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**Inter-American System**

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II INTER-AMERICAN SYSTEM

DIEGO RODRÍGUEZ-PINZÓN

1. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The individual complaint procedure of the Inter-American System is currently experiencing a profound transformation due to recent changes in the Rules of Procedure of the Inter-American Commission on Human Rights (IACHR or Commission) and the Inter-American Court on Human Rights (Court). Article 44 of the New Rules of the IACHR, which indicates that all cases decided by the Commission under the American Convention on Human Rights will be submitted to the Inter-American Court on Human Rights, has significantly modified the type of case law of the Commission as well as its role within the individual complaint structure of the Inter-American System.

One of the most noticeable changes is related with its standard setting function, which the Commission has exercises mainly in cases brought under the American Declaration of the Rights and Duties of Man. However, it is possible to find admissibility cases in which important substantive standards may be developed. Below we are including a summary of the relevant parts of a recent decision in the merits under the American Declaration against Belize, of a decision in the merits against Jamaica still under the American Convention, and we are also including one admissibility decision that has standard setting characteristics regarding freedom of expression.

Article 44 states: Referral of the Case to the Court: 1. If the State in question has accepted the jurisdiction of the Inter-American Court in accordance with Article 62 of the American Convention, and the Commission considers that the State has not complied with the recommendations of the report approved in accordance with Article 50 of the American Convention, it shall refer the case to the Court, unless there is a reasoned decision by an absolute majority of the members of the Commission to the contrary. 2. The Commission shall give fundamental consideration to obtaining justice in the particular case, based, among others, on the following factors: a) the position of the petitioner; b) the nature and seriousness of the violation; c) the need to develop or clarify the case-law of the system; d) the future effect of the decision within the legal systems of the Member States; and, e) the quality of the evidence available.

1 The Commission receives complaints under the Declaration against those States that have not yet ratified the American Convention on Human Rights. In these cases, the final decision in the merits is taken by the Commission, because the Court is only available to States that have ratified the Convention and accepted its contentious jurisdiction.

2 Jamaica ratified the American Convention but has only accepted the contentious jurisdiction of the Court for inter-State applications. Therefore, the Commission cannot submit to the Court cases against Jamaica, so the proceedings end in the Commission's final decision in the merits.
Maya Indigenous Communities of the Toledo District of Belize, Case 12.053, Report No. 40/04, Merits, 12 October 2004

Facts/Background

Environmental Damage

In this case the petitioners claim that the State has violated Articles I, II, III, VI, XI, XVIII, XX, XXIII in respect to lands traditionally used and occupied by the Maya people by granting logging and oil concessions in and otherwise failing to protect those lands, failing to recognise and secure the territorial rights of the Maya people in those lands, failing to afford the Maya people judicial protection of their rights and interests in those lands due to delays in court proceedings instituted by them.

The Maya people have formed organised societies that inhabited the Toledo District of southern Belize and the surrounding region long before any Europeans and its colonial institutions arrived which eventually created the modern State of Belize. There exist distinct linguistic subgroups and communities among these Maya people that have evolved within a system of interrelationships and cultural affiliations. The land use practices of the Maya people are comprised of both subsistence and cultural elements that form a foundation for the life and continuity of the Maya communities. The Maya use land and streams surrounding the Maya villages for dwelling and subsistence purposes as well as agriculture, hunting, fishing, gathering and transportation activities. Numerous sites throughout the agricultural area and the more remote forested lands are also regarded as sacred and used for ceremonial purposes and burial grounds. The Mayas claim that there are three principal zones surrounding the Maya villages: the ‘village zone’ that typically extends to two square kilometres and is used for dwellings, raising fruit and other trees and grazing livestock; the ‘agriculture zone’ extending up to 10 kilometres from the village centre where crops are planted on a rotational system and a broader zone that includes large expanses of forest lands and waterways used for hunting and gathering for food, medicinal, construction, transportation and other purposes.

The customary land use patterns of the Maya people are governed by a traditional land tenure system by which Maya villages hold land collectively, while individuals and families enjoy subsidiary rights or use and occupancy.

This system exists alongside a system of ‘reservations’ established by the British colonial administrations that pertains to Maya villages and that continues to exist under the laws of Belize. But the Maya people note that the reservations include only about one-half of the Maya villages in the Toledo District and that the customary land tenure patterns of the Maya communities extend well beyond the reservation boundaries.

According to a map provided by the State of Belize, a majority of the lands to which the Maya people claim rights are designated ‘National Land’ and that the Government only recognises the Maya people’s rights to the reservations. The State of Belize has continued to authorise and promote development activities on these ‘National Lands’ to which the Maya claim rights, without agreement or consultation with the Maya communities and without accommodations for Maya resource use and cultural patterns affected by this development.

The Government has granted logging and oil concessions on the Maya lands in the Toledo district without meaningful consultations with the Maya. These concessions have caused substantial environmental harm and threatens long term and irreversible damages to the natural environment upon which the Maya depend.
Since 1993, the State of Belize has granted numerous concessions for logging on a total of over half a million acres of land in the Toledo District, including sizeable concessions granted to two Malaysian Timber companies, Toledo Atlantic International and Atlantic Industries. The Maya claim that logging under these concessions is ongoing or imminent and that the areas of ten of the concessions include reservation and non-reservation lands that are traditionally used and occupied by the Maya people. The petitioner further claims that none of the affected Maya villages agreed to any of the logging concessions and that no meaningful consultations with the Maya people preceded the granting of the concessions. The petitioners further claim that there is no indication the Government considered Maya land use patterns or cultural practices in the affected areas when they granted these concessions.

