

Institution: Inter-American Commission on Human Rights
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Session: Ninty-Seventh Regular Session (29 September – 17 October 1997)
Title/Style of Cause: Newton Coutinho Mendes, Moacir Rosa de Andrade, Jose Martins dos Santos Gilvan, Juscelino Rosa da Silva, Valdemir Soarez Pereira, Benedito Rodrigues Costa, Henri Burin des Roziere, Ricardo Rezende Figueroa et al. v. Brazil
Doc. Type: Decision
Decided by: Chairman: Ambassador John Donaldson;
First Vice Chairman: Dr. Carlos Manuel Ayala Corao;
Second Vice Chairman: Professor Robert Kogod Goldman;
Members: Ambassador Alvaro Tirado Mejia, Dr. Oscar Lujan Fappiano, Dean Claudio Grossman.
Commissioner Helio Bicudo, a Brazilian national, did not participate in the consideration and vote on this report, pursuant to Article 19(2)(a) of the Commission's Regulations.
Dated: 1 October 1997
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I. REPORT RECEIVED BY THE COMMISSION

A. Facts Alleged

1. On November 18, 1994, the Inter-American Commission on Human Rights (The Commission) received a communication alleging the murders of Newton Coutinho Mendes, Moacir Rosa de Andrade, Jose Martins dos Santos and his son Gilvan, the attempted murder of Juscelino Rosa da Silva and his wife, Ana Beatriz, the kidnapping and beatings of Valdemir Soarez Pereira, as well as the death threats against the priests Benedito Rodrigues Costa, Henri Burin des Roziere, Ricardo Rezende Figueroa, and others in Xinguara and Rio Maria, State of Pará, Brazil since April 1994.

2. The communication alleges that a death squad (grupo de exterminio) formed by large ranchers from southern Pará has been murdering persons involved in or suspected of being involved in land occupations in the region. It also received information that these persons were alleged to be part of a "list of persons marked for death," known as the "Xinguara list," drawn up by those large ranchers, and including the names of dozens of persons. The complaint alleged that this death squad was responsible for the murder of the following persons:

- (a) Newton Coutinho Mendes, small merchant, in April 1994 was murdered when he was outside his house.
- (b) Moacir Rosa de Andrade, a small landowner was murdered on June 5, 1994, at the door of a bar.
- (c) José Martins dos Santos, butcher, and his son, Gilvan Martins dos Santos were murdered on June 27, 1994.

3. The complaint further alleges that the same group had also attempted to murder Juscelino Rosa e Silva, a small landowner, and his wife Ana Beatriz, on April 6, 1994, when they were travelling by motorcycle from Xinguara to Rio Maria, as well as Father Ricardo Rezende, the parish priest of Rio Maria.

4. Finally, the complaint alleges that said death squad also threatened and intimidated a series of persons, including Father Ricardo Rezende; Father Benedito Rodrigues Costa, parish priest of Xinguara; and Fray Henri Burin des Roziers.

5. One of the persons accused of being liable for these violations is rancher Jerônimo Alves de Amorim, owner of the Fazenda Nazaré, who ordered that several crimes be carried out. It appears that Jerônimo Alves de Amorim was assisted by his ranch managers, Wanderley Borges de Mendonça and "Velho Luiz," as well as hired gunmen, including Ademir Rodrigues da Fonseca and Geraldo Mendes. According to the complaint, Alves de Amorim was also assisted by the Military Police and the Civilian Police, who he bribed in exchange for their guarantee of impunity.

6. Also alleged to have ordered crimes was rancher José Luiz de Freitas, President of the Rural Union of Xinguara, who was assisted by hired gunman Getúlio Batista.

B. Exhaustion of Domestic Remedies

The general guideline of inefficiency, impossibility of access and unjustified delay in the resources of the internal jurisdiction

7. In the interest of establishing the application of Art. 46.2--the inexistence of effective resources, the difficulties of access to the justice and the unjustified delay with which same operates, the petitioner reports that from 1980 to the date of the complaint, 190 rural workers were murdered in southern Pará, and that there are compelling indications that these crimes have been organized by large ranchers of the region.

