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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 80/06; Petition 62-02
Session:	Hundred Twenty-Sixth Regular Session (16 – 27 October 2006)
Title/Style of Cause:	Members of the Indigenous Community of Annas v. Brazil
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; Second Vice-President: Florentin Melendez; Commissioners: Freddy Gutierrez, Paolo G. Carozza, Victor E. Abramovich. Pursuant to the provisions of Article 17.2.a of the IACHR's Rules of Procedure, Commissioner Paulo Sergio Pinheiro, of Brazilian nationality, did not participate in the decision regarding this petition.
Dated:	21 October 2006
Citation:	Indigenous Community of Annas v. Brazil, Petition 62-02, Inter-Am. C.H.R., Report No. 62-02, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLICANTS: the Consejo Indigena de Roraima, the Comision de Derechos Humanos de la Diocesis de Roraima, the Consejo Indigenista Misionero, and the Center for Justice and International Law

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I. SUMMARY

1. On January 30, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a petition from the Consejo Indígena de Roraima (CIR) [Indigenous Council of Roraima], the Comisión de Derechos Humanos de la Diócesis de Roraima [Human Rights Commission of the Diocese of Roraima], the Consejo Indigenista Misionero (CIMI) [Pro-Indigenous Missionary Council (CIMI)], and the Center for Justice and International Law (CEJIL), (hereinafter "the petitioners"). The petition alleges the violation of Articles 5, 21, 22, 24, 8, 25 and 1.1 of the American Convention on Human Rights (hereinafter "the American Convention"), and of Articles 13, 3 and 1 of the Additional Protocol of San Salvador (hereinafter the Additional Protocol), by the Federative Republic of Brazil (hereinafter "Brazil" or "the State"), with prejudice to the Indigenous Community of Ananas, other indigenous peoples, and two religious identified as Sirley Weber and Edna Pitarelli.

2. According to the information provided, the Ananas indigenous territory is located in the Amajari region, northwest from the city of Boa Vista. It was, they report, established in 1977; its demarcation was started in 1980, after an anthropological arbitral decision, which demarcated 3000 hectares of the area as belonging to the indigenous community of Ananas. Facing strong pressures and acts of intimidation that prevented demarcation, they contend, the indigenous territory was not defined until 1981, and was not registered with the Heritage Service until 1995, 13 years later. They further state that initially 20 Macuxi families inhabited this land, but during

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the period of successive conflicts between the indigenous people and the large landowners, and for some time thereafter, several families left the region. Only five were left in the place, totaling 32 indigenous people. The petitioners affirm that conflicts continue to this day due to several factors, the first of which is that geographically the land is surrounded by five private estates; three of the owners of these estates have encroached on the indigenous land. They allege that the petitioners lodged complaints in order for these offenses to cease, and reparations made, before the Fundación Nacional del Indio (FUNAI) [National Indian Foundation], which took cognizance of the facts in the year 2000, although without taking any measures addressing the complaint.

3. The State did not respond to the complaint although it was duly and legally notified.

4. After examining the positions of the parties in the light of the admissibility requirements established by Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible with respect to Articles 5, 8, 21, 22, 24, and 25, in connection with the general obligation established by Article 1.1 of the American Convention, as well as with Articles 13 and 2 of the Additional Protocol. Therefore, the Commission decided to notify the parties and publish this report on admissibility and include it in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

5. The original petition was received by the Commission on January 30, 2002, and assigned number 62 of 2002. On May 2, 2002, pursuant to Article 30 of its Rules of Procedure, the Commission forwarded to the State the relevant portions of the complaint, and requested a response to the petition, granting it two months for that purpose.

6. On May 20, 2002, additional information on the complaint, provided by the petitioner, was forwarded to the State.

7. On June 11, 2002 the Commission notified the State that, given the different dates on which the original petition and the annexes were forwarded to it, the date of this latest communication would be the starting one for the purposes of establishing the deadline provided for by Article 30 of the Commission's Rules of Procedure.

