

OEA/Ser.L/V/II  
Doc. 59  
12 May 2023  
Original: English

**REPORT No. 51/23**  
**PETITION 624-14**  
REPORT ON ADMISSIBILITY

THE ONONDAGA NATION  
UNITED STATES OF AMERICA

Approved electronically by the Commission on May 12, 2023.

**Cite as:** IACHR, Report No. 51/23, Petition 624-14. Admissibility. The Onondaga Nation.  
United States of America. May 12, 2023.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioners:</b>	The Onondaga Nation and the Haudenosaunee Confederation
<b>Alleged victims:</b>	The Onondaga Nation (or Onondaga People)
<b>Respondent State:</b>	United States of America <sup>1</sup>
<b>Rights invoked:</b>	Articles XXIII (right to property) II (right to equality before the law) and XVIII (right to fair trial/judicial protection) of the American Declaration on the Rights and Duties of Man <sup>2</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	April 14, 2014
<b>Additional information received at the stage of initial review:</b>	April 30, 2014, and October 13, 2017
<b>Notification of the petition to the State:</b>	February 28, 2022
<b>State's first response:</b>	August 26, 2022
<b>Additional observations from the petitioner:</b>	October 26, 2022
<b>Notification of the possible archiving of the petition:</b>	Sept 8, 2021
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	September 28, 2021

**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>	Partially, in terms of Section VI
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Declaration (ratification of the OAS Charter on June 19, 1951)

**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 <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles II (right to equality before the law) and XVIII (right to fair trial/judicial protection) of the American Declaration
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in terms of Section VII
<b>Timeliness of the petition:</b>	Yes, in terms of Section VII

<sup>1</sup> Hereinafter "the United States," "the U.S." or "the State".

<sup>2</sup> Hereinafter "the American Declaration" or "the Declaration."

<sup>3</sup> The observations submitted by each party were duly transferred to the opposing party.

## V. ALLEGED FACTS

### *The petitioners*

1. According to the petition, the alleged victims (an indigenous people) have been the subject of wrongful appropriation of 2.5 million acres of land by the State of New York, primarily in violation of the right to property; but also, in violation of the right to equality and the right to judicial protection. The petition indicates that this wrongful appropriation occurred between 1788 and 1822, and that the alleged victims have been unable to obtain any remedy for this alleged wrongful appropriation of land.

### *Background*

2. The alleged victims are known as the Onondaga Nation or the Onondaga People. According to the petition, for many centuries, the Onondaga People have occupied, hunted, fished, and gathered throughout their original territory, which is located in what has become central New York State in the United States. The petition states that this territory is the aboriginal property of the Onondaga Nation, and that this territory contains many sacred sites and cultural places that are essential to the Onondaga way of life.

3. According to the petition, the Onondaga Nation is one of six Indigenous Nations that form part of what is known as the Haudenosaunee Confederation (or “the Haudenosaunee”).<sup>4</sup>

4. The petition indicates that the Haudenosaunee, including the Onondaga Nation, entered into three treaties with the United States: the 1784 Treaty of Fort Stanwix, the 1789 Treaty of Fort Harmer, and the 1794 Treaty of Canandaigua (hereafter “the treaties”). According to the petition, by means of the treaties the United States affirmed the sovereignty of the Onondaga Nation; promised to protect Onondaga Nation lands; and guaranteed the Onondaga Nation the “free use and enjoyment” of its territory.

5. In keeping with its treaty commitments, the petitioners assert that in 1790, the United States enacted the Trade and Intercourse Act (“TIA”). According to the petitioners the TIA regulated land transactions between Indian nations and others. More particularly, the TIA provided that such transactions are void unless they had been authorized and subsequently ratified by Congress in a valid and binding treaty.

6. According to the petition, the original territory of the Onondaga Nation comprised 2.5 million acres. Further the petition states that the Onondaga Nation has never voluntarily conveyed, ceded, sold, given up or relinquished its title to any portion of its aboriginal territory. According to the petition, in keeping with its treaty commitments, the United States has never authorized or approved any transaction conveying Onondaga Nation land to any state, person, corporation, organization or other entity.

