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REPORT No. 319/22
PETITION 1354-20
REPORT ON INADMISSIBILITY

TAWANNA WILSON AND FAMILY
UNITED STATES OF AMERICA

Approved by the Commission electronically on November 23, 2022.

Cite as: IACHR, Report No. 319/22, Petition 1354-20. Inadmissibility. Tawanna Wilson and family. United States of America. November 23, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Monique Y. Yate Chieftess/Head of the Coosa Nation of North America
Alleged victims:	Tawanna Wilson, and her children: Damontey Harper, Damarcuse Harper, and Damarion Dunn
Respondent State:	United States of America ¹
Rights invoked:	Articles I (right to life, liberty, personal security), II (right to equality before law), Article V (right to protection of honor, personal reputation, and private and family life.); Article VI (right to a family and to protection thereof); Article VII (right to protection for mothers and children); Article IX (right to inviolability of the home); Article XI (right to the preservation of health and to well-being); and Article XVIII (right to fair trial/due process) of the of the American Declaration of the Rights and Duties of Man ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	June 22, 2020
Additional information received at the stage of initial review:	June 29, 2020, July 7, 10, 2020, August 6, 28, 2020, October 13,15, 2020, November 11, 2020, December 3, 4, 2020, April 18, 2021, and May 9, 2021
Notification of the petition to the State:	June 7, 2021
State's first response:	September 30, 2021
Additional observations from the petitioner:	November 11, 2021, December 15, 2021, January 4, 2022, February 9, 2022, June 2, 2022

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 Declaration (ratification of the OAS Charter on June 19, 1951)

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	No, pursuant to the terms of section VI
Timeliness of the petition:	Not applicable

¹ Hereinafter "United States," "the U.S." or "the State."

² Hereinafter "American Declaration."

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

V. ALLEGED FACTS

1. This petition contends that Tawanna Wilson (“TW”) was wrongfully deprived of the custody of her children giving rise to allegations of multiple human rights violations, including the right to due process, right to equal protection under the law, and right to family.

2. By way of background, TW lives in the state of Georgia, and is of indigenous descent. She identifies as a member of the Coosa Nation of North America. She complains that on October 30, 2018, her children were forcibly removed from her custody by a state agency: the Division of Family & Children Services of Georgia (DFCS). The names of the children are Damontey Harper (age 13), Damarcuse Harper (age 10), and Damarion Dunn (age 7). According to the petitioner the removal of the children was purportedly based on an allegation that the children were living in a tent on privately owned family land. TW insists that the children were never residing in a tent but in a trailer-home.

3. Following the removal of the children, the petition states that they were placed in the custody of their respective fathers. The petition further states that these fathers had a history of non-payment of child support, as well as a history of domestic violence against TW. Subsequently, it appears that her child Damarcuse Harper was placed in foster care by the state of Georgia. TW indicates that she moved from the family land in December 2018 to another residence, in an effort to facilitate the return of her children.

4. The petition mentions various judicial interventions, such as (a) application for mandamus and habeas corpus relief before the Supreme Court of Georgia; (b) applications to the State Superior Court (brought by the Coosa Nation of North America⁴); (c) litigation before the Athens-Clarke County Juvenile Court; (d) appeal to the Supreme Court of Georgia.⁵ The petitioner also mentions the withdrawal of an appeal to the Georgia Court of Appeals. From the record, it appears that the appeal was originally filed on September 16, 2019 – apparently against a decision by the Athens-Clarke County Juvenile Court.⁶

5. From the record, it appears that the litigation before the Athens-Clarke County Juvenile Court (“the Juvenile Court”), was initiated by the Athens-Clarke County Department of Family and Children Services. This litigation appears to have been initiated in December 2018 and continued until June 2020. Based on the record, it appears that the litigation was largely about removal of the children from the custody of TW; and whether it was in the children’s best interests to remain outside of the custody of TW. During the course of these proceedings, it appears that the Juvenile Court found that TW had issues with substance abuse (including marijuana and opiates). The Juvenile Court declined to return the children to TW and ultimately granted custody of Damarion Dunn and Damontey Harper to their respective fathers (David Dunn and Nelson Harper). With regard to Damarcuse Harper, the Juvenile Court decided to place him foster care.