8. The following are alleged to be some examples of these crimes:

- (a) the murders of João Canuto de Oliveira[FN1], President of the Rural Workers' Union (Sindicato dos Trabalhadores Rurais, "STR") of Rio Maria, on December 18, 1985, as well as two of his sons, José and Paulo Canuto de Oliveira, on April 22, 1990;
- (b) the attempted murder of another son of João Canuto de Oliveira, Orlando Canuto de Oliveira, also on April 22, 1990;

- (c) the kidnapping and homicide of Braz Antonio de Oliveira, former director of the STR and of Ronan Rafael Ventura, on April 3, 1990;
- (d) the murder of Expedito Ribeiro de Souza, President of the STR, on February 2, 1991;[FN2]
- (e) the attempted murder of Carlos Cabral, also President of the STR, on March 4, 1991.[FN3]

[FN1] This case is now before the IACHR.

[FN2] In 1995, the material authors of this murder, Francisco Ferreira and José Serafim, were given 21- and 25-year prison sentences, respectively.

[FN3] The confessed material author of this crime, Paulo César Pereira, was sentenced to two years' probation. The petitioner alleges that despite irregularities in the judicial process, the Public Ministry failed to appeal.

9. The petitioner also alleges that in most of the 190 cases no police investigation was undertaken; and where inquiries were initiated, few were concluded, and only after lengthy delays. An example of this is the case of João Canuto de Oliveira; the inquiry was initiated in December 1985 but was not concluded until July 1993, i.e. eight years later, and up to the date of this complaint; the Public Ministry has brought no action in this case. Petitioner alleges that nine years after the crime occurred, the chances of securing a guilty verdict for the persons responsible are much diminished.

10. It is alleged that in only two cases was there a guilty verdict, and that even so, neither of the two persons found guilty is serving time in prison. The intellectual authors were never found guilty, despite the persistent complaints of their involvement as well as the indicia that they were responsible.

11. In addition, it is alleged that among the obstacles set to due process and access to judicial guarantees, many arrest warrants ordered for suspects are not executed, as for example the arrest warrants for ranchers José Luiz de Freitas, Jerônimo Borges de Mendonça, managers Wanderley Borges de Mendonça and "Velho Luiz," and gunmen Ademir Rodrigues da Fonseca and Geraldo Mendes. In relation to these last five suspects, the petitioner reports that the preventive arrest warrants were announced beforehand by the local press, facilitating their escape.

12. On December 16, 1994, the murderers of unionist Expedito Ribeiro de Souza, Francisco de Assis Ferreira, and José Serafim Sales, were sentenced to 21 and 25 years imprisonment, respectively.

13. It is reported that when the warrants were executed, the suspects fled the jail easily. The escapees included police officer Edson Matos dos Santos, accused of the crime against the Canuto brothers, who fled on January 11, 1992; Marivaldo Ribeiro da Silva, a witness to the same crime, who fled August 26, 1991, from the police station at Curianópolis. José Ubiratan Matos Ubirajara, one of the material authors of this crime, sentenced to a 50-year prison term on April 28, 1994, fled less than six months later, on October 24, 1994.

14. Finally, it is also alleged that the police authorities were accomplices, as they were bribed by the large ranchers to ensure the crimes would meet with impunity, or to assist in carrying out the crimes, and that the police had full knowledge of the "Xinguara list," and knew the names of the persons threatened.

15. The petitioner alleges that all these difficulties obstruct and deny justice, render the domestic remedies ineffective, plainly stand in the way of enforcement of the law, and perpetuate impunity. In this context, the petitioner calls on the Commission to find that domestic remedies have been exhausted, by applying the exception to this requirement set forth in Article 46(2)(b) and (c) of the American Convention.

16. Bearing in mind all these serious events, the petitioner alleges that the Brazilian State has violated the American Convention at Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection), all in conjunction with Article 1(1) (obligation to respect the rights), requiring that a case be opened against the state.

C. EXHAUSTION OF DOMESTIC REMEDIES

Complaints to the authorities

17. The petitioner reports that Brazilian justice was incapable of acting effectively in these cases, and that this resulted from the fact that the local authorities (military police, civilian police, public ministry, judge) were directly involved with organized crime, and were accomplices by act or omission. This complicity of the authorities in the crime frightens the victims and their family members, who refuse to denounce the crimes to the municipal authorities. However, several complaints were brought to the state and federal authorities, which tried to take some measures, without much success.

18. On June 30, 1994, Valdemir Soares, the mechanic who had been kidnapped and beaten, gave testimony before the Office of the Attorney General, in Brasília, in the presence of the Attorney General Alvaro Augusto Ribeiro da Costa.

