM-321-10 granted on February 7, 2011, and lifted on October 31, 2011 |

III. COMPETENCE

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| <i>Ratione personae</i> | Yes |
| <i>Ratione loci</i> | Yes |
| <i>Ratione temporis</i> | Yes |
| <i>Ratione materiae</i> | Yes, American Convention (deposit of instrument of ratification on August 21, 1990) |

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

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| Duplication of procedures and international <i>res judicata</i> | No |
| Rights declared admissible | Articles 4 (right to life), 8 (fair trial), 12 (freedom of conscience and religion), 21 (right to property), and 25 (judicial protection) of the American Convention, in connection with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) |
| Exhaustion or exception to the exhaustion of remedies | Yes, under the terms of Section VI |
| Timeliness of the petition | Yes, under the terms of Section VI |

V. SUMMARY OF ALLEGED FACTS

1. The petition refers to the alleged international responsibility of the State of Chile for the alleged violation of the Rapa Nui People's right to collective property over the territory and natural resources of Easter Island and their right to autonomy. The petitioners describe that despite the fact that the requests for recognition and autonomy of the Rapa Nui People have been constant for more than 125 years, currently more than 70% of their ancestral territory is managed and owned by the State, which has caused irreparable damage to the lifestyle and development of the indigenous people. In this sense, the petitioners insist on the State's duty to restate the land in order to protect the ancestral property of the Rapa Nui people and their right to self-determination.

¹ In conformity with the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the discussion or voting on this petition.

² Hereinafter "the American Convention" or "Convention."

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

2. The petitioners explain that for the Rapanui as an indigenous people, the land plays a role of utmost importance, not only economically, but also in relation to their worldview, expression and development of their physical vitality, culture and spirituality. In particular, the petitioners describe that the Rapa Nui people's close relationship with the land must be understood as an inalienable patrimony and ancestral historical symbol of their culture, as well as the basis for the source of their day-to-day subsistence, inasmuch as their survival depends on the proper management, preservation and use of the island's land. The petitioners also detail that the Rapa Nui people conceive water as a source of life and a bond of spiritual harmony for all their members, which is manifested artistically, religiously and spiritually in the numerous archaeological and hieroglyphic vestiges located in sacred sectors. In this regard, the petitioners argue that this link between the Rapa Nui people and water is based on the continuous and successful administration of the sea and its resources, hand in hand with a spiritual concern for its conservation and development.

3. The petitioners state that historically, the State has maintained a colonizing will, controlling the needs of the Rapa Nui People through Chilean institutions which, together with the serious violations of the human rights of the Rapa Nui People, has resulted in a distrust of the indigenous people towards State policies. The petitioners narrate that, after decades under the control of Western settlements, on September 8, 1888, the State of Chile and the Rapa Nui People, represented by their King, reached an "Agreement of Wills" according to which the indigenous people recognized the cession of sovereignty in favor of the Chilean State, while the State committed itself to recognize the right to land ownership, to respect the investiture of the Rapa Nui chiefs, and to provide protection and socioeconomic development to the island's inhabitants. However, the "Agreement of Wills" was never fulfilled by the State and, on the contrary, the island was granted in concession to the *Compañía Explotadora de Isla de Pascua* (hereinafter "CEIP"). The petitioners point out that in 1933, the State of Chile unlawfully registered, without the knowledge of the indigenous people⁴, the whole of Easter Island or Rapa Nui as public lands of the State based on the principle of *terra nullis*, lands without owner. They add that this inscription remains fully valid and has served as a legal basis for all the actions that the Chilean State has carried out on the island, especially for the installation of public services for the regulation of the National Park; for the collection of maritime concessions; for the "granting of individual property titles" and even the transfer of part of the island to non-indigenous individuals.

4. The petitioners describe that, without safeguarding the archaeological property or its inhabitants and without their participation, the State declared the island a national park by Supreme Decree No. 103 of the Ministry of Lands and Colonization dated January 16, 1935, and a National Historic Monument by Decree No. 4,536 of the Ministry of Public Education dated July 23, 1935; first under the administration of the CEIP and then, in 1953, under the direct administration of the National Navy. Likewise, the petitioners hold that, under a logic of historical reparation to the Rapa Nui⁵, on March 1, 1966, the State adopted Law No. 16,441 which created the Easter Island Department, finally recognized full citizenship to these people and established a series of tax benefits. They also point out that by means of a constitutional amendment to Article 126 bis, in 2007 the State declared Easter Island a special territory by virtue of its "extreme geographical location" without making any reference to its special character as a purely indigenous territory⁶.

