

# Xucuru Indigenous People and its Members v. Brazil

## ABSTRACT\*

*This case is about the recognition, qualification, demarcation, and delimitation of the ancestral lands of the Xucuru, an indigenous community in the State of Pernambuco, in the Brazilian Amazon. The Court found Brazil in violation of the American Convention due to the unduly long process to assign title to the Xucuru over their lands and for the failure to remove non-indigenous people from it.*

## I. FACTS

### A. Chronology of Events

**September 19, 1973:** The State passes Law No. 6001, which regards indigenous communities, including the Xucuru Indigenous People, who live in the State of Pernambuco, in Northeastern Brazil.<sup>1</sup> Law No. 6001 recognizes the right of indigenous people to acquire the title over their ancestral lands through the administrative process of demarcation, and requires the removal of all non-indigenous people from the land.<sup>2</sup>

**1988:** The Constitution of the Federative Republic of Brazil of 1988 grants indigenous people the right to permanent possession of their ancestral land and exclusive use of the resources on the land.<sup>3</sup>

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1. Xucuru Indigenous People v. Brazil, Admissibility Report, Report No. 98/09, Inter-Am Comm'n H.R., Pet. No. 4355-02, ¶ 11 (Oct. 29, 2009); Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 346, ¶ 60 (Feb. 5, 2018).

2. Xucuru Indigenous People v. Brazil, Admissibility Report, ¶ 11; Xucuru Indigenous People v. Brazil, Report on Merits, Report No. 44/15, Inter-Am Comm'n H.R., Case No. 12.728, ¶ 9 (July 28, 2015).

3. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 62.

**September 6, 1989:** After starting the administrative process of demarcation, the Technical Group of the National Indigenous Foundation (*Fundação Nacional do Índio*; “FUNAI”) issues a report identifying the regions of land which the Xucuru were entitled to.<sup>4</sup>

**May 29, 1992:** The Ministry of Justice confirms the demarcation of the territory that FUNAI identified in its report.<sup>5</sup> However, the State does not remove the non-indigenous inhabitants of the Xucuru land, nor does the State make progress in the demarcation of land.<sup>6</sup>

**January 8, 1996:** The State Executive Branch issues Law No. 1775/96, which significantly changes the demarcation process by giving non-indigenous third parties rights to challenge identification and delimitation reports, file actions to reclaim property identified as indigenous land, and receive compensation for demarcated land.<sup>7</sup> According to the Ministry of Justice, nearly 300 objections are filed against the demarcation of Xucuru land.<sup>8</sup>

**June 10, 1996:** The Ministry of Justice rejects the objections against the demarcation of Xucuru land, declaring them inadmissible.<sup>9</sup> The individuals and State authorities who filed objections appeal to the Superior Court Justice (*Superior Tribunal de Justiça*, “STJ”).<sup>10</sup>

**May 28, 1997:** The STJ issues a judgment in favor of the non-indigenous who challenged the demarcation of Xucuru land.<sup>11</sup> However, the Ministry of Justice again rejects their objections and reaffirms the need to complete the demarcation of land.<sup>12</sup>

A series of alleged criminal events occur as tensions rise between the Xucuru Indigenous People and the non-indigenous people still occupying their ancestral land, including the killing of several indigenous

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4. Xucuru Indigenous People and its Members v. Brazil, Report on Merits, ¶ 10.

5. *Id.*

6. Xucuru Indigenous People v. Brazil, Admissibility Report, ¶ 13.

7. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 72.

8. *Id.* ¶ 73.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

leaders (Mr. José Everaldo Rodrigues Bispo; Mr. Geraldo Rolim; and chief of the group, Cacique Xicão).<sup>13</sup>

**April 30, 2001:** Twelve years after the demarcation process began, the President of Brazil issues a decree approving the demarcation of the Xucuru land.<sup>14</sup> However, the State refuses to register the land to the Xucuru people and still does not remove the non-indigenous inhabitants.<sup>15</sup>

**November 18, 2005:** The Property Registry of Pesqueira executes the title to the Xucuru ancestral land to the Xucuru Indigenous People.<sup>16</sup> There are still non-indigenous people living on the Xucuru land because the State has not yet compensated and removed them.<sup>17</sup>