In May 2001, the State established a process to facilitate meetings between the Forestry Department (State) and the Maya communities near prospective logging concessions. But the Maya claim that this process was too little too late and did not cure the absence of any consultation prior to the logging that occurred and continues to occur.

In late 1997, the petitioners learned that the States had approved an application by a company to engage in oil exploration activities in an area that includes most if not all of the Maya villages in the Toledo District. Under Belize law, any contract for petroleum operations guarantees oil extraction rights which may continue for a period of 25 years. The petitioners, therefore, reason that Belize has handed over a substantial portion of Maya traditional territory to potential long-term oil activities without any regard for Maya traditional land tenure.

The petitioners further argue that the logging concessions have been put into effect and cause and will continue to cause similar damage. The logging concessions cover critical parts of the natural environment upon which the Maya depend for subsistence, including vulnerable soils, primary forest growth and important watersheds. The petitioners also claim that the logging activities have affected essential water supplies, disrupted plant and animal life, and, accordingly, affected Maya hunting, fishing and gathering practices that are essential to Maya cultural and physical survival.

Thus the petitioners claim that the logging activities in the Toledo District threaten long term and irreversible damage to the natural environment upon which the Maya depend. This includes top soil erosion, which occurs when land is stripped of forest cover, which impairs the ability of the forest to regenerate. This would injure the Maya's rotational system of farming and could permanently diminish the availability of wildlife and plant resources. This could also permanently damage stream flows that are vital to water supplies, which could cause siltation, which threatens coastal areas.

Lack of Recognition and Adequate Protection of Indigenous Rights
The petitioners claim that Belize Government officials have uniformly refused to recognise Maya rights or interests in lands on the basis of Maya customary land use and occupancy. Instead, the Government has narrowly interpreted Maya interests in lands and resources. The petitioners claim that the reservation system established by the Belize Government provides inadequate protection of Maya customary land tenure. Only half of Maya villages fall within the reservations and those lands are deemed ‘National Lands’ and so under the discretionary authority of the
Government with no specific guarantees for Maya interests. The State has acknowledged in the past that the Maya people have rights to land and resources in Southern Belize and they also claim to have aboriginal rights to land under common law (but argue that international law and not domestic law is ultimately determinative of the existence/scope of Maya rights for purposes of these proceedings).

The petitioners also claim there has been an unreasonable delay in domestic proceedings.

Legal Arguments of the Petitioners
Petitioners argue that the environmental damage caused by the logging concessions in the Toledo District have undermined Maya food sources and threaten to contaminate the soils and waters which would adversely affect the health of the Maya. The Petitioners further claim that Belize is unwilling or unable to enforce environmental norms against these logging and oil practices and has actually facilitated the environmental threats. Belize, therefore, has failed to meet its obligation to guard against the degradation of the natural environment upon which Maya physical and cultural survival depend.

In relation to the logging and oil concessions, the petitioners allege that the State of Belize has violated the following human rights of the Maya people: the right to property (Article XXIII); the right to religious freedom (Article III); right to family and protection thereof (Article VI); the right to take part in the cultural life of the community; and their right to a healthy environment in connection with the right to life (Article I); right to preservation of health and well-being (Article XI); and the right to participate in government (Article XX). In relation to the failure of the Belize Government to recognise and secure Maya territorial rights, the petitioners claim the State violated the Maya people's rights to equality (Article II), and right to property (Article XXIII) and general principles of international law.

The petitioners claim that both the proposed American Declaration of Indigenous Peoples and the draft UN Declaration on the Rights of Indigenous Peoples, and the Rio Declaration acknowledge the need for States to protect the natural environments upon which indigenous people depend.

Petitioners state that the right to property in Article XXIII provides for the right to own such property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home, which requires recognition and protection of the forms of individual and collective landholding and resource use of the customary land tenure system of the Maya. The petitioners further claim that the Maya peoples' property rights are additionally reflected in several draft and final international instruments concerning the rights of indigenous peoples, including Article XVIII of the proposed American Declaration on the Rights of Indigenous Peoples, Article 26 of the Draft United Nations Declaration on the Rights of Indigenous Peoples, and Article 14(1) of the International Labour Organisation's Convention on Indigenous and Tribal Peoples. These rights are further violated in the State's granting of concessions without any consideration of Maya rights, without Maya consent and without compensation or mitigation for the adverse impacts.

The petitioners claim their right to cultural integrity is violated. The petitioners claim that Maya land and resource use is the core of Maya culture and is imperilled by resource extraction activities in the Toledo district without any consideration or
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Petitioners also contend that the substantial environmental harm threatens the Mayan's right to life under Article I; and the right to preservation of health and well-being, under Article XI of the American Declaration.

Finally, the Petitioners contend that the Government has failed to consult with the Maya in the Toledo District about these logging and oil concessions in violation of the 'right to consultation'. The right to be consulted in a meaningful way about any decision that may affect Maya interests in lands and natural resources is implicit in the human rights provisions that protect these interests, including Article 27 of the ICCPR, the right to participate in government, under Article XX of the American Declaration, and the principle of self-determination, which, according to the petitioners, is a general principal of international law. The petitioners also rely on Articles XIII and XVI of the proposed American Declaration on the Rights of Indigenous Peoples and ILO Convention which the claim clarify the right of indigenous peoples to consultation. This consultation, the petitioners argue, requires that indigenous people be provided a fair opportunity to be heard and to genuinely influence the decisions before them.