5. In view of said context, the petitioners maintain that they submit this petition given the recent situations that reveal the continued lack of recognition of the Rapa Nui People's collective right to property of Easter Island. Specifically, they claim that on January 20, 2012, the Rapa Nui Parliament, represented by the King of Rapa Nui, filed a civil action against the Attorney General's Office before the Second Court of Valparaiso requesting the compliance of the Annexation Agreement. The petitioner informs the civil action included claims that the State had not taken the necessary steps for Congress to ratify the agreement; that the Rapa Nui People

⁴ The petitioners explain that the State registered the land without a consultation and at a time when the Rapa Nui were restricted from leaving the island; therefore, they could not appeal that decision.

⁵ The petitioners highlight the Report of the Historical Truth and New Deal for the Indigenous Peoples Commission, issued in 2008, as recognition of the State's failure to comply with its commitments under the agreement of 1888. As such, they state that Chile recognized its responsibility, either directly or indirectly, of systematic human rights violations against the Rapa Nui People, including the violation of their collective right to property through the registration of the whole territory as state property.

⁶ The petitioners explain that, by virtue of the aforementioned article of the Constitution, the government and administration of the island should be regulated by a special statute of administration. In this regard, they point out that after more than a decade, the State issued the Special Statute of Autonomy through Law No. 20,193; however, it maintains that this law does not address the existing problems due to the lack of political will on the part of the State.

had ceded sovereignty, but not the right to property, to Chile; and that in registering the island as state-owned in 1933, the State violated their right to property of the land. They submit that the trial and appellate courts dismissed the action on January 20 and July 24, 2014, respectively on the grounds that the Annexation Agreement was governed by the principles of international law and not by civil law, that this agreement marked the beginning of national sovereignty and therefore it was inadmissible to review an action that could affect Chile's national sovereignty and territory, and that the action had been barred by the statutes of limitation. In its judgment of July 24, 2014, with a resolution dated August 28, 2014, the court of appeals found that the island was officially brought under the sovereignty of Chile on September 9, 1888, when a Chilean state agent took possession of it.

6. The petitioners, moreover, allege that the Rapa Nui Council of Elders, led by Alberto Hotus, requested the undersecretary of the Armed Forces to eliminate the collection of illegal fees against the Rapanui anglers for artisanal fishing on the coastline, related to the maritime concession agreement, in accordance to the provisions of the Easter Island Act.⁷ They assert that on March 3, 2014, the undersecretary denied the request, arguing that the benefits only applied to fiscal taxes and contributions, but not to taxes and fees on maritime concession agreements. In view of this, on April 4, 2014, the president of the Council of Elders filed an appeal for constitutional protection to the Court of Appeals of Santiago seeking the elimination of fees on their maritime concession agreement where they alleged the violation of their collective right to property of the land and its resources. The Court of Appeals of Santiago declared the remedy admissible on August 6, 2014, ruling the elimination of such fees.⁸ However, by its judgment of November 24, 2014, with a resolution dated December 4 of that year, the Supreme Court revoked this decision, claiming that the filing of the remedy was overdue since the 30-day deadline had to be calculated from the date a concession agreement is granted—in this case, it had been granted in 2011—, not from the date the undersecretary officially replied to the request of the Council of Elders.

7. The petitioners argue that simultaneously with the abovementioned proceedings, in 2014, Rapanui leaders tried to engage in dialogue with Chilean officials to maintain their historical claim for the Rapa Nui People's autonomy, the restitution of their land, and the State's compliance with the Annexation Agreement. They affirm that on August 7, 2014, several members sent a letter to the former president of the Republic to file proceedings seeking the restitution of their land. They received a reply on October 3, 2014, stating that the request would be "retransmitted" to the Ministry of the Interior and Public Security and the Ministry of Social Development. In this regard, the petitioners submit that the last decade has been characterized by constant unsuccessful negotiations with the State in the framework of which the State has only recognized as representative of the Rapa Nui People for purposes of establishing mutual dialogues the Commission for the Development of Easter Island (hereinafter "CODEIPA"), a commission created by Law No. 19,253 --or Indigenous Law-- which is composed of State agents who participate with the right to speak and vote.

8. The petitioners furthermore add that given the State's lack of attention to the Rapanui's claim over the land, some members of the Rapa Nui People have protested since March 2015, which has caused tensions among members of the indigenous community and other residents of the island. Accordingly, the petitioners maintain that some members of the indigenous community have blocked archaeological spots and parks as a form of protest on issues of overpopulation, shortage of supplies, pollution, and connectivity and access to basic services, all of which they believe add to the violation of their indigenous right to property.