There are also two pending legal actions filed by non-indigenous people before the Supreme Federal Court of Brazil (*Supremo Tribunal Federal*; “STF”): one motion to regain possession of Xucuru land and one request to annul the demarcation process and permit the return of non-indigenous people who were previously removed.<sup>18</sup>

**2007:** The State concludes its process to identify all non-indigenous occupants on Xucuru ancestral land and confirms its intent to compensate the remaining occupants by August 2009.<sup>19</sup>

### B. Other Relevant Facts

Administrative demarcation is a five-step process, which includes the following stages: (1) identify the ancestral land by mapping boundaries; (2) response by interested third parties; (3) the Ministry of Justice’s approval; (4) ratification by presidential decree; and finally, (5) registration of indigenous territory.<sup>20</sup> Demarcation also requires the expeditious removal of non-indigenous inhabitants on indigenous land.<sup>21</sup>

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13. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 76.

14. Xucuru Indigenous People and its Members v. Brazil, Report on Merits, ¶ 12.

15. *Id.*

16. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 79.

17. Xucuru Indigenous People and its Members v. Brazil, Report on Merits, ¶ 14.

18. *Id.*

19. Xucuru Indigenous People v. Brazil, Admissibility Report, ¶ 25.

20. *Id.* ¶ 12.

21. *Id.*

As a result of delays in the demarcation process, social conflicts arise and a series of alleged criminal events occur between the Xucuru Indigenous People and the non-indigenous people who were occupying the majority of the Xucuru ancestral land after the State refuses to remove the non-indigenous inhabitants.<sup>22</sup> Several indigenous leaders are killed including Mr. José Everaldo Rodrigues Bispo, the spiritual leader's son; Mr. Geraldo Rolim, a FUNAI agent; and chief of the group, Cacique Xicão.<sup>23</sup> Non-indigenous people threaten to assassinate Cacique Xicão's successor, Marcos Luidson de Araújo ("Cacique Marquinhos").<sup>24</sup>

Xucuru members retaliate and damage the property of those who threatened to assassinate Cacique Marquinhos.<sup>25</sup> Cacique Marquinhos is convicted for the property damage and sentenced to over ten years in prison.<sup>26</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

**October 16, 2002:** The Inter-American Commission on Human Rights receives a petition on behalf of the Xucuru Indigenous People.<sup>27</sup> The petitioners ask the Commission for precautionary measures to protect community leaders Cacique Marquinhos and his mother, Zenilda Maria de Araújo.<sup>28</sup>

**October 29, 2009:** The Commission approves Admissibility Report No. 98/09, declaring the case admissible regarding alleged violations of Articles 21 (Right to Property), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.<sup>29</sup> The Commission also issues precautionary measures to the State, requiring it to: (1) do everything in its power to

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22. Xucuru Indigenous People v. Brazil, Admissibility Report, ¶ 15.

23. *Id.*

24. *Id.*

25. *Id.* ¶ 15.

26. *Id.*

27. *Id.* ¶ 1. Petitioners include the National Human Rights Movement/Northeast Region (Movimento Nacional de Direitos Humanos/Regional Nordeste); the Legal Advisory Office for Popular Organizations (Gabinete de Assessoria Jurídica às Organizações Populares; "GAJOP"); and the Missionary Indigenist Council (Conselho Indigenista Missionário; "CIMI").

28. Xucuru Indigenous People v. Brazil, Admissibility Report, ¶ 7.

29. *Id.* ¶ 4.

protect the Xucuru community and its leaders; (2) investigate the death threats that members of the Xucuru community received.<sup>30</sup>

**July 28, 2015:** The Commission issues Report on the Merits No. 44/15.<sup>31</sup> The Commission finds the State violated Article XXIII (Right to Property) of the American Declaration of the Rights and Duties of Man, Articles 5 (Right to Humane Treatment), 21 (Right to Property) 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and 25(1) (Right of Recourse Before a Competent Court), all in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of the Xucuru Indigenous People and its members.<sup>32</sup>