19. On September 13, 1994, in Belém, a petition was delivered to the governor of the State of Pará with 3,800 signatures denouncing the violence and the omissions of the authorities in the south of Pará, as well as the existence of the "Xinguara list," and asking that measures be taken.

20. On September 13, 1994, that same petition was delivered in Brasília by the Pax Christi International Commission to the Attorney General and the Ministry of Justice.

21. On September 21, 1994, gunman Getúlio Batista da Silva confessed in a deposition to the Civilian Police of Paraúna, Goiás, that he had been contracted by José Luiz de Freitas, President of the Rural Union of Xinguara, to assassinate two persons, one of them Father Ricardo Rezende, alleged by this petition to be victim of death threats. On that occasion, Getúlio Batista was held in preventive detention at the Paraúna police station.

22. On September 29, 1994, a commission of members from the workers' union, one pastoral worker, and Father Rezende lodged new complaints with the Secretary for Public Security in Belém, Alfredo Santalice.

23. On October 20, 1994, victim Juscelino Rosa da Silva offered a deposition to the special officer of the Civilian Police of Belém at the church of Xinguara. In his testimony, he reports on the gunmen, on the persons ordering the crimes, and the circumstances of the attempt on his life. Despite this, the chief of the local police district did not order an examination of the corpus delicti.

24. On October 22, 1994, Cícero Coelho da Silva, who had been hired to work as a driver on the Fazenda Nazaré, was taken to Marabá after an attack in which he suffered four gunshot wounds, for the examination of the corpus delicti. On October 25, 1994, Cícero Coelho da Silva went to the Office of the Attorney General in Brasília where he made a statement in the presence of Attorney General Alvaro Ribeiro da Costa. In this statement he confirmed the existence of a death squad made up of hitmen from the ranch owned by Jerônimo Alves de Amorim, and also provided the names of several hitmen and victims. He confirmed the complicity of the military and civilian police with crime in the region, as they had distributed the photographs of the persons threatened in the "Xinguara list" to the hitmen.

25. Cícero Coelho da Silva also stated that he had heard a phone call between the above-mentioned rancher and his manager, in which the rancher said he was concerned because he had given money to the colonel and the lieutenant of the Military Police of Xinguara to throw the invaders off his ranch, but that they had not done so.

B. Measures taken by the authorities

26. In September 1994, the Secretariat for Public Security of the State of Pará decided to send an investigative mission made up of members of the Military Police of Pará to the Xinguara and Rio Maria region. As of that month, Father Ricardo Rezende began to receive protection from the Military Police of Pará, as well as from the Federal Police. In addition, a police inquiry was begun to determine responsibilities in the attempt on Father Rezende's life.

27. On September 21, 1994, a judge from Paraúna, Goiás, issued an arrest warrant for José Luiz de Freitas. The police officer for Paraúna asked the officer for Xinguara to execute the arrest warrant, but the latter did nothing, and the suspect fled.

28. As of October 10, 1994, agents of the Federal Police, and of the Civilian Police from Belém, began to arrive in the region to carry out investigations.

29. On October 24, 1994, judge João Batista do Nascimento, of Xinguara, issued a warrant for the arrest of rancher Jerônimo Alves do Amorim, managers Wanderley Borges de Mendonça and "Velho Luiz," and hitmen Ademir Rodrigues da Fonseca and Geraldo Mendes. Nonetheless, these arrest warrants were leaked to the press, enabling the accused to flee. Nothing was done to stop them.

30. On December 5, 1994, the Public Ministry in the judicial district of Xinguara presented its complaint against Jerônimo Alves de Amorim, Wanderley Borges de Mendonça, Ademir Rodrigues da Fonseca, and Geraldo Mendes, as the persons responsible for the deaths of José Martins dos Santos and his son, Gilvan dos Santos.

31. In September 1995, Fray Henri des Roziers was given police protection to safeguard his life and personal integrity.[FN4]

[FN4] This protection had already been offered to him several times by the government of the state of Pará, in light of the threats against him. Nonetheless, he always refused these offers.