The petitioners argue that meaningful consultations with the Maya have not been held in relation to the logging and oil concessions. Instead, most of the concessions were granted without public knowledge and without direct consultation with the affected Maya communities. Further, any public meetings that were held were held with vague and incomplete information and that any attempt by the Maya to engage in a meaningful dialogue with the Government have been rebuffed, all resulting in a denial of the Maya right to consultation.

The petitioners argue that the legal system of Belize does not recognise Maya customary land tenure as a source of property rights, and the State does not otherwise provide adequate protection for Maya cultural and subsistence practices related to land and resources. The failure to recognise these rights is a form of discrimination that is prohibited under Article II of the American Declaration. The bodies of the UN recognise that indigenous people have historically suffered discrimination. One of the greatest manifestations of this discrimination is the failure of governments to recognise indigenous customary forms of possession and land use. The petitioners argue that this pattern of discrimination cannot be allowed to continue and that States have an obligation to eradicate this kind of discrimination. The petitioners assert that the Maya of the Toledo District have suffered this very form of discrimination by failing to recognise the Maya land and resource rights. At a minimum, the petitioners argue that the Government is obligated to adopt legislation or other measures to identify the geographic extent of Maya traditional lands and specifically define their legal attributes in accordance with Maya customs. The petitioners cite a 2001 case before the Inter-American Court of Human Rights as precedent, Awas Tingni vs Nicaragua, where the Court found that the indigenous people had a property right under international human rights law and that the State of Nicaragua had violated their rights by failing to demarcate and otherwise secure land for the indigenous people and by failing to consultation or agreement with the community.
**State's Failure to Provide Judicial Protection**

The petitioners also claim that the State of Belize has failed to provide effective judicial protection for Maya rights, in violation of Article XVIII, because the Maya people have tried but failed to obtain redress through the domestic courts. The petitioners filed an action with the Supreme Court of Belize alleging violations of constitutionally-protected rights to property and equality. But the Supreme Court failed to take action on the motion 1.5 years after it was filed. (Petitioners note that timeliness is essential where alleged human rights violations are ongoing and possibly irreparable).

The domestic remedies have proven ineffective at protecting Maya rights. Despite the time that has passed and the substantial evidence submitted to the Belize Supreme Court, the court has not made any determination on the matter and it has an international obligation to do so.

**Position of the State**

The State first argues that there was a process of negotiation that took place outside the Commission which resulted in the 'Ten-Points Agreement' signed by the parties on 12 October 2000. The State argues that this agreement became the new basis for the resolution of the claim. The State further argues that the petitioners acted prematurely in moving ahead with their litigation before the Commission while these negotiations were outstanding and the Ten-Point Agreement had not yet been implemented.

The State also emphasises that the issue of land and resource use in Toledo is extremely complex; there are at least four ethnic groups and extreme ethnic diversity in close proximity. Negotiations are therefore very sensitive. The State cites the principal of equality in Article II and argues that it must consider the interests of all its citizens and maintain its neutrality.

The State argues that any decision on the merits of the petition must first answer the question of whether the Maya of Toledo have aboriginal rights in the land of the Toledo District and that any decision on this issue must be taken based on the common law and all relevant domestic litigation.

The State disagrees with the petitioners over what the appropriate test is for determining whether there exist aboriginal rights. The State advocates for a four part test: (1) that the applicants and their ancestors were members of an organised society; (2) that the organised society occupied the specific territory over which they assert the aboriginal title; (3) that the occupation was to the exclusion of other organised societies; and (4) that the occupation was an established fact at the time sovereignty was asserted. The State claims that this test differs from the test preferred by the petitioners: (1) the existence of a culturally distinctive community or society with historical origins that predate the effective exercise of sovereignty by the Government; and (2) customary or traditional land tenure or resource use that can be identified as part of the cultural life of the community or society. The State argues that it is unclear whether the facts asserted by the petitioners are sufficient to establish the elements required to recognise aboriginal rights. Specifically, the State argues that the petitioners failed to prove that the Maya occupied the region exclusively and continuously.

With respect to the logging concessions and oil explorations, the State argues that it has taken into account the concerns of the Belizean public, including the Maya people of Toledo, in a way consistent with a respect for those concerns. The
State further contends that the petitioners have failed to provide evidence that the actions and omissions complained of have actually resulted in the alleged violations of their rights to life, property, cultural integrity, a healthy environment, and consultation or equality before the law. Specifically, the Maya have never been removed or threatened with removal, they continue to live in their customary way, and that the Maya are treated the same as other Belizean communities.

In regard to the allegation of a violation of the right to judicial protection, the State contends that the petitioners have chosen not to pursue domestic litigation to its fullest. As of the date of the State's preliminary response, the petitioners were still availing themselves of domestic avenues for resolution. The State also notes that the justice system is working on resolving the problems of delays in the courts.

Analysis

Human rights principles recognise the need for special measures by States to compensate for the exploitation and discrimination of indigenous populations. The Inter-American Commission recognises and promotes respect for the rights of indigenous peoples. The notion of special protection for indigenous populations has been recognised and applied for many rights recognised under the American Declaration and the American Convention on Human Rights, including the right to life, humane treatment, right to judicial protection, right to a fair trial, and right to property. In deciding the complaints, the Commission considers the norms and principles of international human rights law governing the interest of indigenous people.

Property

The Commission determined that the Maya people demonstrated a communal property right to the lands they inhabit in the Toledo District due to their longstanding use and occupancy of the territory, which the parties agreed pre-dated European colonialisation and extended to the use of the land and its resources for purposes relating to the physical and cultural survival of the Maya communities.

The Commission noted that the State did not submit any independent evidence to support their claim that the Maya have not historically inhabited the Toledo District and have not exercised collective property rights.