In light of the foregoing violations, the Commission recommends the State: (1) adopt measures to remove all non-indigenous inhabitants from the Xucuru ancestral land and ensure the Xucuru people can live peacefully in their traditional way of life; (2) promptly complete and close the pending legal proceedings filed by non-indigenous people according to the standards set regarding the rights of indigenous people; (3) make adequate reparations to individuals and the collective for the delayed recognition and demarcation process and the State's failure to timely remove the non-indigenous people inhabiting their land; and (4) ensure these types of violations do not occur again.<sup>33</sup>

### B. Before the Court

**March 16, 2016:** The Commission submits the case to the Court after the State fails to adopt its recommendations.<sup>34</sup>

**September 14, 2016:** The State raises five preliminary objections.<sup>35</sup> The State's preliminary objections argue that: (1) the Commission did not properly publish the Merits Report; (2) the Court has no jurisdiction over events that occurred prior to the date of the State's recognition of jurisdiction of the Court; (3) the Court has no jurisdiction over events that occurred prior to the date of the State's accession to the American Convention; (4) the Court does not have the authority to prosecute alleged

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30. Xucuru Indigenous People v. Brazil, Admissibility Report, ¶ 7.

31. Xucuru Indigenous People and its Members v. Brazil, Report on Merits, ¶ 3.

32. *Id.* ¶¶ 108(1)-(2).

33. *Id.* ¶¶ 109(1)-(4).

34. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

35. *Id.* ¶ 19.

violations of the International Labor Organization (“ILO”) Convention No. 169 on the Rights of Indigenous and Tribal Peoples; and (5) domestic remedies have not been exhausted.<sup>36</sup>

**January 31, 2017 – April 24, 2017:** The Court receives five *amicus curiae* briefs: (1) Salvador Herencia Carrasco, Daniel Lopes Cerqueira, Melina Girardi Fachin and Luís Donisete Benzi Grupioni on behalf of the Human Rights Clinic of the University of Ottawa, the Foundation for Due Process, the Nucleus of Studies in International Human Rights Systems of the Federal University of Paraná, and the Amazon Cooperation Network; (2) Sílvia Maria da Silveira Loureiro, Pedro José Calafate Villa Simões, Jamilly Izabela de Brito Silva, Denison Melo de Aguiar, Breno Matheus Barrozo de Miranda, Caio Henrique Faustino da Silva, Emilly Bianca Ferreira dos Santos, Ian Araújo Cordeiro, Kamayra Gomes Mendes, Marlison Alves Carvalho, Matheus Costa Azevedo, Taynah Mendes Saraiva Uchôa and Victória Braga Brazil on behalf of the Human Rights and Environment Law Clinic of the University of Amazon, and the Amazonian Research Group of Human Rights; (3) André Augusto Salvador Bezerra on behalf of the Association of Judges for Democracy; (4) Cristina Figueiredo Terezo Ribeiro, Laércio Dias Franco Neto, Isabela Feijó Sena Rodrigues, Ana Caroline Lima Monteiro, Raysa Antonia Alves Alves, Tamires da Silva Lima, Carlos Eduardo Barros da Silva and Jucélio Soares de Carvalho Junior on behalf of the Amazonian Human Rights Clinic, linked to the Graduate Law Program at the Federal University of Pará; and (5) Carlos Eduardo Barbosa Paz, Francisco de Assis Nascimento Nóbrega, Isabel Penido de Campos Machado, Pedro de Paula Lopes Almeida, Rita Lamy Freund and Antônio Carlos Araújo de Oliveira on behalf of Brazil’s Public Defender’s Office.<sup>37</sup>

### 1. Violations Alleged by Commission<sup>38</sup>

Article XXIII (Right to Property) of the American Declaration of the Rights and Duties of Man

Article 21 (Right to Property) of the American Convention of Human Rights

*in relation to:*

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36. *Xucuru Indigenous People and its Members v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 19.

37. *Id.* ¶ 11.

38. *Id.* ¶ 5; *Xucuru Indigenous People and its Members v. Brazil*, Report on Merits, ¶ 108(1)-(2).

Article 1(1) (Obligation of Non-Discrimination) and  
 Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the  
 American Convention.

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent  
 and Independent Tribunal)

Article 25(1) (Right of Recourse Before a Competent Court)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) of the American Con-  
 vention.

## 2. Violations Alleged by Representatives of the Victims<sup>39</sup>

Same Violations Alleged by Commission.