9. In this regard, the petitioners state that since the early 1990s and particularly in 2010s, the island has experienced uncontrolled growth and development due to the boom in the tourism industry,

⁷ The petitioner points out that Law No. 16,441 of 1966 "which creates the Department of Easter Island" established a series of tax benefits with a view to achieve historical reparations, which they consider a partial materialization of the Will Agreement. Specifically, they point out that Article 41 of the Act states: *The goods located in the province of Easter Island and the revenues derived from these or from activities developed on the island are exempted from all types of taxes and contributions, including land tax, and from any other fees imposed by current or future legislation. The same exemption applies to agreements or contracts that persons domiciled at the province of Easter Island enter into on the Island regarding activities or goods connected to the same territory.*

⁸ The Court of Appeals considered that "this illegal act of the administrative authority openly violates the property rights of the inhabitants of Easter Island, in the terms described in number 24 of article 19 of the Political Constitution, disturbing the exercise of this right to establish an administrative charge that, as already stated, expressly violates a legal provision".

resulting in an exponential increase in the population living on the island⁹, in the cost of living and in the generation of garbage, water and energy consumption, the use and need for automobiles, the saturation of services, as well as restrictions on access to education and health¹⁰, and excessive fishing. The uncontrolled demographic increase led Rapa Nui's authorities to request the State to create a special regulation in order to maintain the island's habitability sustainable over time. The petitioners allege that despite the August 1, 2018 adoption of Law No. 21,070, which "regulates the rights to reside, stay and move to and from the special territory of Easter Island", its text turned out to be substantially different from the initial project consulted to the Rapa Nui People and approved by its authorities. The petitioners argue that it has been seriously insufficient to respond to its motivation of mitigating the effects generated from the population increase by granting deadlines that would allow taking corresponding measures to face possible saturations of the system, and, instead of solving environmental problems, it has legitimized people who are not part of the Rapa Nui people to reside on the island according to a long list of qualifying grounds¹¹. Consequently, they explain that, since May 3, 2019, by Decree No. 1428 of November 19, 2018 of the Ministry of the Interior and Public Security of Chile, the special territory of Easter Island is in a state of environmental latency with respect to the demographic carrying capacity due to the saturation of services, overpopulation and environmental crisis.

10. They argue that the State has abandoned its social obligations as all transportation, communications, supply and environmental needs fall on private and transnational companies. The petitioners explain that the State's public institutions are incapable of functioning as the continental legal system mandates, since no national regulations have been created taking into consideration the distinct and unique geographic and cultural conditions of the Rapa Nui people. Likewise, the petitioners emphasize the lack of State protection of the maritime territory, since for more than a decade, ships of Asian origin, mainly fishing boats, have been plundering the marine zone of the Rapa Nui People, bringing numerous marine species to the brink of extinction.

11. On the other hand, the petitioners explain that on August 18, 2016, the national government signed a co-management agreement between the National Forestry Corporation (hereinafter "CONAF") and the Ma'u Henua indigenous community to co-manage the National Park¹² and represent the Rapanui's interests. Under that agreement, the Rapa Nui were given limited rights for which the CONAF used the revenues from entrance fees and other uses of public areas. They further submit that under this agreement, the State undertook to transfer the full management of the Rapa Nui National Park to the Rapanui no later than September 9, 2017, which it materialized on November 27, 2017, by virtue of Decree No. 119, through the legal figure of a 50-year concession. They hold that although greater access has been allowed since 2017 by members of the indigenous people to their sacred sites as a result of the administration of the Ma'u Henua Community, the conditions of ownership have not changed. The petitioners allege that currently most of the island's territory corresponds to State property divided between the Vaitea Estate and the National Park, which threatens the identity and unity of the Rapa Nui, their rights to self-determination, in addition to their rights to land and natural resources.

12. The petitioners explain that property in Easter Island is regulated only by the laws of the State, particularly the provisions contained in the Civil Code of 1857, which implies a serious violation of the traditional way in which property is understood by the indigenous people. The petitioners allege that to date the members of the indigenous people can acquire the individual domain of the lands that other Rapa Nui sell

⁹ The petitioners explain that according to the 2017 national census, there were 7,750 inhabitants of which 3,512 people identified themselves as members of the Rapa Nui People. However, they stress that these figures do not adhere to reality, detailing that until November 2019 the medical records of the Hanga Roa Hospital, the only health center, amounted to a total of 10,900 active records during the period of November 2018 and 2019. He adds that on average there is a floating population of approximately 9 thousand people, resulting in a total of more than 16 thousand people.

¹⁰ The petitioners claim that the Hanga Roa Hospital is the only access to health care for the population of Easter Island, which is classified as a "less complex" health center. He states that this health center does not have sufficient trained personnel, so that secondary health care is resolved through periodic visits or organized rounds of specialists from the health service.

¹¹ The petitioners specify that as of August 11, 2020, there are 5,384 requests for legal authorization to reside by persons outside the Rapa Nui People, of which 5,107 have already been approved.