32. In November 1995, Wanderley Borges de Mendonça[FN5] was preventively arrested, accused of the homicides of João Martins dos Santos and his son, Gilvan dos Santos. Nonetheless, he fled on April 1, 1996, along with 10 other prisoners; Civilian Police officer Lucival Haroldo Sampaio Cruz was responsible for the escape, charged to have received bribes for \$25,000 (reales) and a new car. Wanderley Borges de Mendonça, along with another dangerous prisoner, left through the front door of the jail, and was taken away by Lucival Haroldo, in a police car.

[FN5] Wanderley Borges de Mendonça was already sentenced to 18 years in December 1994 for the 1988 murder of a judge in Mara Rosa, Goiás.

33. On May 25, 1996, the judge of Xinguara issued a warrant for the arrest of police officer Lucival Haroldo Sampaio Cruz, but the officer-general of the Civilian Police of Pará, Brivaldo Soares, failed to execute the warrant. When a warrant was issued for his arrest, he was a member of the Civilian Police force of Belém, until he escaped.

34. On July 10, 1996, the judge of Xinguara, Elder Lisboa Ferreira da Costa, suspended the proceedings for determining the responsibility of investigator Lucival Haroldo Sampaio Cruz in the escape of Wanderley Mendonça and 10 other prisoners, and determined that the proceedings should be removed to the President of the Court of Justice of the State of Pará, to appoint another judge to sit in the matter.[FN6] Since then, the proceedings have been at a standstill.

[FN6] Criminal process no. 011/96.

II. PROCESSING BEFORE THE COMMISSION

A. Processing of the complaint

35. The complaint was submitted November 18, 1994, and the Commission began processing the case on November 21, 1994, by sending a copy of the complaint to the Government and giving the Government 90 days to submit its answer.

36. The Government answered on May 22, 1995, after several requests to extend the deadline[FN7], which were granted by the Commission. In its answer the Government reported that in September 1994 the Secretariat for Public Security of the State of Pará had decided to send an investigative mission by Military Police of the State of Pará, to the Xinguara and Rio Maria region and also, as of that date, to provide police protection to Father Ricardo Rezende. The answer added that in response to the murders of José Martins dos Santos and his son, Gilvan dos Santos, the public ministry of the State of Pará had brought a complaint against rancher Jerônimo Alves de Amorim, Wanderley Borges de Mendonça, Ademir Rodrigues da Fonseca, and Geraldo Mendes. It alleged that the fact that these measures were taken meant that domestic remedies had not been exhausted.

The Government did not report whether there was any action by the Public Ministry or the police authorities in respect of the murders of Newton Coutinho Mendes, Moacir Rosa de Andrade, José Martins dos Santos and his son, Gilvan dos Santos, nor in respect of the attempted murder of Juscelino Rosa e Silva and his wife Ana Beatriz. Nor did it provide information on the kidnapping and beating of Valdemir Soares Pereira and the threats against Father Ricardo Rezende, Father Benedito Rodrigues Costa, and Fray Henri Burin des Roziers.

[FN7] The requests were made on February 21, 1995, March 21, 1995, and April 27, 1995.

37. On May 22, 1995, the Commission transmitted a copy of the Government's answer to the petitioner.

38. On August 15, 1995, the Commission received the observations of the petitioner to the Government's answer. In these, the petitioner rebuts the Government's argument on the exhaustion of domestic remedies, citing Article 46(2)(b) of the American Convention, and asks that the case be taken further. Petitioner argues that of the 190 rural workers assassinated since May 1980, no intellectual author of these crimes has been convicted, and only two material authors have been convicted, both of whom, however, are still free.

39. On September 8, 1995, the Government also reported that understandings had been reached for the establishment of a direct channel of information between the Ministry of Justice and the authorities of the State of Pará to combat rural violence in the South of Pará. That same day, a hearing was held on this case, and the Commission made itself available to the parties to seek a friendly settlement in accordance with Article 48.1.f of the Convention.[FN8] This stage was exhausted without the parties reaching any agreement.

[FN8] The hearing was held during the 90th regular session.

40. On October 5, 1995, the Commission forwarded the petitioner's observations to the Government, and gave it 30 days to submit its final observations.

41. On October 23, 1995, the Commission once again asked the Government to report within 45 days if it wanted to seek friendly settlement, taking into account the hearing held before the Commission on September 8, in which the Commission had made itself available to the parties to help reach such an agreement. The Government did not report within the time period given, or afterwards, so that stage was concluded without the parties reaching agreement.