### III. MERITS

#### *A. Composition of the Court*<sup>40</sup>

Eduardo Ferrer Mac-Gregor Poisot, President

Eduardo Vio Grossi, Vice-President

Humberto Antonio Sierra Porto, Judge

Elizabeth Odio Benito, Judge

Eugenio Raúl Zaffaroni, Judge

L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary

Emilia Segares Rodríguez, Deputy Secretary

#### *B. Decision on the Merits*

**February 5, 2018:** The Court issues its Judgment on Preliminary Objec-  
 tions, Merits, Reparations, and Costs.<sup>41</sup>

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39. *Xucuru Indigenous People and its Members v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 105-106, 168. Adelar Cupinski, Caroline Hilgert, Marcos Luidson de Araújo, Fernando Delgado, Michael Mary Nolan, Raphaela de Araújo Lima Lopes, Rodrigo Deodato de Souza Silva and Vânia Rocha Fialho de Paiva e Souza served as representatives of the Xucuru Indigenous People.

40. *Id.* at n.1. Judge Roberto F. Caldas, in accordance with the provisions of Articles 19.2 of the Statute and 19.1 of the Rules of the Court, is unable to participate in the deliberation and signing of the Judgment because he is a Brazilian national.

41. *Id.*

The Court found unanimously:

To dismiss the State's preliminary objections regarding the publication of the Commission's Merits Report, the violations of the ILO Convention, and the failure to exhaust domestic remedies,<sup>42</sup> because:

*First, the State argued that the Commission prematurely published the Merits Report before submitting the report to the Court in contravention of Article 51 of the Convention.<sup>43</sup> The Court rejected this objection because the Commission submitted to the Court before publishing the Report on Merits, which is a procedure allowed under Articles 50 and 51 of the American Convention.<sup>44</sup>*

*Second, the State argued that the Court can only hear claims that allege violations of the American Convention on Human Rights and any other inter-American instruments that protect human rights.<sup>45</sup> The Court rejected this and stated that it has long found it useful to use other international treaties to analyze content and scope of certain provisions and rights established in the Convention.<sup>46</sup>*

*Third, the State argued not all domestic remedies were exhausted.<sup>47</sup> The Court rejected this because the State did not meet the standards necessary to argue lack of exhaustion of domestic remedies, such as stating what remedies were exhausted or in progress and why those remedies are effective.<sup>48</sup>*

To partially accept Brazil's preliminary objections regarding the Court's *ratione temporis* jurisdiction over facts that occurred before the State accepted the jurisdiction of the Court and before the State acceded to the American Convention,<sup>49</sup> because:

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42. *Xucuru Indigenous People and its Members v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, "decide" ¶ 1.

43. *Id.* ¶ 23.

44. *Id.* ¶¶ 24-25.

45. *Id.* ¶ 33.

46. *Id.* ¶¶ 35-36.

47. *Id.* ¶ 37.

48. *Xucuru Indigenous People and its Members v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 47-48.

49. *Id.* "decide" ¶ 2.



*The Court noted that, for all of the alleged violations, it can only examine events that occurred after the State accepted the Court's jurisdiction on December 10, 1998, pursuant to the principle of non-retroactivity.*<sup>50</sup>

The Court found unanimously that Brazil had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) of the Convention, to the detriment of the Xucuru Indigenous People,<sup>51</sup> because:

*The Court explained that the State acted too slowly in its judicial guarantee of the recognition, qualification, demarcation, and delimitation of the Xucuru ancestral land.*<sup>52</sup> *Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) embodies the aspect of the right to a fair trial that a delay in judicial remedies can ultimately constitute a violation of such a right.*<sup>53</sup> *The right to judicial remedies "within a reasonable time" must be evaluated based on the duration of the judicial proceedings up until the final sentence is handed down.*<sup>54</sup> *This right has four elements that must be analyzed: (1) the case's complexity; (2) the representatives' procedural activity; (3) actions of the judicial authorities; and (4) the duration's legal effect on the victims.*<sup>55</sup> *In such circumstances, the burden is on the State to prove why it needed the amount of time it used to address the case.*<sup>56</sup> *Accordingly, the Court then evaluated each of the following elements as follows:*

*(1) Complexity of the Case*

*The Court held the State failed to demonstrate the existence of complex factors that justified its delay in the completion of the demarcation process between December 1998 and November 2005.*<sup>57</sup> *The Court considered the action filed by the Property Registry of Pesqueira, however, the Court determined the underlying legal issue was already resolved by the*

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50. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 31-32.