7. Despite the foregoing, the petition claims that in a span of 34 years between 1788 and 1822, the State of New York, a political subdivision of the United States, seized control of most of the lands of the Onondaga Nation in a series of illegal transactions. The petition indicates that the actions of the State of New York ultimately reduced the size of the Onondaga territory from 2.5 million acres to its present size of 6,900 acres. According to the petition, the State of New York not only seized possession of these lands, but subsequently conveyed them to (non-indigenous) citizens – in violation of the obligations of the United States (as prescribed by the treaties and the TIA). Generally, the petitioners assert that the State of New York engaged with unauthorized individuals to acquire the lands, and not the Onondaga Nation itself.<sup>5</sup>

8. The petitioners state that seizure of lands has led to several negative consequences for the Onondaga People. In this regard, the petition mentions, for example, that there has been loss of control over

---

<sup>4</sup> According to the petition About one thousand years ago, the Onondaga Nation joined with the Mohawk, Oneida, Cayuga and Seneca Nations to form the Haudenosaunee Confederacy/Confederation. The Tuscarora Nation joined in 1722. The Haudenosaunee is a legally-constituted confederation of sovereign Indian nations.

<sup>5</sup> The petition states, for example, that in 1788, the State of New York purported to purchase approximately two million acres of Onondaga lands, but that the negotiations and subsequent transaction was conducted with were conducted with unauthorized individuals, at an improper location and without the knowledge or consent of the authorized Onondaga Chiefs.

and access to their traditional hunting, gathering, and fishing areas which has deprived the Onondaga People of food and other materials essential to their health and welfare. The petition also mentions that there has been damage done to Onondaga lands because of the activity of extractive industries. In this regard, the petition mentions (as an example) that beginning in the late 1880s, the Onondaga Lake has been used as a dumping ground by several chemical-based industries, and in the process, has become one of the most polluted lakes in the entire United States. The petitioners also indicate that many of the original species of animals, fish, birds, reptiles, amphibians, and plants that originally lived in and near the Lake have disappeared due to the combined loss of habitat and intense chemical pollution. Further the petitioners indicate that the fish that have remained are not fit for human consumption, and that the Lake waters are not fit for swimming or drinking.

9. The petition states that the Onondaga Nation has repeatedly made representation to both the federal government and the State of New York to secure redress for seizure of lands, but without success. The petitioner further states that the historic, traditional method for resolving disputes between the Haudenosaunee nations and outside governments is negotiations between sovereigns. According to the petition, the Onondaga Nation followed the treaty-mandated diplomatic approach to resolving disputes about the taking of its lands by the State of New York, but none of these efforts succeeded.<sup>6</sup>

10. According to the petition, the Onondaga Nation attempted to pursue all legal options that were available to seek redress for the taking of their lands. The petition further states that these efforts were severely hampered by legal doctrines in the United States that rendered federal and state courts closed to land claims by Indian nations. In this regard, the petitioners indicate that in 1929, a federal court ruled that federal courts did not have jurisdiction over claims by Indian nations that their land had been taken in violation of the TIA, because the case did not raise a “federal question.”<sup>7</sup> The petition indicates that this ruling remained good law until 1974, when it was reversed by the U.S. Supreme Court in *Oneida Indian Nation v. County of Oneida*<sup>8</sup> which held that the federal courts had jurisdiction to decide Indian nation claims under the TIA.

11. However, the petition claims that under New York law, New York State courts remained closed to Indian nations until 1987, According to the petitioners, Indian nations were not acknowledged as having legal capacity to file lawsuits on their own (under New York law). The petitioners further allege that under this regime, New York courts required the appointment of attorneys by the State of New York for Indian nations as the exclusive means by which legal actions could be brought. The petitioners state that while this rule was in effect, the New York State exerted tight control over the selection and appointment of attorneys for the Onondaga Nation. The petitioners also argue that the inability of the Onondaga Nation to file suit on its own amounted to a denial of its right to self-determination and to judicial protection. Further, the petitioners allege that because the State of New York would have been the principal defendant in any land rights action meant that no attorney was ever appointed to file actions to redress the loss of Onondaga land.