42. On November 3, 1995, the petitioner provided additional information to reaffirm the complicity of the Civilian Police of Goiás and Pará with crime in the region. Petitioner reported that the Director General of the Civilian Police for the State of Goiás had written a letter on sealed paper of the Police to his counterpart in Pará, to ask that protection be provided to rancher Jerônimo Alves de Amorim, one of the leading suspects in the crimes alleged, who was supposedly being subjected to persecution. This would suggest the involvement of the civilian police in crime and impunity in the region, and also highlight the major difficulties hindering enforcement of the law, as Jerônimo Alves de Amorim should be under arrest.

43. On April 8, 1996, the Government also reported that rancher Jerônimo Alves de Amorim was at large and that he is also responsible for the murder of trade unionist Expedito Ribeiro de Souza, a victim who is not a subject of this petition. It reports that Francisco Ferreira and José Serafim were sentenced to 21 and 25 years, respectively, for this crime.

44. On April 10, 1996, the petitioner also reported that Wanderley Borges de Mendonça, who was finally preventively arrested in November 1995 for the murders of João Martins dos Santos and his son, Gilvan dos Santos, had escaped from jail on April 1, 1996, along with other prisoners. It reported that the civilian police facilitated these escapes, as all escaped through the front door of the jail at the Civilian Police Station in Xinguara, and that the Civilian Police officer in charge of security at the jail was absent at that time.

45. On April 17, 1996, the Commission reiterated to the Government of Brazil its request to provide its final observations on this case within 30 days.

46. On October 7, 1996, at its 95th Regular Session, the Commission held a hearing in which it once again made itself available to the parties to reach a friendly settlement. This stage was exhausted without the parties reaching agreement.

47. On December 9, 1996, the petitioner asked the Commission to prepare the report provided for in Article 50 of the American Convention.

48. On February 12, 1997, the Commission received a petition from the Pastoral Land Commission (Comissão Pastoral da Terra), providing information on the standstill in the criminal proceedings aimed at determining the responsibility of Civilian Police officer Lucival Haroldo Sampaio Cruz in the escape of Wanderley Borges de Mendonça and 10 other prisoners from the jail in the Xinguara police station, on March 30 and April 1, 1996.

B. Precautionary Measures

49. The complaint submitted by the petitioners on November 18, 1994, contained not only a request to open a case against the Brazilian State, but also, in view of the danger faced by the persons on the "Xinguara list," and the urgent need to protect their lives and personal integrity, the petitioner requested that the Commission call on the Government of Brazil to adopt precautionary measures.

50. On February 15, 1995, the petitioner also reported that Father Ricardo Rezende, who had left the region due to the threats against him, was going to return to Rio Maria, and that consequently it was reiterating the request for precautionary measures.

51. On February 17, 1995, the Commission asked the Government of Brazil to adopt precautionary measures to protect the life and personal integrity of Father Ricardo Rezende. The Commission also requested that information be sent on the measures adopted in this regard.

52. In its answer of May 22, 1995, the Government reported that in September 1994 the Secretariat for Public Security of the State of Pará had decided to send the investigative mission, made up of members of the Military Police of Pará, to the region of Xinguara and Rio Maria. It added that in response to the attack on Father Rezende in Rio Maria, the Office of the Attorney General had filed a complaint, giving rise to a judicial proceeding. It reported that from that time on, Father Ricardo Rezende had been assigned protection by the Military Police of the State of Pará, as well as the Federal Police. It also reported that the federal authorities were closely monitoring the threats against him.

53. On August 15, 1995, the petitioner reported that Matias de Souza Cavalcante, another of the persons on the "Xinguara list," had been murdered on June 20, 1995. It argues that this death once again reaffirmed the danger of death facing the persons on that list; consequently, it reiterated the request for precautionary measures to protect all the persons whose names are on the list, not just Father Ricardo Rezende.

54. On October 6, 1995, the petitioner further reported that the hitman "Lampião," of the Fazenda Nazaré, owned by Jerônimo Alves de Amorim, had gone to Rio Maria on August 30, 1995, to intimidate the residents of the region, as the trial of the persons accused of killing Expedito Ribeiro da Silva was to take place on that day. The petitioner reiterated once again the need to request precautionary measures to protect the lives of the persons threatened.