51. *Id.* "declares" ¶ 3.

52. *Id.* ¶ 149.

53. *Id.* ¶ 132.

54. *Id.* ¶ 134.

55. *Id.* ¶ 135.

56. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 135.

57. *Id.* ¶ 138.

*Brazilian Constitution and other regulatory laws that controlled the process of recognition, demarcation and registration of indigenous land.*<sup>58</sup>

*However, the Court also considered the reorganization of indigenous territories, the size of each territory, geographical characteristics, the number of non-indigenous inhabitants in the territory that must be removed, and the characteristics of such people.*<sup>59</sup> *The Court acknowledged that a large number of non-indigenous people were occupying Xucuru territory when it was demarcated in 1989, and by 2016, only six non-indigenous people remained.*<sup>60</sup> *However, the number of non-indigenous people occupying Xucuru land was not enough for the State to justify such an excessive delay in completing the proceeding.*<sup>61</sup>

### *(2) Representatives' Procedural Activity*

*The Court held that the representatives did nothing that constituted an interference with the judicial proceedings.*<sup>62</sup> *States are responsible for initiating and completing the administrative process of demarcation; there is no requirement that the Xucuru people intervene in the process, nor is there evidence that requires the Court to infer that any delay in the process may be attributable to the Xucuru people.*<sup>63</sup>

### *(3) Conduct of State Judicial Authorities*

*State judicial authorities are responsible for directing and prosecuting judicial or administrative procedures without sacrificing justice or due process.*<sup>64</sup> *In this case, the Court found the State's judicial authorities did not justify the delays in the proceedings nor did they provide judicial remedies within a reasonable time.*<sup>65</sup> *However, State judicial authorities had several organizational issues that delayed the case for years and prevented the conclusion of the process.*<sup>66</sup>

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58. *Xucuru Indigenous People and its Members v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 138.

59. *Id.* ¶ 139.

60. *Id.* ¶¶ 140-141.

61. *Id.* ¶ 141.

62. *Id.* ¶ 143.

63. *Id.*

64. *Xucuru Indigenous People and its Members v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 144.

65. *Id.* ¶¶ 145-146.

66. *Id.* ¶ 147.

(4) *Duration's Legal Effect on the Victims*

*Finally, the Court found that the duration of the proceedings without remedy to the indigenous people violated their right to collective property.<sup>67</sup> Therefore, the Court concluded that the State violated the judicial guarantee of remedy within a reasonable time provided for in Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of the Xucuru Indigenous People.<sup>68</sup>*

*Overall, the Court held that the State's ineffective actions and slowness constituted a violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of the Xucuru Indigenous People.<sup>69</sup>*

Articles 21 (Right to Property) and 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Xucuru Indigenous People,<sup>70</sup> because:

*The Court has long held indigenous people have the right to recognition and protection of collective property of the land, including the right to use and enjoy their land according to their specific cultural customs and beliefs of their people.<sup>71</sup> The Court identified three instances of State interference with the Xucuru territory: (1) failure to comply with the obligation to guarantee property rights; (2) lack of legal certainty on the use and enjoyment of Xucuru traditional land; and (3) effectiveness of steps taken to guarantee the peaceful possession of Xucuru indigenous territory through the removal of non-indigenous occupants and the effective protection of the territory against third parties.<sup>72</sup>*

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67. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 148.

68. *Id.* ¶ 149.

69. *Id.*

70. *Id.* "declares" ¶ 4.

71. *Id.* ¶ 115.