The Commission took into account the State's admission in the Ten-Point Agreement, along with the State's more general recognition of the long-standing presence of the Maya people in the Toledo District, which constitutes sufficient evidence of an enduring connection between the Maya people and lands in the Toledo District. The State raised doubts about the continuity of Maya occupation based on the establishment dates of certain specific villages, but the use and occupancy of territory by the Maya extends beyond the settlement of specific villages to include lands used for agriculture, fishing, gathering, etc. This is not alone determinative or fatal to the existence of Maya communal property rights.

As the Commission established that the Maya do have a communal property right, it is subject to protection under Article XXIII of the American Declaration. The Maya people's communal property right has an autonomous meaning and foundation under international law and the Maya property right is not dependent upon any interpretations of domestic judicial decisions.

As the Commission determined that the Maya have a communal right to property under Article XXIII, the State has a correspondent obligation to guarantee
the enjoyment of this right. This obligation requires the State to effectively delimit and demarcate the territory to which the Maya people's property right extends and to take the appropriate measures to protect the right of the Maya people in their territory, including official recognition of that right. This also necessarily includes engaging in informed consultations with the Maya people regarding their own boundaries.

The present system of land titling, leasing and permitting under Belizean law does not adequately recognise or protect the communal rights of the Maya people. The regime governing private property does not take into account or recognise the traditional collective system of property ownership and use of the Maya. Furthermore, the boundaries of the reservations are unclear and do not include all Mayan communities. It is also apparent that under domestic legislation, ownership of the reservation lands lie within the State as 'national lands' and there are not provisions recognising or protecting Maya interest in those lands.

The Commission therefore concluded that the State had violated the Mayan peoples' right to property under Article XXIII.

Granting of Concessions in the Toledo District
The Commission considered that the right to use and enjoy property may be impeded when the State itself or third parties acting with the acquiescence or tolerance of the State, affect the existence, value use or enjoyment of that property without due consideration of and informed consultations with those having rights in the property. Other human rights bodies have repeatedly found that a State's issuance of natural resource concessions to third parties that on ancestral territory of indigenous people contravenes the rights of the affected indigenous communities.

The Commission further observed that one of the central elements of the protection of indigenous property rights is the requirement that States undertake effective and fully informed consultations with indigenous communities regarding acts or decisions that may affect their traditional territories. Articles XVIII and XXIII of the American Declaration require a State to make decisions regarding the interests of indigenous claimants in their lands with the fully informed consent of the indigenous population and to give the indigenous population an opportunity to participate. In the Commission's view, these requirements are equally applicable to a State's decision that will impact indigenous lands and their communities, such as the granting of concession to exploit the natural resources of indigenous territories.

Here, the Commission found that the State granted logging and oil concessions to third parties to utilise property and resources that were within the traditional lands of the Maya people and that the State failed to take adequate measures to consult with the Maya people concerning these concessions. There is no evidence that the State conducted effective consultations with the Maya indigenous communities prior to granting these concessions. While, in the case of one logging license, the State required the third party to provide evidence of consultation with the communities likely to be affected, the State did not prescribe clear standards for these consultations or the extend of community support necessary to permit a license to be issued.

The Commission therefore concludes that the State violated the right to property guaranteed in Article XXIII to the detriment of the Maya people by granting logging and oil concessions within traditional Maya lands without adequately consulting with the Maya people.
Furthermore, the Commission noted that the Mayan land has suffered environmental damage of critical parts of the natural environment upon which the Maya people depend as a result of the concessions. The petitioners presented evidence that the concessions have affected important water supplies, disrupted plant life and animal life and as a result, affected Maya hunting, fishing and gathering practices essential to Maya cultural and physical survival. The State, however, claimed that this evidence was 'anecdotal' and presented no evidence to contradict it.

Consequently, the Commission found that the State's failure to respect the communal property right of the Maya people has been exacerbated by environmental damage and has affected the Maya communities.

Right to Equality

The Commission noted that the principle of non-discrimination is a particularly important protection that permeates all other rights and freedoms under domestic and international law. It is prescribed in Article II of the American Declaration and Articles 1(1) and 24 of the American Convention. Article II of the American Declaration states that all persons are equal before the law, without distinction as to race, sex, language, creed or any other factor. Article 3 of the Constitution of Belize similarly provides for the rights to equality in the guarantee of fundamental rights and freedoms, including property rights. The Inter-American Court of Human Rights recently expressed similar views on the fundamental nature of the right to equality and non-discrimination. Furthermore, the preamble to the Belize Constitution has recently been amended to explicitly recognise that the State must institute polices that protect the identity, dignity, and social and cultural values of Belizeans, including indigenous people. This is consistent with the State's recognition that the Maya represent 47 percent of the population of Belize and illustrates that the State has taken measures to comply with its obligation to guarantee equal protection.

But as with all fundamental rights and freedoms, it is not enough for States to provide equal protection in its law. The State must also take the legislative, policy or other measures necessary to ensure the effective enjoyment of these rights. The State of Belize has therefore not fully complied with its obligations under Article II of the American Declaration by failing to establish the legal mechanisms necessary to clarify and protect the communal property right of the Maya people.

The Commission observed that the right to equality before the law does not mean that the substantive provisions of the law will be the same for everyone but that the application of the law should be equal for all without discrimination. The protection is designed to ensure equality, not identity of treatment. With regard to indigenous peoples, various international studies have concluded that indigenous peoples have historically suffered racial discrimination, and that one of the greatest manifestations of this discrimination has been the failure of State authorities to recognise indigenous customary forms of possession and use of lands.

