

OAS/Ser.L/V/II
Doc. 183
18 October 2024
Original: Portuguese

REPORT No. 174/24
PETITION 731-13
REPORT ON ADMISSIBILITY

MEMBERS OF THE AWA-GUAJÁ INDIGENOUS PEOPLE
BRAZIL

Approved electronically by the Commission on October 18, 2024.

Cite as: IACHR, Report No. 174/24. Petition 731-13. Admissibility. Members of the Awa-Guajá Indigenous People. Brazil October 18, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Indigenous Missionary Council and Survival International
Alleged victims:	Members of the Awa-Guajá indigenous people
State accused:	Brazil
Rights invoked¹:	Articles 4 (life), 8 (fair trial), 21 (property), 25 (judicial protection, and 26 (economic, social, and cultural rights) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Petition submitted:	May 6, 2013
State notified about petition:	December 24, 2015
First response by the State:	April 28, 2016
Additional observations made by the petitioner:	January 17, 2019, February 5, 2019, and September 2, 2019
Additional observations made by the State:	November 6, 2020

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument deposited on September 25, 1992)

IV. DUPLICATION OF PROCEEDINGS AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES, AND TIMELY SUBMISSION

Duplication of proceedings and international res judicata:	No
Rights declared admissible:	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 21 (property), 24 (equal protection), 25 (judicial protection), and 26 (progressive development of economic, social, cultural, and environmental rights) of the American Convention
Exhaustion of domestic remedies or granting of an exception:	Yes, under the terms of Section VI
Timely submission:	Yes, under the terms of Section VI

¹ Also invokes Convention No. 169 of the International Labour Organization.

² Hereinafter, "American Convention" or "Convention."

³ The observations of each party were duly forwarded to the opposing party. On May 11, 2023, the petitioner reiterated its interest in continuing the IACHR process.

V. POSITIONS OF THE PARTIES

The petitioner

1. The petitioner denounces the partial and inadequate demarcation of the indigenous lands of the Awá people, as well as the lack of territorial security, which allowed the presence of invaders, resulting in threats, violent acts, environmental degradation, and serious risks to their way of life.

2. As context, they report that in 1950 and 1985, due to construction of the BR-222 highway and a railway, lumbermen invaded the lands of the Awá people and engaged in economic activities, provoking conflicts, attacks, murders, and the introduction of contagious diseases. Notable among more recent incidents are invasions by armed timbermen in September 2012, which forced a National Indigenous Foundation (FUNAI) team to withdraw from the region. In February 2013, the indigenous Awá informed one of the petitioner organizations that the timbermen were then located a few kilometers from their homes.

3. Moreover, they report that in 2004 the authorities formally recognized one of the territories inhabited by the Awá people, which initially helped to reduce deforestation of the area. In 2009, that territory suffered one of the country's greatest losses of forest. For this reason, although the petitioner appreciates this advance in the protection of its rights, it points out that the subsistence of the Awá people remains at risk even if the current rate of deforestation continues. It also emphasizes that degradation of the territory is exacerbated by fires, many of which are deliberately set in order to expand pasture area.

4. With regard to the exhaustion of domestic remedies, the petitioner maintains that Brazilian legislation does not provide remedies allowing members of the Awá people who live in voluntary isolation to obtain the protection of their rights. Nonetheless, it states that in 2002 the Federal Public Ministry (Ministério Público Federal - "MPF") filed a public civil action asking the Judicial Branch to order the State to demarcate and clean up the entire Awá territory. In 2012, the Federal Regional Court of the 1st Region (TRF1) handed down a ruling favorable to the demarcation and expulsion of the invaders, but the decision was not implemented. In addition, other Awá territories — Alto Turiçu, Caru, and Araribóia — continued under pressure from the invaders, without having been included in the judicial decisions on demarcation and the clearing or expulsion of the invaders.

The Brazilian State

5. The State maintains, first of all, that the Inter-American Commission is not competent based on the subject matter to declare violations of ILO Convention 169 invoked by the petitioner, in that this convention is not part of the inter-American system.