12. The petitioners indicate that in 1974, when the U.S. Supreme Court ruled that the federal courts had jurisdiction to decide Indian nation claims under the Trade and Intercourse Act, the Onondaga Nation approached the President of the United States to discuss the possibility of a negotiated resolution of its land rights dispute. The petitioners also indicate that the Haudenosaunee met with a lawyer for the President in 1976 and 1982 to explore this possibility; and that the Onondaga Nation sent a letter to the President in 1989 making a similar request. However, the petitioners state that none of these efforts was successful.

---

<sup>6</sup> The petition mentions, for example (a) that on June 2, 1789, the Haudenosaunee Chiefs sent a message to President George Washington to protest New York State’s taking of land in the 1788 transaction; (b) on April 21, 1794, Onondaga Chief Clear Sky complained to U.S. Secretary of War Henry Knox about fraudulent land purchases and bemoaned the lack of effort by the U.S. Congress to provide a remedy for Onondaga land that had been lost. The petition also indicates that the Haudenosaunee and Onondaga Nation frequently called on Congress and the President to investigate New York State’s fraudulent and unlawful land transactions and to provide an adequate remedy for the hundreds of thousands of acres that were lost. None of these efforts succeeded. For example, in 1929 and 1930, the Onondagas, along with others of the Haudenosaunee, submitted petitions to Congress that asserted claims against the State of New York for illegal taking of their lands, noting that “every foot of land bought from the Onondagas was illegally obtained in absolute contravention to the laws of Congress, to the United States Constitution and to the treaties.” The petitioners state that Congress took no action on these petitions.

<sup>7</sup> The petitioners cite the case of *Deere v. State of New York*, 22 F.2d 851 (1927), aff’d, 32 F.2d 550 (2d Cir. 1929).

<sup>8</sup> Cited by petitioners as 414 U.S. 661 (1974).

13. According to the petition, the Onondaga Nation also pursued negotiations with the State of New York directly to resolve its concerns regarding the loss of Nation land. On December 27, 1988, the Nation's Council of Chiefs wrote to New York Governor Mario Cuomo, seeking diplomatic discussions about the illegal land takings. This letter was the first step in a decade-long series of meetings among the Haudenosaunee and the Governor and state Attorney General. The petition states that diplomatic efforts to resolve Onondaga land rights issues were halted in mid-1998, when the Governor's staff informed the Onondaga Nation that it must file its land rights action in federal court before settlement talks could proceed further.

14. The petitioners state that on March 11, 2005, the Onondaga Nation filed a suit in a federal court (the United States District Court for the Northern District of New York), seeking declarations that New York State's taking of Onondaga land violated the treaties and the TIA; and that the title to the land remained with the Onondaga Nation.

15. According to the petition in October 2005, the suit was stayed, pending the resolution of litigation by another Indigenous nation dealing with similar claims. In this respect the petitioners explain that on March 29, 2005, less than a month after the filing of the law suit, the United States Supreme Court ruled in *City of Sherrill v. Oneida Indian Nation* that the doctrines of "laches, impossibility and acquiescence" precluded the Oneida Nation from asserting immunity from real property taxes on treaty-protected, reservation land that had been taken by the State of New York in 1795, but subsequently purchased by the Oneidas in the 1990s.

16. The petitioners further indicate that on July 26, 2005, in the case of *Cayuga Indian Nation v. Pataki* the United States Court of Appeals for the Second Circuit ("the Second Circuit Court") applied the *Sherrill* ruling to an Indian land claim under the Trade and Intercourse Act). In this respect, the petitioners state that the Second Circuit Court reversed a \$248 million judgment in favor of the Cayuga Nation against the State of New York for its violations of the Trade and Intercourse Act in taking Cayuga land without congressional approval. According to the petitioners, the Second Circuit Court ruled that Indian land claims that disrupt the "settled expectations" of the non-Indian landowners regarding the security of their land titles are subject to an entirely new equitable defense drawn from the doctrines of "laches, impossibility and acquiescence."