72. *Id.*

*The Court acknowledged the State's effort to remove non-indigenous people from the Xucuru land.<sup>73</sup> However, the confirmation and registration of the land was slow and authorized the presence of non-indigenous occupants.<sup>74</sup> The State's unnecessary delay was an aggravating factor and caused tension and violence to ensue between the indigenous and non-indigenous people.<sup>75</sup> The State's failure to present evidence of the process it used to remove non-indigenous people from Xucuru land led to the Court's determination that the State's procedures were ineffective overall.<sup>76</sup>*

*The fact that the Xucuru people were given formal recognition of the collective property of their ancestral land since November 2005 was not enough to persuade the Court that they were also guaranteed the right to the entire territory.<sup>77</sup> Both legal actions filed by non-indigenous people challenging the administrative process of demarcation directly impacted the Xucuru's rights to legal ownership over their collective territory.<sup>78</sup> The Court acknowledged the State was not responsible for legal actions taken by independent third parties, but held the State responsible for the excessive duration of both actions, which the Court did not consider to be complex.<sup>79</sup>*

*The State's ineffective processing of the case implied a direct violation of the Xucuru's right to their property because the State failed to effectively guarantee their property rights and failed to provide the Xucuru Indigenous People with legal security in their ancestral land.<sup>80</sup> Thus, the State violated rights established in Articles 25 (Right to Judicial Protection) and 21 (Right to Property), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention.<sup>81</sup>*

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73. *Xucuru Indigenous People and its Members v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 153.

74. *Id.* ¶ 154.

75. *Id.*

76. *Id.* ¶ 155.

77. *Id.* ¶ 156.

78. *Id.* ¶¶ 157-158.

79. *Xucuru Indigenous People and its Members v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 159-160.

80. *Id.* ¶¶ 161-162.

81. *Id.* ¶ 162.

The Court found unanimously that Brazil did not violate:

Article 2 (Obligation to Give Domestic Legal Effect to Rights) in relation to Article 21 (Right to Property) of the Convention, to the detriment of Xucuru Indigenous People,<sup>82</sup> because:

*Pursuant to Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, States have a duty to modify their domestic law as necessary to ensure that the treaties they accede to have effect domestically.*<sup>83</sup>

*The Court noted the absence of evidence of conflict between State law and the protections in the Convention*<sup>84</sup> *Thus, the Court held the State was not responsible for violating its obligation to adapt domestic law to ensure the Convention had effect domestically, as established in Article 2 (Obligation to Give Domestic Legal Effect to Rights), in relation to Article 21 (Right to Property) of the Convention.*<sup>85</sup>

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Xucuru Indigenous People,<sup>86</sup> because:

*Article 5(1) (Right to Physical, Mental, and Moral Integrity) protects the physical, mental, and moral integrity of individuals, which ranges from prohibiting torture to prohibiting other types of harassment and degrading treatment.*<sup>87</sup> *The Court considers the personal characteristics of each alleged victim when analyzing whether the State violated the right to personal integrity.*<sup>88</sup> *To satisfy this obligation, a state must reasonably prevent human rights violations, and investigate all violations within the scope of its jurisdiction, identify and sanction those responsible for such violations, and ensure adequate reparation for victims of human rights violations.*<sup>89</sup>

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82. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, "declares" ¶ 5.

83. *Id.* ¶ 163.

84. *Id.* ¶ 165.

85. *Id.* ¶ 166.

86. *Id.* "declares" ¶ 6.

87. *Id.* ¶ 171.

88. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 171.

89. *Id.* ¶ 172.

*The Court noted the existence of tension and violence during the lengthy demarcation and removal of non-indigenous people from the Xucuru territory, however, the Court explained the Commission failed to identify specific facts that the State violated the Xucuru's personal integrity.<sup>90</sup> Thus, the State did not violate the right to personal integrity established in Article 5(1) (Right to Physical, Mental, and Moral Integrity) of the Convention, in relation to with Article 1(1) (Obligation of Non-Discrimination) of the same instrument.<sup>91</sup>*

### C. Dissenting and Concurring Opinions

[None]

## IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

### A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

#### 1. Judgment as a Form of Reparation

The Court noted that the Judgment itself is a form of reparation.<sup>92</sup>

#### 2. Guarantee the Right to Collective Property

The Court ordered the State must effectively guarantee the Xucuru Indigenous Peoples' right to collective property of their land to ensure they do not suffer intrusion or interference by third parties or State authorities who impair the value, use or enjoyment of the land.<sup>93</sup>

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90. *Xucuru Indigenous People and its Members v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 181.

91. *Id.*

92. *Id.* “and provides” ¶ 7.