6. It maintains that the petitioner submitted the complaint to the IACHR prior to the conclusion of proceedings under the public civil action filed to demarcate all the Awá territory (Ação Civil Pública No. 2002.37.00.003918-2). It points out that, although on December 9, 2011 the TRF1, following a decision in the first instance, had determined that within one year the authorities would expel non-indigenous people from these lands, one of the parties filed motions seeking clarification, resolved on August 6, 2012. Then other appeals were filed and decided upon on November 20, 2015, the date on which the domestic proceeding was concluded. Consequently, the State believes that the petitioner filed its petition before that process had a firm and final decision.

7. Based on a simple search of the TRF1 site it is possible to identify the existence of various public civil actions filed by one of the two petitioner organizations, the Indigenous Missionary Council. Along the same lines, the State adds that the petitioner did not seek reparations for material, moral, and environmental damage in any of its civil suits. Therefore, it asks the Commission to declare this petition inadmissible because it fails to comply with the requirement provided in Article 46.1.a of the American Convention.

8. Notwithstanding the above, it maintains that it adopted measures to protect the rights of potential victims. It points out that, as of the cited decision of August 6, 2012, the authorities initiated work to characterize and map the Awá indigenous area, in preparation for the large expulsion operation that would take place. Moreover, it maintains that the State's actions, initiated in 2013 and intensified in 2014 culminated with the effective expulsion of non-indigenous people from the lands of the Awá people in that same year. It emphasizes that, as a result, on April 15, 2014, the Awá people received the "order of expulsion" from the officials of Federal Justice in the State of Maranhão and with that the State secured the Awá people's possession of the indigenous land.

9. In addition, it emphasizes that the indigenous Caru, Alto Turiaçu, Araribóia, and Awá territories were demarcated in 1982, 1988, 1990, and 2005, respectively. It indicates that the railroad mentioned by the petitioner, completed in 1985, does not go through indigenous territories. According to the State, the route in question is the Carajás Railroad (Estrada de Ferro Carajás - EFC), constructed in 1982 and currently responsible for carrying both passengers and minerals. For construction of the route, indigenous people in the region benefited from compensatory and mitigating measures, such as demarcation, environmental conservation projects, education, health, sanitation, and protection of indigenous people in isolation. In addition, the map of the place where the railroad was constructed shows that it is very far from the land of the Awá and, in fact, only abuts the Caru indigenous land.

10. Finally, Brazil reports that it adopted public policies intended to protect the indigenous lands located in the State of Maranhão, including the lands of the Awá, such as supervisory actions, support for preventive monitoring activities, and the so-called indigenous surveillance, which promotes the participation of the indigenous community in activities supporting and promoting territorial protection. To prove this, it submits the report of a supervisory operation in April 2019 that mentions the presence of invaders and documents monitoring and inspection activities on the part of military, police, and environmental forces. Those activities included seizure of the equipment of clandestine timbermen. On this basis, it asks the Commission to declare this complaint inadmissible.

VI. ANALYSIS OF THE EXHAUSTION OF DOMESTIC REMEDIES AND TIMELY SUBMISSION

11. The petition focuses on denouncing the failure to completely demarcate the indigenous lands of the Awá people and inadequate territorial security, which facilitated the persistent presence of invaders in their territories. On this basis, the Inter-American Commission recalls that, in accordance with its precedents, compliance with the requirement of prior exhaustion of remedies is analyzed based on the factual and legal situation in effect when the admissibility report is adopted, and not on the basis of the situation existing upon submission of the petition.⁴ In addition, it reiterates that the requirement regarding the exhaustion of domestic remedies does not mean that the alleged victims are required to exhaust all the remedies available. Both the Court and the Commission have repeatedly indicated that "[...] *the rule that requires the prior exhaustion of domestic remedies is conceived in the interest of the State, since it seeks to absolve it of the need to respond to an international organ for acts imputed to it before having had an opportunity to remedy them using its own means.*"⁵

12. In the instant case, in order to comply with the requirement on exhaustion of the domestic jurisdiction, the petition points out that: i) in 2002, the Federal Public Ministry (MPF), representing the indigenous interests, initiated public civil action 2002.37.00.003918-2, seeking demarcation or regularization of the indigenous lands of the Awá people, as well as expulsion of the invaders; ii) in 2012, the Federal Regional Court (TRF) ordered the demarcation and expulsion of the invaders, but that decision was not implemented.