In this case, the Commission concluded that the Maya communities of southern Belize constitute a distinct group in the Toledo District which warrants special protection from the State. The State has not established the legal mechanisms necessary to clarify and protect the communal property right of the Maya people. While the State has recognised that the Maya people have rights to the lands and resources on southern Belize, it has still failed to take the necessary steps to clearly
guarantee those rights, which has created a climate of uncertainty for the Maya communities. Accordingly, the State of Belize has violated the right to equality before the law, equal protection of the law and to non-discrimination enshrined in Article II of the American Declaration to the detriment of the Maya people of the Toledo district by failing to provide them with protections necessary to exercise their right to property fully and equal to other members of the Belizean population.

Right to Judicial Protection

The right to judicial protection, enshrined in Article XVIII of the American Declaration provides that every person may resort to the courts to ensure respect for his legal rights and there should be a simple, brief procedure whereby the courts will protect individuals from acts of authority that violate a person's fundamental constitutional rights. This right is also affirmed in Article 25 of the American Convention on Human Rights.

The Commission has found that the lack of an effective judicial remedy implies, not just an exception to the exhaustion of domestic remedies, but also a violation of the substantive right to judicial protection which is upheld by the inter-American human rights system. The inter-American system has also established that an essential element of effectiveness is timeliness. The right to judicial protection requires courts to adjudicate and decide cases expeditiously, particularly urgent cases. In this regard, three factors are to be considered in determining what timeframe is reasonable for a judicial proceeding: (a) the complexity of the case; (b) the procedural activity of the interested party; and (c) the conduct of the judicial authorities.

In 1996, the petitioners filed a motion for constitutional redress in the Supreme Court of Belize seeking an order declaring, *inter alia*, the existence and nature of Maya interests in the land and resources and the status of those interests as rights protected under the Constitution, as well as declarations of violations of those rights and interests by the government because of the licenses to log within Maya traditional lands. In 1998, the petitioners also filed a motion for interlocutory relief where they requested an immediate injunction against the Minister of Natural Resources restraining the Minister from granting additional logging concessions or other concessions for resource extractions. But despite this urgency, the hearing for the motion was adjourned at the request of the Attorney General's office and has not been rescheduled. And the Court still has not taken any action on this motion for interlocutory relief or on any aspect of the merits of the main litigation. The Government, furthermore, has not repeatedly failed to meet the court issued procedures and deadlines established for this litigation.

The State argues that the petitioners have chosen not to pursue domestic litigation to its fullest (the petitioners could petition the Chief Justice of Belize for an early hearing on the basis of urgency) and also argues that the petitioners have availed themselves of domestic avenues for resolution by engaging in negotiations with the Government. But the Commission noted that a State's obligation to provide effective judicial remedies is not fulfilled simply by the existence of courts or formal procedures, or even by the ability to resort to the courts. Rather, a State must take affirmative steps to ensure that the remedies provided by the State through its courts are truly effective in establishing whether there has been a violation of human rights and in providing redress.
The Commission indicated that as of the date of this report, almost eight years have past since the motion for constitutional relief were initiated and over five years have passed since the motion for emergency interlocutory relief was lodged. Still, no decision has resulted. While the Commission acknowledged that the subject matter of the case raised complex matters of fact and law that may reasonably require some delay in litigating and some of the delay is attributable to the parties attempt to reach an amicable settlement, there is no evidence that the settlement negotiations had the effect of suspending the litigation. It is also apparent that the lack of progress is largely a result of the State’s failure to comply with certain procedural requirements as well as a systematic delay that is inherent in the civil justice system generally. Accordingly, the Commission found that an unreasonable delay has been demonstrated. The State of Belize has violated the right to judicial protection enshrined in Article XVIII of the American Declaration to the detriment of the Maya people.

Subsequent Proceedings
On 30 October 2003, the Commission requested that the State of Belize inform the Commission within 60 days of the measures it planned to adopt to comply with the recommendations made to resolve the situation. The State of Belize replied with a request that the Commission publicise this report to ‘ensure its customary transparency and widest dissemination as it begins consultation on this matter’. The Commission granted the request. The Commission has received no further response from the State within the 60-day period.

Recommendations
The Commission requested the State of Belize to adopt in its domestic law, and through fully informed consultations with the Maya people, the legislative, administrative and any other measures necessary to delimit, demarcate and title or otherwise clarify and protect the territory in which the Maya people have a communal property right, in accordance with their customary land use practices and without detriment to other indigenous communities.

The Commission requested the State to delimit, demarcate and title or otherwise clarify and protect the corresponding lands of the Maya people without detriment to other indigenous communities and, until those measures have been carried out, abstain from any acts that might lead the agents of the State itself or third parties to affect the existence, value, use or enjoyment of the property used and occupied by the Maya people.

The Commission requested that the State repair the environmental damage resulting from the logging concessions granted in the Maya territory.

Whitley Myrie, Jamaica, Case 12.417, Report No. 41/04, Merits, 12 October 2004

Background
On 22 October 2001, a firm of solicitors in London filed a petition against the Government of Jamaica on behalf of Mr. Whitley Myrie, who is serving a life sentence in a Jamaica prison. Mr. Myrie was convicted of capital murder by the St. James Circuit Court in Kingston, Jamaica and sentenced to death. The Court of Appeal of Jamaica subsequently classified the murder as non-capital and reduced his sentence to life imprisonment with a minimum term without parole of 15 years.
According to the prosecution's case, Mr. Myrie, with three other individuals, killed Dennis Grubb on 11 August 1990 when Mr. Grubb and his wife returned home from a party. The prosecution's main witness was Ms. Barrett who testified that on the night of the murder, she saw Mr. Myrie with a machete and testified that she heard Mr. Myrie and his co-defendants speaking about a fight with Mr. Grubb.