17. The petitioners state that the Cayuga Nation applied to the United States Supreme Court for certiorari to challenge the ruling of the Second Circuit Court. The petitioners indicate that by agreement of the parties, their suit was stayed on October 26, 2005, until 60 days after the decision by the United States Supreme Court on the application for certiorari by the Cayuga Nation. The petitioners indicate that The United States Supreme Court subsequently refused to review the Second Circuit Court's ruling in the *Cayuga* case. As a result, the stay of the petitioners' lawsuit was lifted on July 5, 2006.

18. The petitioners indicate that on August 15, 2006, the defendants (to the Onondaga lawsuit) filed motions to dismiss the lawsuit on the ground that it failed to "state a claim" for relief under applicable federal law. According to the petitioners, the defendants argued that the facts were irrelevant because it was impossible to grant any relief to the Onondagas that would not "disrupt" the non-Indian landowners, and that it was self-evident that the Onondagas had waited too long to bring the action. The motions were largely based on the U.S. Supreme Court's decision in the *Sherrill* case and the Second Circuit's decision in the *Cayuga* case. The petitioners state that on November 16, 2005, they filed pleadings opposing the motions to dismiss. However on September 22, 2010, the petitioners indicates that the court granted the defendants' motions to dismiss and ordered the dismissal of the Onondaga Nation's lawsuit in its entirety.

19. The petitioners indicate that on October 20, 2010, they appealed to the Second Circuit Court of Appeals ("Second Circuit Court"). The appeal was heard on October 12, 2012, before being dismissed on October 19, 2012. On November 5, 2012, the petitioners subsequently applied for a rehearing *en banc*, asking for all thirteen judges to rehear the appeal. This application was dismissed on December 21, 2012.

20. The petitioners state that on April 30, 2013, they filed an application for a Writ of Certiorari with the United States Supreme Court, seeking review of the Second Circuit's dismissal of their appeal. The United States Supreme Court dismissed this application on October 15, 2013. The petitioners state that this

dismissal signified that there were no other possible judicial avenues to be pursued within the United States court system.

21. According to the petitioners the application of laches to dismiss the Onondaga Nation's land rights action represent a new body of law that closes the courts of the United States to claims of historic violations of indigenous land rights, and that "this new equitable defense has not been applied to the land rights claims of non-Indians.

22. The petition contends that the right of indigenous people to their communal property is supported by international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations International Covenant on Civil and Political Rights.<sup>9</sup>

#### *Position of the State*

23. The State rejects the petition as inadmissible. In this regard the State submits that: (a) the claims in the petition are outside of the Commission's competence *ratione temporis* and *ratione materiae*; (b) consideration of the petition is precluded by the Commission's fourth instance doctrine; and (c) the petition fails to state any facts that tend to establish a violation of any rights under the American Declaration.

24. The State does not dispute the history of the petitioners' claims regarding the lands that are the subject of the petition. The State notes, however, that other constituent nations of the Haudenosaunee have litigated comparable claims in United States courts. In this regard, the State indicates that protracted litigation by the Oneida Indian Nation and the Cayuga Indian Nation explored at length the facts and law relevant to land claims by the Onondaga Nation; and that the precedents set by those lawsuits controlled the outcome of petitioners' lawsuit filed in 2005.<sup>10</sup> In this regard the State submits that in 1970, the Oneida Indian Nation began to litigate the issues of whether a Haudenosaunee Tribe could recover by court order sovereign authority over lands invalidly alienated in the 18th and early 19th centuries. Through decades of litigation, and multiple decisions by the federal district court, the court of appeals, and the Supreme Court, every facet of the issue was argued and decided. According to the State the United States Supreme Court ruled in 1985 that such tribes could bring a claim to court under federal common law. However, in 2005 the United States Supreme Court ruled (in the case of *City of Sherrill v. Oneida Indian Nation*) that, in consideration of the long passage of time and settled expectations of those currently in possession, equitable considerations precluded court-ordered return of sovereign authority over the Tribe's historic lands. The State indicates that based on this judicial precedent, the suit of the petitioners (filed in 2005) was dismissed by the federal courts (both at first instance and appeal).