¹² The petitioners argue that within the boundaries of the Rapa Nui National Park there are about 125,000 archaeological sites of great sacred and spiritual significance to its inhabitants who maintain a living culture through the celebration of traditions that include language, dance, music and cuisine. However, the Rapa Nui cannot occupy them, only visit them.

or transfer while the State, as owner of 70% of the land property, delivers in "cession of rights" to people who require housing solutions through the Ministry of National Assets, without recognizing the domain or property rights¹³. They highlight that the State likewise stripped the Rapa Nui People of the ownership and administration of the sea through Decree No. 10 of the Ministry of Environment of June 8, 2018 by creating a figure of administration of the maritime territory called Rapa Nui Multipurpose Protected Coastal Marine Area of Multiple Uses. The petitioners explain that, under the aforementioned norm, the administration corresponds to a board of directors composed of 6 representatives elected by the Rapa Nui People and 5 representatives of the State, affecting the Rapa Nui maritime territory that was already protected by Law No. 20,249¹⁴. In this context, they maintain that in order to make use of the ancestral land with coastal border, the State requires requesting concession permits from the Navy, which are often granted for limited periods of time after charging a monetary value.

13. The petitioners argue that although the right to property issue would lead the State to initiate a process aimed to modify this situation, there is no other judicial remedy before internal authorities to discuss the provenance of the collective property recognition of an indigenous people over a certain territory and its specific jurisdictional resources. It is argued that this lack of resources places the petitioners in a state of defenselessness. The petitioners also emphasize that under the strict criteria of 30 days to file the protection action, it is illusory to think that the Rapa Nui People can question the usurpation of their lands that took place in 1888 and in 1933 due to non-compliance with the Agreement of Wills and the fiscal inscription, whose effects remain until the present time. Finally, the petitioners indicate that the measures taken in relation to plans and programs that the State has carried out over time on the island are insufficient when the substantive discussion is the right to property and its lack of recognition.

14. Regarding the State argument on failure to exhaust domestic remedies, the petitioners explain that according to Article 764 of the Code of Civil Procedure, the remedy of cassation is that procedural legal act that is granted to the parties to invalidate a judgment when it has been issued in a flawed process or with omission of formalities; or when the court has violated the law decisive of the conflict when resolving it. They argue that the appeal in cassation in its different expressions both in form and substance, is an extraordinary procedural remedy that has grounds strictly established by law with a high rate of inadmissibility. Therefore, the last ordinary recourse that exhausts the domestic jurisdiction and is suitable in most cases is the appeal.

15. For its part, the State maintains that it has taken various legislative and administrative measures in the legal recognition of indigenous peoples and lands, such as the enactment of regulations and the establishment of plans and programs that recognize and protect ceremonial sites, including those of the Rapa Nui people. The State points to Law No. 16.441 "Easter Law" of 1966, thanks to which state services were created on the island and a series of benefits and exemptions; Decree Law No. 2.885 of 1979 as the first tool to claim land for the people and the creation of the Rapa Nui National Park in 1935, which currently occupies more than 43% of the island's territory, and since 2015 operates under a regime of co-administration with the indigenous community Ma'u Henua, representative entity of the Rapa Nui People, to strengthen the care of both its cultural and natural heritage, as well as the promotion of a legal initiative to regulate the residence, permanence and transfer to or from Easter Island. It maintains that it granted legal recognition to indigenous peoples, explicitly including the Rapa Nui People through Law No. 19,253, and that the Political Constitution recognizes Easter Island as a special territory, and assigns it a particular regime of government and administration.

16. Likewise, it maintains that after 1966, the Cadastral Plans of Hanga Roa were drawn up with the purpose of updating the tenure and granting official planimetry to each property previously delivered by the maritime authority¹⁵. Subsequently, in 1979, Decree Law No. 2885 was issued, regulating the granting of

¹³ In this regard, they highlight a case that considered as emblematic of the Hanga Roa Hotel, built by foreign capital thanks to the fact that the State gave them ownership of a piece of land belonging to a Rapa Nui clan.

¹⁴ The petitioners argue that Law No. 20,249 specifically recognized the right of the coastal communities of the native peoples to the spaces they have customarily used, including the ownership and administration of the Rapa Nui maritime territory by said indigenous people.

¹⁵ It explains that during this period, the land in the rural sector where the CEIP operated was divided and used for the operation of the National Park and the Vaitea Estate, and then passed to the *Corporación de Fomento para el Desarrollo de Actividades Agropecuarias* as the island's economic engine, and for the installation of public services.

free title deeds in favor of the island's natives. Since then and to date, approximately half of the lands that had provisional titles in the urban and rural sectors of Hanga Roa have been subject to the regularization process and are registered in the Real Estate Registry of Easter Island. It claims that parallel to the aforementioned, there is a second land registry system on the island through which these properties can be transferred through assignments of rights. The State points out that in the eighties, two great processes of delivery of agricultural plots in the sectors of "Orito-Vaihu" of 397 hectares and "Puna-Vaihu" of 196 hectares were carried out through the granting of Provisional Settlement Certificates, to young Rapa Nui heads of families and to Rapa Nui people who exchanged the plots granted by the Chilean Navy. It affirms that with the entry into force of the aforementioned Law 19,253 in 1993, the lands subject to the regularization process were granted the character of indigenous land, thus restricting the transfer of such lands only among members of the Rapa Nui People. In addition to the above, the State explains that in 2000, the Commission for the Development of Easter Island, integrated by representatives of different Ministries and the Rapa Nui People, came into operation, which agreed to create the Subcommission of Lands as an instance in which the requests and requirements of the lands in the special territory are studied, allowing a coordinated and constant work between the State and its representatives, thanks to which the diverse demands and historical requirements of the Rapa Nui People in relation to the lands of the island are addressed.

