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REPORT No. 35/20
PETITION 393-08
REPORT ON ADMISSIBILITY

INDIGENOUS RURAL TOURIST AND ENVIROMENTAL
COMMUNITIES OF EL TATIO GEYSERS
CHILE

Approved electronically by the Commission on April 14, 2020.

Cite as: IACHR, Report No. 35/20. Petition 393-08. Admissibility. Indigenous Rural Tourist and Environmental Communities of El Tatio Geysers. Chile. April 14, 2020.



I. INFORMATION ABOUT THE PETITION

Petitioner:	International Migration Observatory
Alleged victim:	Indigenous Rural Tourist and Environmental Communities of El Tatio Geysers
State denounced:	Chile ¹
Rights invoked:	Article 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 19 (rights of the child), 22 (freedom of movement and residence), 24 (right to equal protection), and 25 (judicial protection) of the American Convention on Human Rights ² in relation to its articles 1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEDURE BEFORE THE IACHR³

Reception of petition:	April 3, 2008
Additional information received at the stage of initial review:	April 24, 2009
Notification of the petition to the State:	January 12, 2016
State's first response:	August 4, 2016
Additional observations from the petitioning party:	September 26, 2017

III. COMPETENCE

<i>Competence Ratione personae:</i>	Yes
<i>Competence Ratione loci:</i>	Yes
<i>Competence Ratione temporis:</i>	Yes
<i>Competence Ratione materiae:</i>	Yes, American Convention (ratification instrument deposited on August 21, 1990)

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

Duplication of procedures and International res judicata:	No
Rights declared admissible	Article 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 12 (freedom of conscience and religion), 19 (rights of the child), 21 (right to property), 22 (freedom of movement and residence), and 25 (judicial protection) of the Convention in relation to its articles 1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes
Timeliness of the petition:	Yes

V. SUMMARY OF ALLEGED FACTS

1. The petition under analysis is presented on behalf of the members of the indigenous, agricultural, and livestock communities of Northern Chile located in the towns of Alto Loa, Calama, and Atacama La Grande in relation to the alleged international responsibility of the Chilean State in developing and authorizing various actions related to the deep drilling project in the hands of the company "Geotérmica del Norte SA", owned by the National Petroleum Company, in the El Tatio Geysers, which would be seriously and directly affecting the rights of the members of these communities. The petitioners argue that the absence of

¹ Pursuant to Article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the debate or decision on this matter.

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

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

measures to protect and guarantee the human rights of indigenous communities by the Chilean State has meant a progressive worsening of their situation of defenselessness.

2. The petitioners describe that the Lickan Antay-Atacameños peoples have lived in northern Chile for twelve thousand years B.C., in permanent interaction with the Quechua and Aymara communities. They detail that after the arrival of the Europeans, as a result of which they suffered a process of ethnocide of their culture, the State of Chile declared the indigenous and Atacameño lands of fiscal interest and usurped their territories without any compensation, generating a strong forced migration during the 20th century, particularly of young people, to large cities in precarious and poor conditions.

3. Specifically, the petitioners argue that as of 2007, the Chilean State, through the company Geotérmica del Norte S.A., has developed early actions of exploration of geothermal energy in the framework of the deep drilling project in the sector of the former CORFO camp, south of the El Tatio Geysers field, Calama commune, without any authorization or approval from the members of the indigenous, agricultural, or tourist communities involved. In this sense, they denounce the irreversible destruction of areas of El Tatio Geysers and the direct impact of these activities carried out within the framework of the drilling project on tourism developed around the great archaeological discoveries of the Lickan Antay-Atacameños ancestors and on the shepherding administered by indigenous communities.

4. They add that roads, facilities, and drilling platforms have been built while the natural water courses have been diverted, contaminated, and extracted from the El Tatio areas. In this regard, the petitioners explain that the extraction and destruction of water sources, such as the Jauna and Putana rivers, directly affect the life and sustainability of communities in relation to the use of water for agricultural and grazing purposes, and violate a central element of their history and future of the generations in that, according to their worldview, water lives and the souls of their ancestors that are present in the Geysers maintain a link with the water sources there. In particular, they argue that El Tatio Geysers are a ceremonial place for the shamans of the communities that have spaces of archaeological meaning and sustainable life. This sustainable life with a specific biodiversity with the set of elements that compose it, such as water, land, energy, air, flora, fauna, and members of the communities in a perfect harmonic interrelation that make up the circular cosmovision.

5. However, as a result of the aforementioned actions and in a context of loss of ancestral agricultural and indigenous customs, they describe that the communities of these localities have been forced to migrate to other localities due to the loss of water. The petitioners indicate that despite the fact that said lands are considered a protected territory because they constitute a unique ecosystem in the world and an energy reserve for the neighboring communities and indigenous ancestral territories of the Aymara communities, the State, through the company, has not sought alternatives in territories that do not harm their cosmovision, and on the contrary, it once again discriminates as it has historically done. They maintain that the State has tolerated the degradation of the essential energy of earthly and spiritual life and does not implement actions to control the amount of water extracted, indicating that the "blood of the earth is used without any control."