#### *Ratione temporis*

25. To the extent that the petition presents claims relating to the Onondaga Nation's loss of land between 1788 and 1822, the State submits that the Commission lacks jurisdiction because these events do not fall within the Commission's competence *ratione temporis*. The State further submits that these events occurred before the adoption of the American Declaration and the establishment of the Commission. The State indicates that the American Declaration cannot be applied retroactively, and that this principle is well established in international and Inter-American jurisprudence.

#### *Ratione materiae*

26. The State notes that in support of their claims, the petitioners cite international instruments other than the American Declaration. The State submits that such recourse to international instruments and authorities beyond the American Declaration reflects the reality that petitioners' claims do not implicate provisions of the American Declaration, leaving them to look to other instruments in their attempt to construe

<sup>9</sup> The petition notes that the United Nations Declaration on the Rights of Indigenous Peoples has been adopted by the United States; and that the United States is a party to the International Covenant on Civil and Political Rights.

<sup>10</sup> The State does not generally dispute the petitioners' history of the litigation (by other Nations) that preceded the 2005 lawsuit by the Onondaga Nation.



cognizable claims. Accordingly, the State submits that claims based on instruments beyond the American Declaration are inadmissible because they are outside the Commission's competence *ratione materiae*.

27. The State also contends that the petitioners' claims are inadmissible *ratione materiae* because the American Declaration does not speak to collective rights and the Commission lacks competence to expand its review beyond the Declaration. The State argues that the American Declaration sets forth human rights, fundamental freedoms, and duties of individuals, not of collectives.

#### *Fourth Instance*

28. The State argues that the issues raised by the petitioners have been fully adjudicated (and rejected) before the courts of the United States. More generally, the State asserts that (similar) land claims relating to other nations of the Haudenosaunee have been litigated for more than 50 years by federal courts including the United States Supreme Court. The State contends that the federal courts (up to the United States Supreme Court) have ruled that they cannot order the return of lands to Nations of the Haudenosaunee, such as the Onondaga Nation.

29. According to the State, the petitioners are dissatisfied with the outcome of the domestic proceedings, and now seek to have the Commission reexamine the determinations of the domestic courts. The State argues that the petitioners raise the same issues before the Commission as they presented before the domestic courts. The State argues that this constitutes an infringement of the Commission's fourth instance doctrine and is therefore inadmissible.

#### *Failure to State a Claim under the American Declaration*

30. The State contends that the petitioners have failed to state facts that tend to establish a violation of the American Declaration. In this regard, the State argues, for example, that the petitioners have failed to establish a violation of the right to property, because Article XXIII of the Declaration, on its face, does not set forth a right pertaining to collectives like the Onondaga Nation.

31. The State similarly argues that the petitioners have failed to establish a *prima facie* violation of the right to resort to the courts/right to judicial protection. The State argues that the petitioners fully litigated their claim before the federal courts. The State asserts that the fact that the petitioners were unsuccessful cannot constitute a denial of the right to resort to the courts. Regarding the right of equality, the State rejects the petitioners' claim that the application of laches to dismiss their claims has not been applied to the land rights claims of non-Indians. The State asserts that laches is a well-established principle, the purpose of which is to "avoid inequity; and that contrary to petitioners' assertions, laches has been invoked to support dismissal of historic land by non-Indians.<sup>11</sup> Accordingly, the State submits that the petitioners have failed to establish any *prima facie* violation of their right to equality.