55. On October 24, 1995, the Government reported that the Governor of the state of Pará had determined that the military police and the civilian police would provide protection for the life and personal integrity of Father Ricardo Rezende, in Rio Maria and in Xinguara. It also reported that Father Rezende had been in regular contact with the representatives of the Office of the Attorney General to ensure that the federal authorities could closely follow the question of the threats against him.

56. On November 3, 1995, the Commission asked the petitioner to provide the name of all the members of the "Xinguara list," so that the Commission could request that the precautionary measures be extended to all the persons threatened, not only Father Ricardo Rezende.

57. On November 3, 1995, on providing additional information the petitioner reaffirmed that a death squad had been hired and organized by large ranchers of southern Pará and that Jerônimo Alves de Amorim had hired more gunmen, who were to come from the State of Goiás to work on his ranch, in southern Pará. The petitioner attached documents aimed at verifying the facts alleged, as well as the danger faced by the persons threatened. As regards the "Xinguara list," petitioner reported that the list was found at the Fazenda Nazaré and that the local police knew whose names were on the list. Even so, the petitioner had not gained access to most of the names of the persons threatened due to the complicity of the police with the criminals.

58. Petitioner further reaffirmed that the persons against whom the judge of Xinguara had issued arrest warrants were free, and that this was due to the irregular acts of the civilian and military police. Finally, it reiterated to the Commission its request that it call on the Government to adopt precautionary measures to protect the lives of the persons threatened in the "Xinguara list."

59. On March 20, 1996, the Commission asked the Government to adopt the precautionary measures, mentioning Fray Henri des Roziers as among the persons threatened. It requested more specifically that:

- (a) the agents entrusted with protecting the persons threatened by the "Xinguara list," including Father Ricardo Rezende, be trained in the use of firearms, and that they be adequately armed so as to guarantee effective protection for the persons threatened;
- (b) the individuals for whom preventive arrest warrants have been issued be detained;
- (c) the persons responsible be tried and punished; and,
- (d) the actions taken in this respect be reported.

60. On April 8, 1996, the Government reported, in respect of the precautionary measures requested, that Fray Henri des Roziers had been given police protection. It also reported that rancher Jerônimo Alves de Amorim was still at large, and that he was may well be responsible, as the one giving orders, for the murder of unionist Expedito Ribeiro de Souza as well.[FN9] It also reported with respect to this crime that the material authors, Francisco Ferreira and José Serafim, were sentenced to 21 and 25 years, respectively. The Government failed to report, however, whether they were serving the sentences or free.

[FN9] The murder of this victim was not the subject of the complaint.

61. On April 23, the Commission reiterated to the Government of Brazil its request for precautionary measures pursuant to which the Government of Brazil would detain persons whose arrest had been ordered, specifically naming Jerônimo Alves de Amorim, "Velho Luiz," "Adão de Tal," Ademir Rodrigues da Fonseca, Geraldo Mendes, and Wanderley Borges de Mendonça.

It further asked that the persons responsible for these crimes be tried and punished; and that measures be adopted aimed at protecting the life and integrity of Mrs. Carneiro and her family. Mrs. Carneiro is the widow of João Dos Santos, and mother of Gilvan Santos. she gave a deposition to the Commission about the two murders. In this respect, if the involvement of the civilian police in the escape of Wanderley Borges de Mendonça is confirmed, the Commission requested that the protection for Mrs. Carneiro be provided by a police force other than the Pará civilian police.

62. On August 1, 1996, the Commission informed the Government that it had received a communication affirming the involvement of the Civilian Police officer Lucival Haroldo in the escapes of Wanderley Borges de Mendonça and of the other prisoners. Given this situation, the Commission noted that the Government of Brazil should adopt urgent measures to detain, try, and punish him, and also to report on the measures adopted in respect of the April 23, 1996 request that urgent measures be adopted.

III. POSITION OF THE PARTIES ON ADMISSIBILITY

A. Position of the Government

63. The Government alleges that the domestic remedies have not been exhausted, as the representative of the public ministry in Xinguara had submitted a complaint regarding the murders of two of the victims, José Martins dos Santos and his son, Gilvan dos Santos, and that the police inquiry on the attempted murder of Father Ricardo Rezende had concluded. It also reported on other measures taken in relation to the cases set forth in the complaint, as indicated in paragraph 22.