8. On August 7, 2002, the State requested an extension of the deadline. The request was denied for lack of sufficient grounds; this decision was transmitted to the State on November 22, 2002. At the time of the writing of this report, the State has not responded to the petition.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners state that the Ananas indigenous territory is located in the Amajari region, northwest from the city of Boa Vista. It was, they report, established in 1977; its demarcation was started in 1980, after an anthropological arbitral decision, which demarcated 3000 hectares of the area as belonging to the indigenous community of Ananas. Facing strong pressures and

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acts of intimidation that prevented demarcation, they contend, the indigenous territory was not defined until 1981 by Decree No. 86,920, with an area of only 1,769 hectares; it was not registered with the Heritage Service until 1995, 13 years later. They further state that initially 20 Macuxi families inhabited this land, but during the period of successive conflicts between the indigenous people and the large landowners, and for some time thereafter, several families left the region. Only five were left, totaling 32 indigenous people. The petitioners affirm that conflicts continue to this day due to several factors, the first of which is that geographically the land is surrounded by five private estates; three of the owners of these estates have encroached on the indigenous land. One of them has justified his steamrolling action by claiming that he was entitled to an usufruct of that portion of the land that had formerly been part of his estate, and which now belonged to the indigenous community, given that it was the most fertile one in the area. The other two owners, they contend, built wire fences to keep the indigenous people, the true owners of the land, out of it.

10. They affirm that another relevant fact of this conflict was the ambush of the member sisters of the Misioneras de la Congregación Siervas del Espíritu Santo [Missioneries of the Congregation of Servants of the Holy Spirit], who had traveled to the zone to explain a cattle, development and self-sustaining project, coordinated by the Diocese of Romaira, to the indigenous leaders. When these religious were on their way to the land of the Ananas Community, they contend, an automobile was following them, and intercepted them as they reached the bridge over the Ereu River; more than 30 estate owners and politicians of the region blocked their way, threatening them with plunging their car into the river from a height of ten meters. The petitioners contend that, for hours, bearing knives and sticks, they subjected the religious to accusations of seizing the lands of the estate owners, shouted insults at them and engaged in moral aggression against them, instilling in them an intense emotional terror. Their car was taken away, forcing them to walk more than 30 kilometers on the road they were traveling, while, they affirm, the owners of the estates rushed by in their automobiles, close to them, to the point that one of the religious was almost run over. These events were, they allege, reported to the Federal Police when they arrived to the town. However, their car was not found until four days later; it had been thrown into the river. With respect to these individuals, they say that a police investigation was opened, which, according to local legislation, the authorities had 90 days to conclude; however, at the time this petition was lodged, a year and a half had gone by without the investigation delivering any results. They state that the Office of the Public Prosecutor did not begin an ex-officio criminal action against the aggressors, who have gone unpunished. They inform that in March of 2000 they lodged a civil suit for damages for pain and suffering, which has not yet been decided.

11. The petitioners complain that the aforementioned violations are accompanied by actions on the part of the estate owners of the region to prevent the indigenous people from accessing public health services, by barring their access to the zone's public health station, and from accessing communications, by barring their access to the local radio station; they are also prevented from attending school. With respect to the latter, specifically they contend that seven indigenous children are not attending school, because of their fear of the harassment to which they are subjected.

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12. The petitioners state that they lodged the appropriate complaints in order for these offenses to cease, and reparations made, before the Fundación Nacional del Indio (FUNAI) [National Indian Foundation], which took cognizance of the facts in the year 2000, although without taking any measures in response to the complaint. They affirm that as a result of the reiteration of the complaint before the aforementioned authority by the Consejo Indígena de Roraima (CIR) [Indigenous Council of Roraima] in May 2001, a FUNAI official made a visit to the zone in June of that year, without any solution having been sought regarding the consequences of the situation.

13. The petition, in essence, is based on the alleged violations of Articles 5, 8, 21, 22, 24, 25 and 1.1 of the American Convention, and of Articles 13, 3 and 1 of the Additional Protocol of San Salvador.