⁴ See, inter alia: IACHR, Report No. 35/16, Petition 4480-02, Admissibility, Carlos Manuel Veraza Urtusuástegui, Mexico, 29 July 2016, para. 33; Report No. 4/15, Petition 582-01, Admissibility, Raúl Rolando Romero Feris, Argentina, 29 January 2015, para. 40; Report No. 15/15, Petition 374-05, Admissibility, Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia, Colômbia, 24 March 2015, para. 39; Report No. 4/19, Petition 673-11, Admissibility, Fernando Alcântara de Figueiredo and Laci Marinho de Araújo, Brazil, 3 January 2019, para. 21.

⁵ IACHR, Report No. 70/04, Petition 667/01, Admissibility, Jesús Manuel Naranjo Cárdenas et al. – Pensioners of the Venezuelan Aviation Company, VIASA, Venezuela, 13 October 2004, para. 52.

According to the information provided by the State, on November 20, 2015, the organs of justice adopted the final decision related to this process, which has *res judicata* status.

13. The State, for its part, alleges that there are several actions filed by one of the petitioning organizations, the *Conselho Indigenista Missionário* (Missionary Indigenous Council), and that the petitioners have not requested reparations for material, moral, and environmental damages in any of their civil suits. It argues that, since these available domestic remedies have not been exhausted, the petition does not comply with the requirement set forth in Article 46.1.a) of the American Convention and should be declared inadmissible.

14. The Commission observes that the requirement of exhaustion of domestic remedies demands that adequate and effective remedies be used to address the alleged violations. In this regard, the public civil action filed in 2002 by the MPF sought the demarcation and protection of the Awá indigenous lands, as well as the expulsion of invaders, which are central issues in this petition. That action culminated in a final decision on November 20, 2015.

15. Regarding the other actions mentioned by the State and allegedly filed by CIMI, the Commission notes that the State has not provided specific details about their content, procedural status, or direct relevance to the violations alleged in this petition. Furthermore, regarding the lack of requests for reparations for material, moral, and environmental damages, the Commission considers that the main object of the petition is the protection of the territorial and cultural rights of the Awá people. The absence of compensation claims in domestic proceedings does not preclude considering domestic remedies pertinent to the purposes of this petition as exhausted.

16. Therefore, the Commission concludes that domestic remedies have been exhausted in relation to the principal claims of the petition, and that this petition complies with the requirement set forth in Article 46.1.a) of the American Convention. With regard to the timeliness of submission, considering that the cited final resolution was adopted while the current review was being evaluated for admissibility, there is also compliance with the timing requirement established in Article 46.1.b) of the Convention.

VII. CHARACTERIZATION OF THE ALLEGED FACTS

17. Firstly, the Commission reiterates that the criterion of evaluation in the admissibility phase differs from that used to rule on the merits of a petition; in this phase the IACHR must perform a *prima facie* evaluation to determine whether a petition establishes the basis for a possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination regarding the characterization of violations of the American Convention constitutes a preliminary analysis, which does not imply prejudging the merits of the case. For purposes of admissibility, the Commission must decide whether the facts alleged could characterize a violation of rights, as stipulated in Article 47.b) of the American Convention or if the petition is “manifestly groundless” or “obviously out of order,” in accordance with Article 47.c) of the American Convention.

18. The petitioner denounces the partial and inadequate demarcation of the indigenous lands of the Awá people and the lack of territorial security, which allowed the continued presence of invaders in their territories. For its part, the State argues that the petition is manifestly groundless, in that: i) construction of the Carajás railroad benefited the indigenous people, ii) the indigenous territories mentioned by the petitioner were already demarcated, and iii) the authorities promoted the expulsion of the invaders from the Awá lands in 2014.

19. The Commission notes that, according to the facts related, the lands of the Awá indigenous people cover the territories known by the State as Caru, Alto Turiaçu, Araribóia, and Awá. According to the State, these territories were approved and demarcated, respectively, in 1982, 1988, 1990, and 2005. However, the MPF, the State body that represents the interests and rights of the Awá indigenous people before the courts, presented a public civil action in 2002 to claim both the failure to demarcate the Awá territory and the lack of

security and presence of invaders throughout all the indigenous lands. During this judicial action, in 2012 the TRF1 determined that the demarcation and expulsion of the invaders would be realized. With respect to this last point, the dispute between the parties is that, for the State, the decision was enforced in 2014, the year when the Awá received the “notification of expulsion” from the government, whereas, for the petitioner, the decision has not been enforced.