B. Position of the Petitioner

64. The petitioner alleges that the domestic remedies are totally ineffective and that security in the region is continuously threatened and that this pattern allows the Commission to accept the exception as per Article 46.2.a and b. of the Convention. Proof of this is the fact that there was no police investigation of most of the 190 homicides of rural workers from 1980 to the date of the complaint. In addition, the ease with which the suspects fled the jail, the complicity of the police authorities, who are easily bribed, with crime in the region, keeping the few persons of those responsible who were found guilty free, and the fear inspired by the power of the large ranchers and their continuous threats, all obstruct justice and render any domestic remedies ineffective.

65. The petitioner also alleges that there is an unjustified delay in concluding the few inquiries that are opened. This is the case in the murder of João Canuto de Oliveira; he was murdered in 1985, yet the inquiry was not concluded until 1993.

66. Therefore, the exception to the requirement of exhaustion of domestic remedies provided for at Article 46(2)(b) and (c) of the American Convention applies in this case.

IV. GENERAL CONSIDERATIONS

A. The Commission's Jurisdiction

67. The Inter-American Commission on Human Rights has jurisdiction to hear this case, as it alleges violations of human rights recognized by the American Convention on Human Rights at Articles 4, 5, 8, and 25, all in conjunction with Article 1(1) of the Convention, as well as Articles 1 and 18 of the American Declaration of the Rights and Duties of Man.

68. This complaint meets the formal requirement of admissibility provided for at Article 46(1)(c) and (d) of the Convention, as the subject matter of the complaint is not pending in another international proceeding for settlement. In addition, it meets the requirement set forth in paragraph (d), as it contains the name and signature of the legal representative of the entity submitting the complaint, a non-governmental organization legally recognized in one or more member states of the Organization, and its name and address are set forth. Consequently, the Commission considers this requirement met.

B. Exhaustion of Domestic Remedies

69. Pursuant to Article 46(1)(a) of the American Convention, for a petition to be admitted by the Commission, it is necessary "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." Paragraph (b) of this Article requires that the complaint have been "lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment."

70. Nonetheless, Article 46(2) provides that the provisions of Article 46(1)(a) and (b) shall not apply 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.

71. In this respect, the Government of Brazil invoked a preliminary objection of failure to exhaust domestic remedies, based on the fact that a judicial proceeding was opened into the murders of two of the victims, and that the inquiry with respect to one of the cases of attempted murder had been concluded. It argues that the complaints are still being processed.

72. The petitioner, for its part, alleged that domestic remedies are ineffective as there has been verified it exist a pattern of impunity, reflecting the absence of judicial process and guarantees as well as the lack of effective access to judicial remedies, as the murders have been occurring since 1980, and to date the perpetrators of these crimes are free, no judicial proceedings have been brought to determine responsibilities, and the police have yet to open

inquiries to investigate the facts. When there is a police investigation, seldom is it concluded, and only after much delay.

73. Petitioner alleges that access to justice is still blocked due to the complicity of the public authorities with organized crime in the region. This complicity entails various consequences, which range from the victims' fear, in the face of the threats, to come forward with the story, to the omission on the part of the police in failing to act to prevent and investigate crimes. Petitioner argues that justice is thus obstructed, that arrest warrants are simply ignored by the authorities, who even facilitate and assist in the escape of the suspects arrested. In such circumstances, it is impossible to exhaust domestic remedies. In the few cases in which a judicial proceeding has reached its conclusion, and the accused have been found guilty, they are not serving their sentences; to the contrary, they continue absolutely free.

74. As the Inter-American Court of Human Rights highlights:

The rule of prior exhaustion of domestic remedies allows the State to resolve the problem under its internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction (American Convention, Preamble).[FN10]

[FN10] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 61.

75. In the instant case, the Government of Brazil limited itself to alleging the failure to exhaust such remedies, without answering the allegations related to the ineffectiveness of the remedies to which petitioner did have recourse.

76. Considering that the Government raised no objection to most of the petitioners' allegations, nor did it justify its own delay in deciding on the domestic remedies, nor its inaction in most of the cases, and the ineffectiveness of said remedies, merely reporting briefly on the existence of an inquiry not yet concluded, regarding an attempted murder of one of the victims (Father Ricardo Rezende), and a complaint brought by the public ministry of Xinguara, December 5, 1994, regarding two of the murders that occurred in the case in question, the Commission should reach its conclusions without the Government becoming even more actively involved than it already was.[FN11]

[FN11] Id., para. 137.