B. The State

14. The State did not respond to the petition, although it was legally and duly notified on June 11, 2002, of the deadline for responding established by Article 30 of the Commission's Rules of Procedure.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence rationae personae, rationae loci, rationae temporis, and rationae materiae, of the Commission

15. The petitioners are authorized by Article 44 of the Convention to lodge petitions with the IACHR. The petition claims that the alleged victims are the members of the Indigenous Community of Ananas, other indigenous people and two religious identified as Sirley Weber and Edna Pitarelli. Therefore, the Commission has competence rationae personae to examine the petition. The State, for its part, ratified the Convention on September 25, 1992, and the Additional Protocol on August 21, 1996.

16. The Commission has competence rationae loci to hear the petition, because it alleges violations of human rights protected by the American Convention and the Additional Protocol, within the territory of a State Party to said treaties.

17. The IACHR has competence rationae temporis because the obligation of respecting and guaranteeing the rights protected by the American Convention and the Additional Protocol was in force for the State at the time during which the alleged events would have occurred.

18. Finally, the Commission has competence rationae materiae, because the petition complains of violations of human rights protected by the American Convention and by Article 13 of the Additional Protocol.

B. Admissibility requirements for the petition

1. Exhaustion of domestic remedies

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19. In accordance with generally recognized principles of international law, Article 46.1 of the American Convention establishes the requirement of prior exhaustion of the available remedies within the domestic jurisdiction of the State, for the complaint to be admissible.

20. Paragraph 2 of the aforementioned Article establishes that the provisions regarding the exhaustion of domestic remedies shall not be applied when:

a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

21. The petitioners have indicated that the origin of the complaint is a series of actions harmful to the indigenous community they represent, and to the two religious that came to their aid; these were reported to the proper authority in the year 2000, but the authority did not act with diligence towards their cessation or towards finding a solution for this ongoing situation.

22. The State did not respond to the petition, although it was duly and legally notified, and hence did not lodge the objection of lack of exhaustion of domestic remedies. The Inter-American Court on numerous occasions has stated that "the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed."[FN2] There is enough indisputable evidence in the record that complaints were lodged before the competent authority regarding all of the facts in the petition, without any indication that any apparent solution had been provided in response to them.

[FN2] The Inter-American Court has stated that "the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed." See: Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C., No. 1, para. 88; Fairén Garbi and Solís Corrales Case. Preliminary Objections. Judgment of June 26, 1987. Series C., No. 2, para. 87; Godínez Cruz Case. Preliminary Objections. Judgment of June 26, 1987. Series C, No. 3, para. 90; Gangaram Panday Case. Preliminary Objections. Judgment of December 4, 1991. Series C, No. 12, para. 38; Neira Alegría et al. Case. Preliminary Objections. Judgment of December 11, 1991, Series C, No. 13, para. 30; Castillo Páez Case. Preliminary Objections. Judgment of January 30, 1996. Series C, No. 24, para. 40; Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C., No. 25, para. 40.

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23. The Commission understands that, although domestic remedies have not been exhausted, there is an unwarranted delay in their judgment, as there is evidence that sufficient complaints were lodged to which no response was provided during a more than reasonable time period for

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that purpose. The most relevant of these was the complaint made before the competent organ to decide any and all controversies related to the ownership of indigenous lands (FUNAI). There is no evidence of any FUNAI decision in this regard, and the inexistence of said decision is presumed in view of the lack of any state response to the petition. Albeit that it is true that a complaint has been lodged, which has not yet been decided, with respect to legal recourses of this nature, the Court has said that "… it is not sufficient that such recourses exist formally, but that they must be effective; that is, they must give results or responses to the violations of rights established in the Convention, and those remedies which prove illusory, due to the general situation of the country or even the particular circumstances of any given case, cannot be considered effective",[FN3] this citation leads to the conclusion that, if a legal remedy is ineffective, it can be deemed to have been exhausted.

[FN3] I/A Court H.R., Bámaca Velásquez Case. Judgment of November 25, 2000. Series C No. 70, para. 191; I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community Case. Judgment of August 31, 2001. Series C No. 79, para. 114; I/A Court H.R., Case of the "Five Pensioners". Judgment of February 28, 2003. Series C No. 98, and I/A Court H.R., Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 121.