According to the police evidence at trial, Mr. Myrie provided a statement to the police and was cautioned before the statement was taken. The trial judge found that the statement was voluntary and admissible and was consequently read to the jury. In the statement, Mr. Myrie said that on the evening of the murder, as he was leaving a party, Mr. Grubb threatened him and slashed him with a machete. Mr. Myrie ran back to the party to find a District Constable but the only person he could find was Widcliffe Williams. So Mr. Myrie told him what happened and then went back up the road where he saw Mr. Grubb again who was holding a machete. Mr. Grubb tried to hit Mr. Myrie but slipped and Mr. Myrie grabbed the machete. Mr. Myrie then gave Mr. Grubb a 'couple of chops' and then ran home with the machete. The petitioners also claim that during the trial, Mr. Myrie gave an unsworn statement in which he stated, 'Dennis attacked me with a machete and he and I got into a collusion, and I have to defend myself'.

The petitioners allege that the State violated Mr. Myrie's rights under Articles 1, 4, 5, 8, 12, 24 and 25 of the American Convention on Human Rights because of the conditions of his detention during the course of his criminal proceedings, the failure of the State to protect against irregularities in Mr. Myrie's trial, and the failure to make legal aid available to pursue a Constitutional Motion in the domestic courts in connection with his criminal proceedings.

The State did not provide any observations on the merits of the Petitioner's petition.

Positions of the Parties – Petitioners

Right to Humane Treatment

The petitioners first allege that the State is responsible for violations of Mr. Myrie's right to human treatment contrary to Articles 5(1), 5(2) and 5(4) of the Convention due to his conditions of detention while in custody at the police station and at various penitentiaries. The petitioners provide evidence concerning the nature and quality of basic accommodations, hygiene, and medical treatment. While in custody at the police station for 3 months, Mr. Myrie was detained in a small cramped cell with other individuals, provided with poor quality food that was often inedible, and denied the opportunity to exercise. The conditions of the cell, moreover, were unsanitary and foul smelling. While at another prison for 10 months, Mr. Myrie was confined to a small cramped passageway with other prisoners because there were no cells available. The passageway was hot, without ventilation, without proper sanitation facilities and was therefore foul smelling, and contained bugs, food scraps and excretions. Mr. Myrie was forced to sleep on the floor without any bedding and a hose was his only washing facility. He was not given the opportunity to exercise and the food was inedible so he often went without eating. The petitioners claim that Mr. Myrie suffered from poor health and it was difficult to see a doctor and family visits were extremely limited. He was furthermore prohibited from making any phone calls and there were no educational facilities or books.

All of the prison facilities where Mr. Myrie lived reveal similar conditions. And while on death row, Mr. Myrie was also subjected to mental and physical torture, as
he suffered from nightmares, anxiousness, sleeplessness and depression. The petitioners also state that there was no adequate mechanism for dealing with prisoner complaints.

The petitioners emphasise the standards of treatment under Article 5 apply regardless of the nature of the offence for which the individual concerned is imprisoned and do not depend on the level of development of the detaining State. In support of this claim the petitioners cite Jamaica's own rules regarding treatment of detained persons as well as the United Nations Standard Minimum Rules for the Treatment of Prisoners. Based upon these factual and legal observations, the Petitioners conclude that the State is responsible for infringing on Mr. Myrie's physical and mental integrity and subjecting him to cruel, inhuman and degrading treatment in violation of Article 5 of the Convention.

Right to a Fair Trial
The petitioners also contend that the State has violated Mr. Myrie's right to a fair trial under Article 8 of the Convention. The Petitioners first argue that Mr. Myrie was convicted based upon evidence that was improperly obtained, because he was forced to give a signed confession under threat which was subsequently used as evidence at trial. (Mr. Myrie was poked 3 times with a stick).

Next, the petitioners argue that the State violated Article 8 when the judge allowed the jury to remain present during the hearing to determine whether Mr. Myrie's statement was voluntary and therefore admissible.

The judge further instructed the jury that they could rely on the confession even if they determined that it was involuntarily given. Furthermore, the petitioners argue that Mr. Myrie was denied a fair hearing because the trial judge erred in giving reasons in the presence of the jury why there was insufficient evidence for a case against the co-defendants. This, the petitioners argue, could have prejudiced the jury by giving them the impression that there was, therefore, sufficient evidence against Mr. Myrie.

The petitioners also argue that the trial judge erred in allowing the trial to continue in the absence of Mr. Myrie's trial attorney, contrary to Article 8(1) and (2)(d) of the Convention. The failure of the trial judge to postpone the trial to allow Mr. Myrie's attorney to be present constituted a material irregularity that led to seriously damaging evidence going unchallenged. The petitioners also claim that this irregularity was obvious to the court and Mr. Myrie was therefore deprived of proper representation during his trial, contrary to Article 8 of the Convention.

Additionally, the petitioners argue that the trial judge decided not to allow the character of the deceased to be examined and that this decision seriously harmed Mr. Myrie's self-defence claim that he feared for his own life.

Finally, the petitioners contend that the incompetence of Mr. Myrie's trial counsel deprived Mr. Myrie of a fair trial. The performance of Mr. Myrie's counsel fell far below the standard required for counsel defending a murder trial under the Jamaican Constitution. (Counsel was often absent, he asked for the jury to be present during the hearing on the admissibility of Mr. Myrie's statement, and did not pursue the issue of the deceased's violent character.)