77. When the complaint was brought, the domestic remedies had not been set in motion by the Government, nor had effective police or judicial actions been taken in relation to any of the crimes denounced. Today, three years later, the situation of impunity in the region persists.

78. The lack of rigor with which the authorities conducted the limited investigations and executed the arrest warrants is also clearly shown in the face of the need to repeatedly request the adoption of precautionary measures to protect the lives and personal integrity of the persons threatened in the "Xinguara list." The continuous requests were made due only to the urgent attention required by the situation, as the authorities allowed the escape of the suspects who were arrested, and given the inertia characteristic of the limited investigations and the only judicial proceedings, the persons responsible for the crimes continued to be free and unimpeded from making further threats and from carrying out more crimes. In such circumstances, the very need for precautionary measures points to the ineffectiveness of domestic remedies.

79. The exceptions provided for at Article 46(2) of the Convention aim to guarantee international action when the domestic remedies and the domestic legal system are ineffective in assuring respect for the victims' human rights. This being the case, the formal requirement on the non-existence of domestic remedies that guarantee the principle of due process (Article 46(2)(a) of the Convention) refers not only to the formal absence of domestic remedies, but also to cases in which they prove inadequate. The denial (Article 46(2)(b) of the Convention) and the unjustified delay of justice (Article 46(2)(c) of the Convention), moreover, also have to do with the effectiveness of the remedies mentioned.[FN12]

[FN12] Pinto, Mónica, *La denuncia ante la Comisión Interamericana de Derechos Humanos*, Editores del Puerto, 1993, p. 64.

80. In this regard, generally recognized principles of international law refer to the formal existence of domestic remedies and to their adequacy in protecting the legal rights that have been infringed, as well as for producing the results for which they were designed.[FN13] For this reason, their exhaustion should not be understood as a need to mechanically take certain steps, but in each case the reasonable possibility of obtaining the remedy must be analyzed.[FN14] In this context, the right to adduce the failure to exhaust domestic remedies as the grounds for a declaration of inadmissibility of a complaint cannot lead to "a halt or delay that would render international action in support of the defenseless victim ineffective." [FN15]

[FN13] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, paras. 62-66; Case of Fairén Garbí and Solís Corrales, Preliminary Objections, March 15, 1989, paras. 86-90; Godínez Cruz Case, Judgment of January 20, 1989, para. 65-69.

[FN14] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 72; Case of Fairén Garbí and Solís Corrales, Preliminary Objections, March 15, 1989, para. 97; Godínez Cruz Case, Judgment of January 20, 1989, para. 75.

[FN15] Inter-American Court of Human Rights, Judgment of June 26, 1987, para. 95.

81. In other words, if there is an unjustified delay[FN16] in the procedure in respect of the domestic remedies, one can deduce that they ceased to be effective for producing the result for which they were designed, and that action in support of the "defenseless victim" is "rendered ...

ineffective."[FN17] In that event, the mechanisms of international protection should be applied, including the exceptions provided for at Article 46(2) of the Convention.

[FN16] This kind of delay has a negative effect on the effectiveness of domestic remedies, as it leads to a deterioration of the evidence, especially witness testimony, which after so many years may change, or there is a tendency to forget the facts. This no doubt limits the efficacy of proceedings whose purpose is to determine responsibilities and convict the persons guilty.

[FN17] Inter-American Court of Human Rights, Godínez Cruz Case, Judgment of June 26, 1987, para. 95.

82. In view of the foregoing, the Commission considers that the exception provided for at Article 46(2)(c) of the Convention, on the unjustified delay in criminal proceedings, applies in this case, considering that the executions have been happening since 1980. The Commission also considers that in view of the degree to which the public authorities are accomplices in the illegal activities in the region, the exception provided for at Article 46(2)(b), on the impossibility of gaining access to domestic remedies, also applies.

83. The Commission concludes, on this basis, that the exceptions to the exhaustion of domestic remedies established by Articles 46(2)(b) and (c) of the Convention are applicable to this case and, therefore, the petitioners are exempted from that admissibility requirement.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

84. To declare the complaint submitted in case 11.405 admissible, pursuant to Articles 46, 47, and 48 of the American Convention.

85. To send this report to the Government of Brazil and to the petitioners and to publish it in its Annual Report to the General Assembly of the OAS.