93. *Id.* “and provides” ¶ 8.

### 3. Remove All Non-Indigenous Occupants

The State must compensate and remove all remaining non-indigenous occupants from Xucuru land.<sup>94</sup> If the State cannot guarantee full, effective control to the Xucuru People over their land, the State must provide them with alternative land of similar or greater quality at no extra cost.<sup>95</sup>

### 4. Publish the Judgment

The State must publish the Judgment within six months of the Judgment and publish the Official Summary of the Judgment in a newspaper of large national circulation and in the Official Gazette.<sup>96</sup> The Court required the Judgment be published on an official State website for one year, and noted the State must immediately notify the Court once each publication is made available regardless of any time period restriction.<sup>97</sup>

#### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

[None]

#### 2. Non-Pecuniary Damages

The Court awarded non-pecuniary damages of \$1,000,000 to the Petitioners to be distributed in a Community Development Fund so that they may decide how they want to use the money to benefit their community.<sup>98</sup>

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94. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, “and provides” ¶ 9.

95. *Id.* ¶ 196.

96. *Id.* “and provides” ¶ 10.

97. *Id.* ¶¶ 199-200.

98. *Id.* ¶¶ 211-12.

### 3. Costs and Expenses

The Court awarded \$10,000 to representatives of the Xucuru Indigenous People for costs and expenses for the work in the litigation of the case.<sup>99</sup>

#### 4. Total Compensation (including Costs and Expenses ordered):

\$1,010,000.

### C. Deadlines

The State must immediately guarantee the Xucuru Indigenous Peoples' right to collective property of their land.<sup>100</sup>

The State must remove all non-indigenous occupants from Xucuru territory within eighteen months from the date of the Judgment.<sup>101</sup>

The State must publish the Official Summary and the Judgment within six months from the date of the Judgment.<sup>102</sup>

Within one year from the Judgment, the State must provide the Court with a report on the measures it took to comply with the Judgment.<sup>103</sup>

The State must make all payments for damages and for the reimbursement of costs and expenses within eighteen months from the date of the Judgment.<sup>104</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

**November 22, 2019:** The Court found the State fully complied with its obligation to publish the Judgment.<sup>105</sup> The Court found that the State had

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99. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 216.

100. *Id.* ¶ 193.

101. *Id.* “and provides” ¶ 9.

102. *Id.* ¶ 199.

103. *Id.* “and provides” ¶ 12.

104. *Id.* ¶ 212.

105. Xucuru Indigenous People and its Members v. Brazil, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. “Considering That,” ¶ 4-7 (Nov. 22, 2019).



not completed its obligations to: (1) fully guarantee the right to collective property of the Xucuru Indigenous People, (2) complete the process to fully remove all non-indigenous people occupying indigenous land, and (3) compensate victims and reimburse costs and expenses.<sup>106</sup>

The Court will continue to monitor the State's compliance with its remaining obligations.<sup>107</sup> The Court requested that the State submit a report by February 21, 2020, outlining measures taken to comply with its remaining obligations.<sup>108</sup>

## VII. LIST OF DOCUMENTS

### *A. Inter-American Court*

#### 1. Preliminary Objections

[None]

#### 2. Decisions on Merits, Reparations and Costs

Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 346, (Feb. 5, 2018).

#### 3. Provisional Measures

[None]

#### 4. Compliance Monitoring

Xucuru Indigenous People and its Members v. Brazil, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Nov. 22, 2019).

#### 5. Review and Interpretation of Judgment

[None]

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106. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, "Resolves" ¶¶ 2(a)-(d).

107. *Id.*

108. *Id.* "Resolves" ¶ 3.

*B. Inter-American Commission*

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

Xucuru Indigenous People v. Brazil, Admissibility Report, Report No. 98/09, Inter-Am Comm'n H.R., Pet. No. 4355-02, (Oct. 29, 2009).

3. Provisional Measures

[None]

4. Report on Merits

Xucuru Indigenous People v. Brazil, Report on Merits, Report No. 44/15, Inter-Am Comm'n H.R., Case No. 12.728, (July 28, 2015).

5. Application to the Court

Xucuru Indigenous People v. Brazil, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.728, (Mar. 16, 2016).

VIII. BIBLIOGRAPHY

[None]