20. Taking the above into account, the facts reported are not clearly groundless and merit analysis in the merits phase. There is evidence that implementation of the property rights regarding all the indigenous Awá lands was affected by tardy demarcation and the persistent presence of non-indigenous occupiers or invaders. With respect to this last point, the IACHR emphasizes that although the State asserts that the invaders were expelled in 2014, the precautionary measures mechanism of the IACHR adopted a resolution in 2021 referring, among other matters, to the continued presence of invaders in one of the indigenous lands of the Awá people.⁶ It is thus relevant to examine whether and to what extent and in what period the process of demarcation of the indigenous Awá lands was tardy and incomplete, in the light of rights and obligations under the American Convention.

21. Finally, the Commission emphasizes that in the case of culturally distinct communities with a special connection to the land, such as indigenous and quilombola communities, the life of their members fundamentally depends on subsistence activities (agriculture, hunting, fishing, gathering) carried out in their territories,⁷ including the continued use of traditional collective systems “essential for the individual and collective well-being and [...] for the survival” of these groups.⁸ In establishing the parameters or conditions necessary for adequate living conditions, without which the free and full development of life projects becomes impossible, the rights established in Article 26 serve as a reference for interpreting the state obligations necessary to guarantee a dignified life.⁹

22. Based on these considerations, and after examining the elements of fact and law presented by the parties, the Commission believes that the allegations made by the petitioner are not groundless and require a study on the merits, as the alleged facts, if corroborated, could characterize violations of Articles 4 (life), 5 (humane treatment), 8 (fair trial), 21 (property), 24 (equality before the law), 25 (judicial protection), and 26 (progressive development of economic, social, cultural, and environmental rights) of the American Convention, in relation to Article 1.1 thereof (obligation to respect rights), to the detriment of the indigenous Awá community and its members.

23. Finally, the Commission takes note that the State opposed the petitioner’s invocation of Convention 169 of the International Labour Organization on Indigenous and Tribal Peoples. In this regard, the IACHR reiterates that it is not competent to rule on the direct violation of this treaty, but under the terms of Article 29 of the American Convention it can use it when interpreting the meaning and/or scope of inter-American legal obligations.¹⁰

VIII. DECISION

1. To declare this petition admissibility with regard to Articles 4, 5, 8, 21, 24, 25, and 26 of the American Convention, in connection with Article 1.1 thereof.

⁶ IACHR, [Resolution 1/2021, Precautionary Measure No. 754-20](#). Members of the Guajajara and Awá Indigenous Peoples of the Indigenous Araribóia Land with respect to Brazil. 4 January 2021.

⁷ IACHR, Allegations before the Inter-American Court of Human Rights in the case of *Awas Tingni v. Nicaragua*. Referred in: IACtHR. Case of the *Mayagna (Sumo) Awas Tingni Community Vs. Nicaragua*. Merits, Reparations, and Costs. Judgment of August 31, 2001. Series C No. 79, para. 140(f).

⁸ IACHR, Report No. 75/02, Case 11.140, *Mary and Carrie Dann (United States)*, December 27, 2002, para. 128.

⁹ IACtHR. Case of the *Yakye Axa Indigenous Community vs. Paraguay*. Judgment of June 17, 2005 (Merits, Reparations, and Costs), paras. 157, 158, 164 and following; IACHR, Report No. 189/20, Case 12.569. Merits. *Quilombola Communities of Alcântara*. Brazil. June 14, 2020, para. 247.

¹⁰ Along the same lines, see: IACHR, Complaint filed with the Inter-American Court of Human Rights in the Case of the *Yakye Axa Indigenous Community v. Paraguay*, 17 March 2003; IACHR, Report No. 40/04, Case 12053, *Maya Indigenous Communities of the Toledo District v. Belize*, 12 October 2004. para. 87.

2. To notify the parties of this decision; continue with analysis of the merits of the case, publish this decision, and include 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 18th day of the month of October, 2024. (Signed:) Roberta Clarke, President; Carlos Bernal Pulido, Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.