## **VI. COMPETENCE**

32. The State contends that the petition is outside of the Commission's competence *ratione materiae* and *ratione temporis*.

#### *Ratione materiae*

33. Regarding the issue of competence *ratione materiae*, the State claims, firstly, that the petitioners have based their claims not only on the American Declaration but on other international instruments. The State indicates that the Commission lacks the competence (*ratione materiae*) to entertain any claims based on such instruments, and that such claims are therefore inadmissible.

---

<sup>11</sup> The State mentions a few judicial precedents in this regard, including *Wetzel v. Minnesota Ry. Transfer Co* 169 U.S 327 (1898) (US Supreme Court).

34. The Commission observes that the American Declaration is a source of legal obligations that may be applied by the Commission to the U.S. based on the State's commitment to uphold respect for human rights as provided for and defined in the Charter of the Organization of American States (OAS). In this regard, while the Commission looks to the American Declaration as the primary source of international obligations and applicable law in cases concerning the United States, this does not mean that the Commission may not refer to other sources of law in effectuating its mandate. The Commission has long held that it is necessary to consider the provisions of the American Declaration in the broader context of both the inter-American and international human rights systems, in light of developments in international human rights law since the Declaration was adopted and having regard to other relevant rules of international law applicable to member states against which complaints of violations of the Declaration are properly lodged.

35. Based on the record, the claims of the petition are grounded in the American Declaration, and that the references to other international instruments simply serve to support these claims. Having regard for the foregoing, the Commission considers that petition's references to other international instruments do not place the petition outside of the Commission's competence *ratione materiae*.

36. The State also contends that the Commission lacks competence *ratione materiae* to consider the petition's claim regarding violation of the right to property under the American Declaration (Article XXIII). In this regard, the State contends that the American Declaration addresses the rights of individuals and does not speak to collective rights. Accordingly, the State submits that the Commission lacks competence to expand its review beyond the Declaration.

37. The Commission has established that the corpus of international law that is relevant in examining complaints concerning indigenous territories under the American Declaration "includes the developing norms and principles governing the human rights of indigenous peoples" and "with due regard to the particular principles of international human rights law governing the individual and collective interests of indigenous peoples."<sup>12</sup> As previously noted by the Commission, these norms and principles of international law include precepts on the protection of indigenous peoples' traditional forms of ownership and cultural survival and on their right to lands, territories and natural resources."<sup>13</sup>

38. By its jurisprudence, the Commission has long established that the right to property enshrined in the American Declaration applies to not only individuals, but also to collectives, such as indigenous groups.<sup>14</sup> Accordingly, the Commission considers that it is competent to *ratione materiae* to take cognizance of the petition's claim alleging a violation of the right to property.

#### *Ratione temporis*

39. The State contends that the Commission lacks competence *ratione temporis* to examine this matter, because the petition is based on facts alleged to have occurred prior to the State's accession to the Charter of the OAS in 1951, and its concomitant assumption of obligations under the American Declaration.

40. The Commission notes that it is a generally recognized principle of international law that international instruments are not retrospective in effect.<sup>15</sup> However, the Commission observes that States may

<sup>12</sup> IACHR, Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II Doc. 56/09, 30 December 2009, para. 9, *citing*, IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, paras. 124, 131.

<sup>13</sup> IACHR, Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II Doc. 56/09, 30 December 2009, para. 9, *citing*, IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, para. 124.

<sup>14</sup> See for example IACHR Report N<sup>o</sup> 40/04 Case 12.053 Merits Maya Indigenous Communities of the Toledo District Belize October 12, 2004.