6. The petitioner generally contends that all available domestic remedies were exhausted. The petition also indicates that TW has also sought the interventions of government agencies, such as the Department of Justice, but without success.

7. Generally, the petition alleges that that the state of Georgia and the United States have created a national and local climate that is not protective of American indigenous persons, and which prevents the equal application of justice for American indigenous women and children. The petitioner claims that these systemic biases have led to circumstances of the petition and to the violations of rights against TW and her children.

8. The State generally rejects the petition as inadmissible, on several grounds. These include (a) failure to exhaust domestic remedies; (b) failure to state sufficient details of her allegations (pursuant to Article 28 (4) of the Commission’s Rules of Procedure; (c) failure to state facts that tend to establish a

⁴ The petition indicates that these applications were dismissed by the court, ruling that the Coosa Nation of North America had no standing to bring these applications.

⁵ The petition itself provides little or no detail on the nature, chronology, or outcome of these court actions.

⁶ There is no information provided on the nature of the decision that was appealed.

violation of rights set forth in the American Declaration. The State also notes that the Commission is not equipped to review to a custody dispute and family matters governed by domestic family law, involving significant evidentiary records and testimony.

9. By way of background and context, the State makes a number of observations. Firstly, indicates that the Petition and accompanying documents are voluminous, incoherent at times, and often difficult to reconcile. -Which has also verified as true by the IACHR-. However, the State does acknowledge that TW's three children (Damontey Harper, Damarcuse Harper, and Damarion Dunn) were apparently removed from her custody on October 30, 2018. The State refers to various judicial proceedings that took place subsequently before the Athens-Clarke County Juvenile Court ("the Juvenile Court").

10. According to the State, the Juvenile Court, on March 20, 2019, issued a "Dependency Removal Order" authorizing the removal of Damarcuse Harper from the custody of TW. The State further indicates that Damarcuse Harper was then placed in foster care, State indicates that on April 30, 2019, the Juvenile Court granted legal custody of Damarion Dunn to David Dunn (his biological father) and legal custody of Damontey Harper to Nelson Harper (his biological father). It appears that the Juvenile Court found that TW had a substance abuse problem, and that this was a major factor in the decisions made regarding the children.

11. According to the State, during these proceedings involving her children, TW had three successive court appointed attorney to represent her. However, she dismissed each of them and chose to proceed pro se with the assistance of Dr. Monique Y. Tate, a non-attorney advocate and Principal Chieftess of the Coosa Nation of North America. The State indicates that on November 25, 2019, the Coosa Nation of North America attempted to file a habeas petition on behalf of TW. However, the filing of the pleadings was denied as the Coosa Nation of North America was not legally unauthorized to file on behalf of TW. The Coosa Nation of North America appealed the denial, but it was dismissed by the Georgia Supreme Court as untimely on February 10, 2020.

12. The State indicates that on June 1, 2020, the Juvenile Court issued a Permanency Review Order finding that Damarcuse Harper could not be safely returned to TW at the time and that his foster placement should continue. Also on June 1, 2020, the Athens-Clarke County Juvenile Court issued a Judicial Review Order that approved extended visitation time for TW with Damarcuse, but not overnight visits, citing continued concerns about TW (including the issue of substance abuse).

13. The State argues that TW has failed to demonstrate that she invoked and exhausted domestic remedies pursuant to Article 31 of the Commission's Rules of Procedure. The State indicates that the petition contains few and confusing details on whether and how TW attempted to invoke or exhaust domestic remedies related to the abuses alleged in the petition through criminal, civil, or administrative processes. The State also contends that it is unclear whether TW has exhausted all appeals with respect to the custody orders made by the Georgia courts, or to any of the alleged violations asserted in the petition.

14. The State asserts that Article 28(4) of the Commission's Rules of Procedure, require that that petitions addressed to the Commission contain "*an account of the act or situation that is denounced, specifying the place and date of alleged violations.*" The State notes that TW asserts that her children were unlawfully removed from her care on October 30, 2018 but provides no other dates and very limited detail for the various human rights she alleges were subsequently violated. Accordingly, the State concludes that the petition fails to meet the requirements of Article 28 (4) and should thus be found inadmissible.