17. It alleges that the Rapa Nui National Park occupies more than 43% of the Island's territory and currently enjoys the protective regime applicable to the areas protected by the State, among which stand out the link to the principle of environmental non-regression and the absolute impossibility of alienation to private individuals, since the law itself establishes its scope of administration within the orbit of the competent agencies. In this regard, it argues that, nevertheless, the Ministry of National Assets is authorized by virtue of Decree Law No. 1939 to grant concessions of national parks to foundations and corporations for purposes of conservation and protection of the environment, taking into account their character as non-profit legal entities. By virtue of the above, the Office of the Comptroller General of the Republic authorized by Supreme Decree No. 119 of September 27, 2017 the granting of a concession of free use to an indigenous community of the Rapa Nui ethnic group for the administration of the Rapa Nui National Park¹⁶ for the maximum legal term of 50 years allowed by Decree Law No. 1939 on a renewable basis¹⁷.

18. The State affirms that in response to the multiple demands of the representatives of the Rapa Nui people, it promoted a series of provisions with the objective of implementing legal mechanisms to control the demographic load of the special territory and thus protect its environmental fragility and preserve its culture. In said line it published on March 23, 2018 Law No. 21,070¹⁸ which entered into force on August 1, 2018 establishing a series of legal, administrative and public management provisions aimed at its implementation. The State explains that this norm incorporated restrictions to the permanence on the island and established management instruments to face the consequences of the demographic increase. Among them, the Demographic Load Management Council was constituted whose function is to collaborate with the responsible agencies in matters related to the residence and permanence of people in Rapa Nui¹⁹. It thus

¹⁶ It argues that from the Rapa Nui community, the proposal known as Ma'u Henua was born, according to which the character of National Archaeological Park would be established by law and its administration would be given to a Rapa Nui organization in a process that had three stages: co-administration, autonomous administration and administration by law. In this regard, he states that this proposal was approved in October 2015 through a consultation and voting process in Easter Island, Valparaiso and Santiago technically assisted by the National Corporation for Indigenous Development. Thus, in August 2016 the Ma'u Henua indigenous community was constituted with the registration of 1,007 members and currently has more than 2200 members.

¹⁷ It adds that said concession was subsequently perfected through a contract signed on March 7, 2018 between the Chilean Treasury and Camilo Rapu Riroroko on behalf of the indigenous community.

¹⁸ The State notes that a draft law was conceived and its indigenous consultation process took place on January 26, 2016, before the Rapa Nui People with the Undersecretary of Regional and Administrative Development of the Ministry of the Interior and Public Security and the Provincial Government of Easter Island, as an instance of dialogue between the State and the representative institutions of the Rapa Nui People. The State points out that the indigenous people agreed and collaborated to promote participation in the consultation process in which 1,411 voters belonging to the Rapa Nui people participated. It points out that subsequently the responsible body reviewed and systematized all the information of the process and finally after the legislative process in the National Congress. In the same line, it states that it approved the Regulation of Law 21,070 published in the Official Gazette on May 3, 2019, which was approved unanimously by the members present at the Council for the Management of Demographic Burden after having been worked on by the Council itself, the technical teams in Rapa Nui and the legal team of the Ministry of Interior.

¹⁹ The State explains that this Demographic Burden Management Council is composed of the Mayor, the 5 elected members of the Easter Island Development Commission, the President of the Council of Elders and 3 elected representatives of the Rapa Nui people.

maintains that on May 2, 2019, by means of Decree No. 1428, a state of latency of the special territory was declared, which was extended through Decree No. 81 of 2020, within the parameters determined by the formula established in Law No. 21,070 for carrying capacity calculations²⁰.

19. In view of the above, it should be noted that the Population Load Management Council, together with the Easter Island Development Commission, the Easter Island Provincial Government, the Ministerial Coordination for Rapa Nui and, in general, the Ministry of the Interior and Public Security, have worked on the development of a series of measures by setting up an Interministerial Round Table for Rapa Nui, in the framework of which different public agencies and bilateral meetings with various ministries were convened; presentations were made in Rapa Nui and in the continent; and different meetings and work tables were developed with the Municipality of Easter Island, local representatives of public organisms and with several representative organizations of the community. The State emphasizes that in the development of this work, different aspects that benefit the regulation of the population in the territory were addressed through measures, projects and investment initiatives; to improve living conditions; to contribute to improve environmental conditions; to strengthen and improve the situation of the local health service and educational matters and to manage measures to benefit the connectivity of the territory with the continent. It argues that this plan, which is currently being processed, will be valid for 4 years and will be binding for the municipality, ministries, public services and other bodies of the State administration that operate in Easter Island.