<sup>15</sup> The Vienna Convention on the law of treaties codifies this principle in Article 28 which provides that: "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."



be liable for violations that originated prior to a state's ratification of a treaty or other international instrument but continue thereafter.<sup>16</sup>

41. The Commission observes that there is nothing in either the OAS Charter or the American Declaration that evinces any intention on the part of the State to be bound in relation to acts or facts that occurred and ceased to exist prior to acceding to the OAS Charter. There is no disagreement between the parties on the chronology of events that led to submission of the petition. Specifically, the record clearly demonstrates that between 1788 and 1822, the state of New York wrongfully appropriated 2.5 million acres of land from the Onondaga Nation. Assuming that the appropriation of the land represented *prima facie* violations of the American Declaration, the appropriation clearly originated prior to the State's accession to the OAS Charter. Moreover, the Commission further notes that the alleged misappropriation certainly occurred before 1965, the year in which the Commission was granted competence to review individual petitions.<sup>17</sup> Accordingly, the Commission does not have competence *ratione temporis* to consider the alleged misappropriation of land (that took place that between 1788 and 1822).

42. However, the Commission notes that the petitioners have also claimed a violation of their right to judicial protection and the right to equality before the law arising from litigation that they unsuccessfully pursued between 2005 and 2013. To the extent that this claim was initiated and pursued after 1965, the Commission does have jurisdiction *ratione temporis* to consider it.

## VII. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND COLORABLE CLAIM

43. Having regard for the foregoing, the Commission now considers the alleged violation of the petitioners' right to judicial protection and the right to equality before the law. As a preliminary consideration, Article 31 (1) of the Commission's Rules of Procedure provides that for a petition to be admissible the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law. This requirement ensures the State the opportunity to hear the alleged violation of a protected right and, if applicable, settle the issue before it is brought before an international body settle human rights complaints within its own system of justice before being addressed by an international body.

44. Based on the documents and information provided, it appears that the petitioners initially filed suit before the US federal courts in March 2005, seeking redress for the alleged misappropriation of land. The suit was dismissed at first instance and on appeal mainly on the ground that laches/equitable considerations such as long passage of time and settled expectations of those currently in possession of the land prevented the courts from ordering the return of the lands to the petitioners. The petitioners appealed to the Supreme Court (by way of writ of certiorari), but this appeal was dismissed on October 15, 2013. In the absence of any evidence to the contrary, the Commission concludes that the decision by the US Supreme Court represents the exhaustion of domestic remedies. Therefore, the current petition, received on April 14, 2014, complies with Articles 31 and 32 of the Rules of Procedure.

45. The Commission notes the efforts made by the petitioners to obtain redress for the historical taking of their treaty recognized traditional lands and territories. It is worth noting that that during the period following the State's accession to the Charter of the OAS in 1951 and its concomitant assumption of obligations under the American Declaration, the petitioners' efforts to obtain redress for the loss of their lands were impeded because they could not present claims to federal courts until 1974 (para. 10) and, under the law of New York State, indigenous peoples were not acknowledged to have legal capacity to sue under New York Law until 1987 (para. 11). During the 1970's and 1980's the petitioners were unsuccessful in their attempts to negotiate with the President a resolution for their land rights claims, given the political treaties between the United States and the Onondaga Nation (para. 12). In addition, efforts to negotiate with the New York Governor during the 1980s and 1990s were also unsuccessful (para. 13). Lastly, subsequent efforts to obtain redress

<sup>16</sup> See for example, IACHR Report N° 98/03 CASE 11.204 Statehood Solidarity Committee United States December 29, 2003; para.59; I/A Court H.R., *Case of Alfonso Martín del Campo-Dodd v. Mexico. Preliminary Objections*. Judgment of September 3, 2004. Series C No. 113.

<sup>17</sup> See IACHR, Report No. 48/15, Petition 79-06. Admissibility. Yaqui People. Mexico. July 28, 2015, para. 45.

before federal courts during the 2000s and 2010s were impeded due to the doctrine of laches and considerations of the settled expectations of those currently in possession of those lands (paras. 14-20). According to the petitions, the doctrine of laches has not been applied to the land rights claims of non-Indians.