15. The State argues that the petition generally fails to state facts that tend to establish any violation of the American Declaration. In this regard, the State contends that TW makes vague allegations that removing her children from her custody placed both herself and her children in danger and violated their rights to private family life. The State interprets this allegation to refer to the right to the security of person under Article I of the American Declaration and the rights to family and private life under Articles V and VI. The State argues that she presents no examples of the direct type of state action that implicates these Articles.

Further, the State contends that the placement of judicial removal of TW's children from her custody is not the type of direct state action that fall within the purview of these Articles.

16. In this regard, the State further contends, the mere fact that an individual may be adversely effected by the court-ordered removal of her children from her custody cannot transform such removal into "an abusive attack" upon private or family life within the meaning of Article V; nor can such removal be construed as a denial of the ability to procreate and raise a family within the meaning of Article IV; nor can it constitute a violation of the right to security of person within the meaning of Article I. The State indicates that while TW clearly disagrees with the outcome of the custody proceedings involving her children, such disagreement is insufficient to substantiate a violation of rights under American Declaration.

17. The State also dismisses the claims of racial and ethnic discrimination by entities of the state of Georgia. The State contends that petition fails to state any fact that establish that TW and her children suffered unequal treatment before the law on the on the basis of race, sex, language, creed, or any other factor within the meaning of Article II of the American Declaration.

18. To the extent that the petition claims violations based on generalized allegations of bias against Native Americans and women by law enforcement and in the U.S. judicial system, the State argues that this constitutes an *actio popularis*. The State contends that such the Commission's governing instruments do not allow for an *actio popularis*. Consequently, the State contends that an individual petition is not the proper means by which to request a decision about alleged racial and ethnic discrimination in the United States justice system.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

19. In accordance with Article 31(1) of the Rules of Procedure of the Inter-American Commission, for a petition to be admissible, domestic remedies must have been pursued and exhausted pursuant to generally recognized principles of international law. This requirement is aimed at enabling national authorities to take cognizance of the alleged violation of the protected right and, if appropriate, resolve the matter before it is heard by an international body.

20. This petition revolves around the removal of TW's children from her custody. The petition broadly contends that this removal resulted in multiple violations of the rights of TW and her children. These rights include the right to due process; the right to right to equality before the law; and the right to family. The State asserts that domestic remedies have not been exhausted, while the petition asserts the contrary.

21. Based on the record, it appears undisputed that the issue of the removal of the children from the custody from TW was litigated primarily in the Juvenile Court. However, it appears that this litigation was initiated by the state of Georgia and not by TW. The petition provides no clear or coherent evidence regarding the invocation or exhaustion of any domestic remedies to challenge the decisions of the Juvenile Court. There is equally no clear or coherent indication that TW was prevented from invoking or exhausting any such domestic remedies.

22. Given the foregoing, the Commission is unable to verify that the petitioner has exhausted domestic remedies in relation to the alleged claims. Accordingly, the Commission considers that the petition is inadmissible for failure to comply with the requirements of Article 31 (1) of the Commission's Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

23. Whereas the foregoing conclusion on the issue of domestic remedies is sufficient to dismiss of this petition, the Commission nevertheless wishes to make some observations regarding the applicability of the fourth instance doctrine to this matter. In this respect, the IACHR notes that the interpretation of the law, the relevant proceeding, and the weighing of evidence, is among others, a function to be exercised by the

domestic jurisdiction, which cannot be replaced by the IACHR. In this regard, it should be recalled that the Commission does not have authority to review judgments handed down by domestic courts acting within their competence and applying all due judicial guarantees unless it finds that a violation of one of the rights protected by the American Declaration has been committed. Based on available information, the Commission petitioners have not provided sufficient evidence to show, *prima facie*, any violations of her rights as guaranteed by the American Declaration.

VIII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; 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 23rd day of the month of November, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Joel Hernández, and Roberta Clarke, Commissioners.