20. Additionally, the State argues that in 2018, through Decree No. 10 of the Ministry of the Environment, the Rapa Nui Multipurpose Coastal Marine Protected Area was created with the objective of ensuring the conservation and sustainable use of natural resources and ecosystem services, with the worldview of the Rapa Nui People as its central axis. It argues that the aforementioned ministry carried out an Indigenous Consultation process between the months of June and September 2017 on the creation, administration and regulation of uses of a coastal marine area having a strong support from the island community as verified in the vote held. The State explains that several agreements derived from the indigenous consultation process were reached, among them, the administration jointly between the State and representatives of the Rapa Nui people through a council created for such purposes which is in operation having held its first session on October 3, 2018 and the incorporation of a provision in Decree No. 10 of 2018 of the Ministry of Environment tending to prohibit any activity that is contrary to the traditions and customs of the Rapa Nui indigenous people.

21. On the other hand, it argues that the appropriate domestic legal remedies have not been exhausted to address the subject matter of the petition as the legal grounds for the actions identified are not directly related to the land ownership claim. It alleges that there are appropriate legal actions offered by the Chilean legal system, such as the action for protection in relation to the rights established in ILO Convention No. 169, which would be suitable for resolving the legal situation. In addition, the State alleges that the alleged victims did not exhaust the means of challenge contemplated in the current procedural system in any of the jurisdictional antecedents recognized by the petitioners in their complaint, that is, the action for the protection of fundamental rights aimed at "declaring the cessation of the collection of the maritime concessions" and the civil action aimed at obtaining a judicial declaration of the termination of the 1888 treaty or agreement of wills.

22. With respect to the civil action, the State details that the action was filed on September 2, 2011 before the civil court, that it was rejected by judgment of January 20, 2014 and then, in the framework of the appeal filed, the Court of Appeals confirmed the ruling. Notwithstanding, the State argues that the remedies that were available were not fully exhausted, such as the appeal in cassation on the form and/or on the merits as indicated in Articles 764 and following of the Code of Civil Procedure, without which the judgment became executory and the highest court was deprived of hearing the case. In this regard, the State explains that this appeal is granted against final judgments or interlocutory judgments that terminate the proceedings in the

The Undersecretariat of the Interior is leading the process of implementation of this legal body, for which it coordinates a joint work with the Undersecretariat of Regional and Administrative Development and the Provincial Government of Easter Island.

²⁰ It states that these calculations are made based on the recommendations of the "Estudio de Capacidad de Carga Demográfica para el Territorio de Isla de Pascua", dated March 2018, conducted by the Urban Plans and Projects team of the Pontificia Universidad Católica de Chile.

cases expressly indicated by law and in the present case, it constituted a suitable judicial proceeding²¹. It argues that the appeal in cassation, especially on the merits, meets the required standard of adequacy and effectiveness insofar as the Supreme Court has qualified the strict notion of "violation of law" to admit the use of different sources of law, such as an international convention or the fundamental rights guaranteed in the constitution, as a basis for judicial decisions. Thus, it states that this conceptualization of the ground currently guarantees an equally broad access to present such a challenge whenever there is an erroneous application of the law or other norms of equivalent normative relevance.

23. The State argues that cassation on the merits is currently a system of control by virtue of which the Supreme Court can exercise its jurisdictional power to correct procedural defects or incorrect applications of the law. In this sense, it adds that once the appeal in cassation on the form or merits is filed, it is not possible to amend or expand the grounds, however, the Supreme Court may rule on defects not alleged by the parties. In the particular case of cassation on the merits, the Supreme Court must issue the replacement judgment without remanding it to the court of origin.

24. Lastly, the State argues that the IACHR lacks competence *ratione temporis* because the alleged facts were prior to the ratification and even creation of the ACHR. It insists that, in this case, the petitioners do not mention any fact related to a violation of the right to property that took place after the State's ratification of the ACHR nor are facts identified that correspond to a continued violation of articles 8 and 25 of the ACHR. The State affirms that the petitioners refer to the publication of the Easter Island Act but do not report anything happening until 2010, and the alleged events that occurred after 2012 do not directly relate to a violation of the right to property while there is nothing to indicate an ongoing violation of Articles 8 and 25 of the ACHR.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

25. In this regard, the petitioners allege that the domestic legal system lacks fully adequate remedies to remedy the situation and protect indigenous peoples' collective rights to property; that, therefore, the exception established in Article 46.2.b of the Convention should be applied. However, they claim to have exhausted the remedies filed on July 24, 2014, regarding the civil action, and December 4, 2014, regarding the appeal for constitutional protection. For its part, the State argues that the appropriate domestic legal remedies have not been exhausted to address the subject matter of the petition, since the legal grounds for the actions brought are not directly related to the claim of ownership of the lands. In addition, it argues the suitability of the remedy of protection and, in civil avenue, the appeal in cassation.