46. The Commission recalls its previous jurisprudence on land rights claims of indigenous peoples in the United States, and in particular, the general international legal principles applicable in the context of indigenous human rights which guide the interpretation of the State's obligation under the American Declaration. These general international legal principles include: the rights of indigenous peoples to their specific forms and modalities of their control, ownership, use and enjoyment of their lands and territories; the recognition of the lands, territories and resources they have historically occupied; and "where property and user rights of indigenous peoples arise from rights existing prior to the creation of a state, recognition by that state of the permanent and inalienable title of indigenous peoples relative thereto and to have such title changed only by mutual consent between the state and respective indigenous peoples when they have full knowledge and appreciation of the nature or attributes of such property. This also implies the right to fair compensation in the event that such property and user rights are irrevocably lost".<sup>18</sup>

47. As stated by the Commission, articles XVIII and XXIII of the American Declaration specially oblige a member state to ensure that any determination of the extent to which indigenous claimants maintain interests in the lands to which they have traditionally held title and have occupied and used is based upon a process of fully informed and mutual consent on the part of the indigenous community as a whole. This requires at a minimum that all of the members of the community are fully and accurately informed of the nature and consequences of the process and provided with an effective opportunity to participate individually or as collectives.<sup>19</sup> Regarding the United States, the Commission had previously stated that determinations by domestic bodies that historical land claims by an indigenous people would be denied based on the "extinguishment" of their land rights due to the encroachment by non-indigenous persons, and without a due process where indigenous peoples' rights and interest were adequately represented, were incompatible with the rights of equality before the law, right to fair trial and property under the American Declaration.<sup>20</sup>

48. Therefore, the compatibility of the judicial and other proceedings available to the petitioners to obtain redress for loss of their lands and the application of legal doctrines that impede the claims by indigenous peoples would need to be evaluated by the Commission in the Merits stage, taking into account the abovementioned standards under the American Declaration, as well as other standards within the Inter-American system. The IACHR recalls that the developments in the corpus of international human rights relevant to interpreting and applying the American Declaration may also draw from the American Convention on Human Rights as an authoritative expression of the fundamental principles set forth in the American Declaration<sup>21</sup>. In that sense, the jurisprudence of the Inter-American Court has established that indigenous peoples who have lost total or partial possession of their territories preserve their property rights over such territories, and a preferential right to recover them even when they are in the hands of third parties<sup>22</sup>. The Court has also pointed out that "when a State is unable, on objective and reasonable grounds, to adopt measures aimed at returning traditional lands, it must surrender alternative lands of equal extension and quality, which will be chosen by agreement with the members of the indigenous peoples, according to their own consultation and decision procedures."<sup>23</sup>

<sup>18</sup> IACHR, Report No. 75/02, Case 11.140. Mary and Carrie Dann (United States), December 27, 2002, para. 130.

<sup>19</sup> IACHR, Report No. 75/02, Case 11.140. Mary and Carrie Dann (United States), December 27, 2002, para. 140.

<sup>20</sup> IACHR, Report No. 75/02, Case 11.140. Mary and Carrie Dann (United States), December 27, 2002, paras. 144-145.

<sup>21</sup> IACHR, Report No. 75/02, Case 11.140. Mary and Carrie Dann (United States), December 27, 2002, para. 97; IACHR, Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II Doc. 56/09, 30 December 2009, para. 8.

<sup>22</sup> I/A Court H.R., Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, par. 128; IACHR, Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II Doc. 56/09, 30 December 2009, para. 123.

<sup>23</sup> I/A Court H.R., Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, par. 135.

49. Based on the above, the Commission will admit the petition based on Articles II (equality before the law) and XVIII (right to fair trial/judicial protection) of the American Declaration.

**VII. DECISION**

1. To find the instant petition admissible in relation to articles II (equality before the law) and XVIII (right to fair trial/judicial protection) of the American Declaration; and

2. To notify the parties of this decision; and to publish this decision; to continue with the analysis on the merits; to publish this decision; and to 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 12<sup>th</sup> day of the month of May, 2023. (Signed:) Margarete May Macaulay, President; Roberta Clarke, Second Vice President; Joel Hernández García (dissenting vote), and Julissa Mantilla Falcón, Commissioners.