Right to Judicial Protection
The petitioners argue that Mr. Myrie has been denied access to a court and denied an effective remedy for violations of the Constitution of Jamaica and the American
Convention contrary to Article 24 and 25 of the Convention, by denying him the ability to seek, on an equal basis, simple and prompt recourse to a competent court or tribunal for protection against violation of his fundamental rights. While the Jamaica Constitution gives any person the right to apply to the Supreme Court for Redress, but due to a lack of funds, this is not a right of access that Mr. Myrie can exercise, as Jamaica does not provide legal aid to prisoners.

Analysis

Conditions of Detention
The Commission considered whether the conditions described by Mr. Myrie disclose violations of the State’s obligations under Article 5 of the Convention not to subject Mr. Myrie to inhumane treatment. The Commission assessed the details of Mr. Myrie’s conditions in light of previous decisions of this commission and the Inter-American Court of Human Rights, where similar standards were found to violate Article 5. The United Nations Standard Minimum Rules for the Treatment of Prisoners is a reliable benchmark, provides, for example, that: prisoners’ sleeping arrangements shall be healthy, with due regard for space, climactic conditions, lighting, heating and ventilation; the sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner; prisoners shall be given at least one hour of suitable exercise. Mr. Myrie’s subjection to crowded, unhygienic confinement spaces, improper nutrition, denial of exercise, reading or educational facilities, as well as the torture he endured by the State during prison rights, coupled with the length of time of Mr. Myrie’s confinement, clearly violate these minimum standards and Article 5. This constitutes cruel, inhuman or degrading treatment or punishment and the Commission finds the State responsible for these violations.

Right to a Fair Trial
First, in evaluating the petitioners’ contentions concerning the admissibility of Mr. Myrie’s statement and the conduct of the trial judge, the Commission considered that it is generally left for the appellate courts of States Parties, and not the Commission, to review the manner in which a trial was conducted, unless it is clear that the judge’s conduct was arbitrary or amounted to a denial of justice, or the judge manifestly violated his obligation to impartiality. There is no information on the record indicating that the trial judge’s decision to admit the statement was arbitrary or was otherwise characterised as a denial of justice. The Commission, therefore, found no grounds upon which to establish a violation of Article 8 in regard to the use of Mr. Myrie’s statement at trial.

In regard to the other aspects of the judge’s manner of conducting Mr. Myrie’s trial, the Commission found a denial of justice in two respects. The first is the fact that the trial judge allowed the hearing on the admissibility of Mr. Myrie’s statement to be held in the presence of the jury. This is inconsistent with established domestic jurisprudence requiring the absence of a jury during this type of hearing in order to avoid unfair prejudice, with no apparent justification for the irregularity. The second violation is the trial judge’s continuation of the trial during periods when Mr. Myrie’s attorney was absent. It should have been evident to the trial judge that continuing with the trial in the absence of Mr. Myrie’s attorney would potentially prejudice Mr. Myrie and deprive him of his right to effective representation. On this basis, the Commission found that Mr. Myrie suffered a denial of justice as a
consequence of the manner in which the trial judge conducted his proceedings, contrary to Article 8(1) and 8(2).

The Commission found further violations of Articles 8(1) and 8(2) in regard to Mr. Myrie's ineffective legal representation. According to Article 8(2)(d) provides every person accused of a criminal offense an inalienable right to be assisted by counsel provided by the State. This is a particularly fundamental right in the case of capital offences. Here, while the State did provide Mr. Myrie with legal representation, the right to legal representation must be guaranteed in a manner that renders it effective and therefore requires not only that counsel be provided, but that counsel be competent in representing the defendant. National authorities are required under Article 8(2)(c) to intervene if a failure by legal counsel to provide representation is manifest or sufficiently brought to their attention. While Mr. Myrie did not make it known that he considered his counsel ineffective, the defence counsel's inadequacy should have been manifest to the trial judge as his behaviour was incompatible with the interests of justice. In particular, the defence counsel did not request that the jury leave for the hearing on the admissibility of Mr. Myrie's statement, as he should have, but actually requested that the jury be present. And his excessive absence from the court room for important portions of the trial should also have alerted the judge to the defence counsel's incompetence.

The Commission considered that these serious violations of due process should be considered to have deprived Mr. Myrie's criminal proceedings of their efficacy and should therefore invalidate his conviction.

*Right to Judicial Protection*

The issues raised by Mr. Myrie in this proceeding are sufficiently complex that they cannot be effectively raised or presented before a domestic court in the absence of legal representation. Furthermore, Mr. Myrie lacks the financial means to hire an attorney and Jamaica does not provide legal aid to prisoners. Accordingly, pursuant to Articles 24 and 25, the State is obliged under the American Convention to provide individuals with effected access to Constitutional Motions which in certain circumstances, as in this case, require the provision of legal assistance. The Commission considered that by not providing legal aid to Mr. Myrie, the State has effectively barred his recourse to a competent court or tribunal in Jamaica, in violation of Articles 25, 8 and 1(1).

*Proceedings Subsequent to Report 32/02*

On 27 October 2003, the Commission transmitted Report No. 50/03 to the State, and requested that the Government of Jamaica inform the Commission within two months as to the measures adopted to comply with the recommendations mad to resolve the situation denounced. The Commission did not receive a response.