26. For determining the appropriate procedural route in the internal system, the Commission considers it necessary to first establish the object of the petition submitted to its knowledge. There is no controversy regarding the fact that the purpose of the present petition includes the legal recognition of the property of the Rapa Nui People over the lands and natural resources of Easter Island. It must also be emphasized that both parties agree that there are no internal judicial remedies in the State regulations specifically related to the recognition of collective ownership of indigenous peoples' lands, since this was alleged by the petitioner and not contested by the State.

27. The information available in the record leads the Commission to understand that the alleged victims have repeatedly sustained the lack of recognition and protection of their territory as well as various community rights allegedly violated, before administrative and judicial organs, in order to protect the rights, they claim violated by the State. The Commission notes that the appeals and applications filed on behalf of the Rapa Nui people have been closely linked to the exercise and protection of the right to collective property over their ancestral land and the resources derived from it. Specifically, the alleged victims filed a civil resolution

²¹ The State assures that the scope of review of cassation on the merits is exclusively questions of law and not of fact; however, indirectly, the facts of the case may be reviewed only if they can be redirected to a question of law. With respect to the cassation on the merits, it explains that it does not have as a scope of review in itself the questions of fact, but it may be appropriate to submit evidence when it is necessary for the accreditation of the procedural defect that is invoked, among which it is highlighted that the court was incompetent, implicated judge, *ultrapetita*, failure to comply with the requirements of the judgment, lack of valid notification of the claim, violation of *res judicata*, contradictory decisions or lack of an essential procedure defined by law, among others also established in Article 768 of the Code of Civil Procedure.

action against the Treasury on January 20, 2012 for breach of the Will Agreement alleging ownership of their territory and the effects of such damage on the Rapa Nui People which concluded with a ruling by the Court of Appeals on July 24, 2014, with resolution on August 28, 2014. They also filed a request to the Undersecretary for the Armed Forces and a remedy of protection in relation to the collection of maritime concessions to artisanal Rapa Nui anglers, also alleging a violation of the exercise of their collective property rights over land and resources which was dismissed by the Supreme Court by judgment of November 24, 2014 with resolution of December 4 of the same year. The Commission further observes the requests for dialogue filed by in 2014 and after in the context of the signing of the Association Agreement, with the transfer of the full administration of the Rapa Nui National Park to the Rapa Nui People in 2017. The Commission reiterates that the procedures for titling indigenous or tribal communal lands must be effective and must allow them to be filed by the affected communities and not only by private individuals. In this sense, the mere possibility of recognition of rights through certain judicial processes is not a substitute for the actual recognition of such rights²².

28. In this regard, with respect to the civil action, the Commission notes that the State's argument is based on the non-exhaustion of the motion for cassation. In this regard, the Commission has previously established that although in some cases extraordinary remedies may be appropriate for dealing with human rights violations, as a general rule, the only remedies necessary to be exhausted are those that, within the legal system, are suitable for providing the protection needed to remedy the infringement of a specific legal right. In principle, these are regular and not extraordinary remedies.²³ Likewise, the Commission has held that the requirement of exhaustion of domestic remedies does not mean that the alleged victims have the obligation to exhaust all available remedies. Both the Court and the Commission have repeatedly held that "(...) the rule requiring prior exhaustion of domestic remedies is designed in the interest of the State, since it seeks to exempt it from answering before an international body for acts imputed to it, before it has had the opportunity to remedy them with its own means". Consequently, if the alleged victim raised the issue through one of the valid and adequate alternatives under the domestic legal system and the State had the opportunity to remedy the matter in its jurisdiction, the purpose of the international rule is fulfilled. While the alleged victims had the possibility of continuing to exhaust other judicial instances, the Commission considers that these gave the State the opportunity to disregard the claims made by the community, as well as to remedy the human rights violations imputed to them, and the State did not allege that the remedies pursued had been inadequate.

29. Likewise, concerning the State's argument about the appeal for constitutional protection, the Commission notes that, according to the information on the record, the term is 30 calendar days from the date of the act or threat that motivates the appeal or since the claimant became aware of said act or threat, a fact that must be accredited before the Court. The Commission considers that, in accordance with this deadline, and given that the alleged acts of land usurpation occurred in 1888 and in 1933 as a result of the alleged breach of the Will Agreement and of the registration, the remedy of protection would not be an adequate remedy for the Rapa Nui People in this case.