6. They describe that at the end of 2007, the Atacameños Peoples Council and other representatives filed an appeal for protection in relation to the situation described before the Antofagasta Court of Appeals, which was rejected, and whose decision was confirmed by the Supreme Court in January 2008. In this regard, they emphasize that the State has established the existence and commitment of serious events that violate the rights of indigenous peoples, and nevertheless insists on the continuity of activities. In particular, they point out that the Advisory Council of the Regional Commission for the Environment of the Second Region issued a statement on June 30, 2008, addressed to the Regional Commission for the Environment requesting an unfavorable statement to the State of Chile regarding the Environmental Impact Study called "Drilling El Tatio Deep Geothermal, Phase I" of project in El Tatio Geysers. In the text, this Council describes that the "level of uncertainty regarding the non-affection in the operation of El Tatio Geysers is between medium and high (...) [which] constitutes a critical point given the fragility of this type of ecosystems and their exclusive nature, since they are unique ecosystems and of extremely low representativeness in the national territory" and considers that "the environmental authority must adequately consider and weigh citizen observations".

7. The petitioners argue that the State of Chile has verified the existence of serious facts that violate the rights of indigenous peoples, but insists on the continuity of the activity. In this regard, they claim that the State has applied more than 13 fines “for very serious acts” but nevertheless omits to order the suspension or detention of the company’s illegal activities or to implement actions tending to guarantee the full exercise of the human rights of the affected victims.

8. In its response, the State requests information from the petitioners regarding the possible filing of a parallel complaint with a body of the United Nations System, to which the petitioners indicated that they had not taken any steps to file a complaint before said forum. As of the date of adoption of this report, no additional observations have been received from the State.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. With regard to the exhaustion of domestic remedies, according to the information available and not disputed by the State, the Atacameños Peoples Council and other representatives filed a petition for protection before the Antofagasta Court of Appeals, which was rejected and whose decision was upheld by the Supreme Court of Justice in January 2008. As a result, the petitioners affirm the exhaustion of domestic remedies.

10. The Commission recalls the requirement of prior exhaustion of domestic remedies is intended to enable the national authorities to take cognizance of the alleged violation of a protected right and, if appropriate, to resolve the situation before it becomes known to an international body⁴. In this regard, the IACHR has established that the requirement of exhaustion of domestic remedies does not mean that the alleged victims necessarily have the obligation to exhaust all available remedies. Consequently, if the alleged victim raised the issue through any of the valid and appropriate alternatives under the domestic legal system and the State had the opportunity to remedy the issue in its jurisdiction, the purpose of the international norm is fulfilled⁵. It should be noted that, at this procedural stage, the State did not challenge the petitioner’s allegations regarding the exhaustion of domestic remedies.

11. The Commission considers, on the basis of the foregoing, that the alleged victims have exhausted the domestic remedies contemplated, and concludes that the present petition meets the requirement established in Articles 46.1.a of the Convention and 31.1 of the Rules of Procedure. Likewise, taking into account that, according to the above, the judgment of the Supreme Court is of January 2008, and that the present petition was received on April 3, 2008, the Commission considers that the requirement established in Article 46.1.b of the Convention is fulfilled.

VII. COLORABLE CLAIM

12. The Commission notes that the present petition includes allegations regarding the development of early exploration actions in the indigenous territory within the framework of the deep drilling project; the destruction of areas of El Tatio Geysers, and the direct effect on the life and sustainability of the communities, as central element of their history and worldview.

13. In light of these considerations, and after examining the elements of fact and law presented by the parties, the Commission considers that the petitioner’s allegations are not manifestly unfounded and require a thorough study, since the alleged facts, if corroborated as certain could characterize violations of articles 5 (right to humane treatment), 8 (right to a fair trial), 19 (rights of the child), 21 (right to property), 22 (freedom of movement and residence), and 25 (judicial protection) of the American Convention, in accordance with Articles 1.1 and 2 of said treaty. Likewise, in view of the alleged link between the El Tatio

⁴ IACHR, Report No. 82/17, Petition 1067-07. Admissibility. Rosa Ángela Martino and María Cristina González. Argentina. July 7, 2017, para. 12.

⁵ IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, para. 12.

Geysers as a central element of its history and worldview, the IACHR observes that the events described by the petitioners could characterize an alleged violation of article 12 of the American Convention⁶.

14. On the other hand, regarding the claim of the alleged violation to article 24 (right to equal protection) of the American Convention, the Commission observes that the petitioners have not offered allegations or sufficient support to *prima facie* consider their possible violation.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 5, 8, 12, 19, 21, 22, and 25 of the American Convention, in relation to its articles 1.1 and 2;

2. To declare the present petition inadmissible in relation to Article 24 of the American Convention; and

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

Approved by the Inter-American Commission on Human Rights on the 14th day of the month of April, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.

⁶IACHR, Report No. 72/11, Petition 1164-05. Admissibility. William Gómez Vargas. Costa Rica. March 31, 2011, paras. 48 and 51.