*Recommendations*

1. Grant Mr. Myrie an effective remedy, which includes a re-trial in accordance with the due process protections prescribed under Article 8 of the Convention, or where re-trial is not possible, his release and compensation.
2. Adopt legislative or other measures to ensure that Mr. Myrie's conditions of detention comply with international standards of humane treatment under Article 5.
3. Adopt legislative or other measures as may be necessary to ensure that the right to judicial protection under Article 25 of the Convention and the right to a fair hearing under Article 8(1) of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions.

Elias Santana et al., Venezuela, Petition 453/01, Report No. 92/03, Inadmissibility, 23 October 2003

Background
Article 14 of the Convention provides that anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

On 27 August 2000, the President of Venezuela, Hugo Chavez Frias, publicly ridiculed and criticised the ideas of Elias Santana, a political figure who ran a non-profit group, Queremos Eligir that advocated for a broader role in government. The President made these remarks on his own radio programme, 'Alo Presidente'. As a result, Elias Santana, who was also a radio broadcaster who hosted his own programme, requested that the Director of the 'Independent National Radio Institute of Venezuela' give Santana the opportunity to exercise his right of correction or reply to respond to the President's remarks. The Director of the National Radio Institute gave Santana the right through three of the National Radio Institute's broadcasting networks. Santana, however refused, and instated on exercising his right of reply on the same programme, stations and time that the President made his remarks. The National Radio Institute refused.

On 9 October 2000, Elias Santana thus brought an appeal for constitutional protection, acting on his own behalf and as General Coordinator for the association Queremos Eligir, before the President and other magistrates of the Constitutional Chamber of the Supreme Tribunal of Justice. On 12 July 2001, the Constitutional Chamber decided Judgement 1013, to reject the appeal for constitutional protection as inadmissible in limine litis, on the grounds that, in accordance with Venezuelan Law, Mr. Santana had been granted his right of correction or reply.

Admissibility
The Commission considered whether the allegations of Mr. Santana constitute a violation of the rights guaranteed by the Convention in light of the State's arguments that (1) Mr. Santana was granted the right of a correction or reply within domestic jurisdiction and (2) that the right of correction or reply did not apply because what was involved was an opinion and not factual affirmations.

The Commission noted that there is controversy surrounding the scope accorded to the right of reply as it relates to the freedom of expression. One viewpoint is that the right of reply limits freedom of expression because it obliges the media to provide free coverage for information that is not necessarily consistent with its editorial line, while another viewpoint maintains that the right of reply strengthens freedom of expression by fostering a greater flow of information.

The Commission considered that Article 14(1) of the Convention guarantees the right of reply through the same medium of communication, under the conditions established by law. The Commission noted that Article 14(1) does not indicate whether the beneficiaries of Right to Correction or Reply are entitled to an equal or
greater amount of space, when the reply must be published, within what time frame the right can be exercised, etc. Under Article 14, these conditions are 'such as the law may establish', i.e., domestic law.

Here the Commission noted that Article 58 of the Venezuelan Constitution provides for a right of reply and correction for anyone affected by inaccurate or offensive information. Article 9 of the Law on the Exercise of Journalism also declares that any distortion or untruthfulness in information must be corrected in a timely and effective manner – the journalist is obliged to correct it and the company to accommodate such a correction. Mr. Santana was granted the right to reply through three Broadcasting companies, belonging to the National Radio Institute of Venezuela, the same medium that the President used to broadcast his allegedly offensive comments. However, Mr. Santana refused to have his opinion broadcast under these conditions, and insisted that it should be on the same program, at the same time with the same coverage. This does not amount to a violation of Mr. Santana's Article 14 right to reply.

Additionally, the Commission agreed with the State argument that the President's comments were merely political opinion, with no factual basis. In accordance with Article 14, the right of reply or correction exists only in relation to information of a factual nature and not to commentary or opinion. The English version of Article 14 provides the right of reply or correction for statements or ideas, but the other French, Spanish, and Portuguese versions do not. The Commission concluded that these latter versions that exclude mere ideas from recourse under Article 14, are correct because the broader wording of Article 13, which protects freedom of expression, including ideas, is not echoed in the more narrowly tailored Article 14, which lead the Commission to conclude that the intention was to exclude ideas from the right of reply and correction.

In this case, the Commission agreed with the State that the President's comments were ideas with no factual basis, and Mr. Santana was therefore not entitled to a right of reply under Article 14.

Other Petitioners
Several other individual journalists argue that they were injured by Judgment 1013 issued by the Supreme Tribunal of Venezuela as it binds interpretation of Articles 57 and 58 of the Venezuelan Constitution. Instead of confining itself to deciding the personal complaint of Mr. Santana, these petitioners argue that the Supreme Tribunal injured them directly by establishing that, 'the media and those who habitually exercise journalism through the media do not have a right of reply, nor do those who maintain columns or programs in them' which the petitioners claim makes them victims, as journalists.

But the Commission held that these petitioners did not provide sufficient evidence to demonstrate the specific manner in which their personal situation was injured by this portion of the judgement – it is not enough to claim the mere existence of a law violates her rights under the American Convention, the law must be applied to her detriment. Furthermore, the petitioners did not bring their cases to the domestic courts so has not given the State an opportunity to resolve the complaint. Finally, the paragraphs to which the petitioners referred to are not the decision but the reasoning behind the decision and it is only the decision that is binding.
Decision
The Inter-American Commission on Human Rights declared this case inadmissible. But the Commission indicated its concern about the affect of Judgment 1013 on Articles 57 and 58 of the Venezuelan Constitution. Accordingly, the Commission instructed the IACHR's Special Rapporteur for Freedom of Expression to prepare a special report on Judgment 1013 and the standards of protection of human rights as they relate to freedom of expression in the inter-American System.