30. The Commission observes the alleged victims filed the aforementioned remedy before the Court of Appeals of Santiago in April 2014, to request the elimination of fees on marine concessions and raise claims on the historical violations of their indigenous collective right to property over the land and its resources. The Court granted the appeal, but the Supreme Court overturned the decision and reaffirmed the strict criteria of the term, by arguing that the appeal was filed extemporaneously; the Supreme Court held that the 30-day term had to be counted from the granting of a concession --which took place in 2011-- and not from the date of the formal response of the Undersecretary to a requirement of the Council of Elders.

31. Therefore, the Commission finds that, in this case, the exception to the requirement of prior exhaustion of domestic remedies applies, under Article 46.2.a of the American Convention.²⁴

32. Finally, the Commission observes that the IACHR received the petition on January 23, 2015, and the decision of the Supreme Court on the appeal for constitutional protection is dated November 24, 2014,

²² CIDH, Report No. 30/17. Petition 1118-11. Admissibility. Comunidad Maya Q'eqchi' Agua Caliente. Guatemala. March 18, 2017.

²³ IACHR, Report No. 161/17, Petition 29-07. Admissibility. Andy William Garcés. Peru. November 30, 2017, par. 12.

²⁴ IACHR, Report No. 30/17, Petition 1118-11. Admissibility. Maya Q'eqchi' Agua Caliente Community. Guatemala. March 18, 2017, pars. 37 and 38.

with a resolution dated December 4 of the same year. Given the context and the characteristics of the petition referred to in this report, the Commission believes that the petition was filed on time and that the requirement of timeliness was met.

VII. COLORABLE CLAIM AND COMPETENCE

33. Regarding the argument of the State that the Inter-American Commission lacks competence to review matters that took place before ratification of the American Convention by Chile, the Commission recalls that the petition deals with the continued lack of recognition of the collective property of the Rapa Nui People on Easter Island and the violation of the right to self-determination, especially the petitions filed in the administrative and judicial venues since 2012, adopted when the American Convention was already in force in Chile. Although some of the denounced facts stem from actions taking place before the date mentioned, many of the effects persist to date.

34. For the purposes of admissibility, the Commission recalls that the criteria for evaluating those requirements differ from those used to rule on the merits of a petition; the Commission must carry out a *prima facie* evaluation to determine whether the petition establishes the basis for the violation, possible or potential, of a right guaranteed by the American Convention, but not to actually establish the violation of any of those rights. This determination constitutes a primary analysis, which does not imply prejudging the basis of the matter.

35. The Commission notes that his petition includes allegations regarding recent situations that demonstrate the continuing lack of recognition of the collective ownership of the Rapa Nui People on Easter Island. In particular, they present allegations regarding the lack of collective ownership of the Rapa Nui People regarding the territory and natural resources of Easter Island; restrictions in the access to their territory; lack of recognition of the right to self-determination of the Rapa Nui People; and the lack of adequate proceedings to restore the right to property, as well as the purported effects of the lack of recognition and protection of their ancestral property on the Rapanui's living conditions, health, and development.

36. With respect to the allegations about the absence of a procedure for the titling of indigenous communal lands, that neither administrative nor judicial procedures would have been effective in guaranteeing the territorial rights of the community as well as the lack of recognition of the collective property of the Rapa Nui People over their ancestral territory, the Commission observes that they tend to characterize an alleged violation of Articles 8, 21 and 25 of the American Convention. Regarding the allegations about the lack of access to archeological centers, the problems of overpopulation, shortage, pollution and access to basic services, the Commission observes that they tend to characterize an alleged violation of Articles 4, 12 and 21 of the American Convention.

37. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that the claims of the petitioners are not manifestly unfounded and require a substantive study on the merits as the alleged facts, to be corroborated as certain could characterize violations of articles 4 (right to life)²⁵, 8 (fair trial), 12 (freedom of conscience and religion), 21 (right to property), and 25 (judicial protection) of the American Convention to the detriment of the Rapanui indigenous community, in relation to Articles 1.1 and 2 of the same instrument.

²⁵ IACHR, Report No. 2/02, Petition 12.313. Admissibility. Yaxye Axa Indigenous Community of the Enxet-Lengua People. Paraguay, February 27, 2002; and IACHR. Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region. OAS/Ser.L/V/II. Doc. 176 29 September 2019, pars. 41 and 42. As for Articles 4, 26, and 1.1, see I/A Court H.R. Case of the *Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, pars. 158, 162 y 168; I/A Court H.R. Case of the *Sawhoiyamaya Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 1146, par. 153; and see I/A Court H.R. Case of the *Xakmok Kasek Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of August 24, 2010. Series C No. 214, pars. 215 and 217.

VIII. DECISION

1. To declare this petition admissible regarding Articles 4, 8, 12, 21 and 25 of the American Convention in accordance with its Articles 1.1 and 2.

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

Approved by the Inter-American Commission on Human Rights on the 14th day of July, 2021. (Signed): Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Edgar Stuardo Ralón Orellana (dissenting opinion), Commissioners.