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24. It can be inferred from the record that the authorities took cognizance of the situation in the year 2000. In this respect, it is the opinion of the Commission that, in the concrete circumstances of the instant case, over a period of nearly six years to the date of this decision, no solution has been reached through the remedies offered by domestic legislation. This constitutes an unwarranted delay in legal processes, and consequently domestic remedies must be considered exhausted.

25. As mentioned above, the State has not presented a response to the petition, in which it should have lodged the objection of lack of exhaustion of domestic remedies established by Article 46.2.c of the Convention. Since this objection was not made, the petitioners are exempted from complying with this requirement for admissibility.

2. Timeliness of the petition

26. The IACHR has concluded, with respect to this petition, that there has been an unwarranted delay in the matter. Therefore, the Inter-American Commission must determine if the petition was presented in a timely manner. In this regard, the IACHR notes that domestic authorities took cognizance of the facts in the complaint in the month of February, 2000, and that since then no judgment has been rendered on them. The petition was lodged on January 30, 2002, which the Commission finds to have been timely, under the time period established by Article 32 of its Rules of Procedure.

3. Duplication of proceedings and international res iudicata

27. There is no evidence in the record indicating that the subject matter of the petition is pending under another procedure of international settlement, nor that it duplicates a petition

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already examined by this or by another international governmental organization. Therefore, the requirements established by Articles 46.1.c and 47.d of of the Convention have been met.

4. Nature of the alleged facts

28. To make a decision on admissibility, the IACHR must determine, pursuant to Article 47.b of the American Convention, whether the stated facts tend to establish a violation, and, pursuant to paragraph (c) of the same Article, whether the petition is "manifestly groundless" or is "obviously out of order."

29. The standard to assess these matters is different from that required to decide on the merits of a petition. The IACHR must perform a prima facie evaluation to examine whether the complaint provides grounds for an apparent or potential violation of a right guaranteed by the Convention, but not to establish whether the violation has taken place. This assessment is a preliminary analysis that does not imply prejudgment or the statement of an opinion on the merits.[FN4]

[FN4] IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luis Tapia González et al., Chile, February 24, 2004, para. 33.

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30. The Commission does not find that the petition is "manifestly groundless," or that it is "obviously out of order." Therefore, it is the opinion of the IACHR that, prima facie, the petitioners have met the requirements of Article 47, paragraphs (b) and (c) of the Convention.

31. Bearing in mind the aforementioned, it is the opinion of the Inter-American Commission that, should the facts put forward be proven regarding the violation of the rights to humane treatment, to property, to freedom of movement and residence, to equal protection, to a fair trial, to education, and to nondiscrimination, with prejudice to the members of the Indigenous Community of Ananas, and to the two religious that came to their assistance, there is the possibility of a violation of Articles 5, 8, 21, 22, 24 and 25 in connection with the general obligations provided for by Articles 1.1 and 2 of the Convention, as well as of Article 13 of the Additional Protocol, in connection with the general obligations provided for by Articles 1, 2, and 3 of same.

V. CONCLUSIONS

32. Based on the foregoing considerations in fact and in law, and without prejudging the merits of the case, the Commission finds that the instant case meets the requirements for admissibility provided for by Articles 46 and 47 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

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1. To declare, without prejudging about the merit of petition 62-2002, that it is admissible in relation with the denounced facts and Articles 5, 8.1, 21, 22, 24 and 25 of the American Convention, in connection with the general obligation contained in Articles 1.1 and 2 of the same instrument, as well as Article 13 of the Additional Protocol, in connection with the general obligations contained in Articles 1, 2 and 3 of it.
2. To transmit this report to the State and the petitioners.
3. To continue to consider the merits of the instant case.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 21st day of the month of October, 2006. (Signed): Evelio Fernández Arévalos, President; Florentín Meléndez, Second Vice-President; Freddy Gutiérrez, Paolo G. Carozza and Víctor E. Abramovich, Commissioners.