

Institution:	Inter-American Commission on Human Rights
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Title/Style of Cause:	Corumbiara v. Brazil
Doc. Type:	Decision
Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume. Commissioners: Alvaro Tirado Mejia, Claudio Grossman, Henry Forde. As prescribed in Article 19(2)(a) of the Commission's Regulations, Member of the Commission Helio Bicudo, of Brazilian nationality, did not participate in the discussions or the voting on this case.
Dated:	25 September 1998
Citation:	Corumbiara v. Brazil, Case 11.556, Inter-Am. C.H.R., Report No. 77/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
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## I. INTRODUCTION

1. On October 10, 1995, the petitioners filed a complaint with the Inter-American Commission on Human Rights (the Commission) against the Federative Republic of Brazil (the State, Brazil) for alleged violations under Articles 4, 5 and 1(1) of the American Convention on Human Rights (the Convention). These violations stemmed from an operation conducted by the Rondonia State military police and, according to the complaint, resulted in 13 people killed and 355 arrests. The State alleged the lack of exhaustion of domestic remedies.

## II. BACKGROUND

### A. Context

2. According to the petition, the ownership of the Santa Elina Hacienda, located close to the city of Corumbiará, was at issue and the subject of a legal dispute, which led to the organized and peaceful occupation of the hacienda by 540 families on June 15, 1995. The property's ownership was disputed by the Land Reform and Settlement Institute, which issued an opinion in favor of its being made available to settlers. However, the presiding judge ordered the return of the hacienda to its owner.

### B. Facts in the Complaint

3. According to the petition, negotiations between the Rondonia State police and the peasants concerning eviction were complex. Following a conversation in which the peasants were told to leave the hacienda, the police withdrew. Hours later, at dawn, the police returned and tried to forcibly evict the occupying families. An armed clash ensued in which the alleged police brutality occurred. This operation resulted in 11 farmworkers and two policemen killed, 53 injured, and 355 arrested. There were also complaints of abuse and torture by the police following the incident. Subsequently, on December 18, 1995, the scope of the complaint was broadened to include the murder of a municipal official from Corumbiará presumably linked to the earlier rights complaints.

### III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

#### A. Position of the Petitioner

4. The petitioners argue that there was an unwarranted delay in the judgment under the domestic remedies and that the investigation of the events had been extremely slow and prolonged. They allege that two and a half years have already passed and the Brazilian Government has yet to punish those responsible for the massacre. They seek to object under Article 46(2)(c) of the Convention and Article 37(1)(c) of the Commission's Regulations for unwarranted delay and failure to investigate and prosecute diligently. They mention that only two persons have been investigated; that the weapons used by the police agents have not been confiscated; and that the lieutenant colonel in charge of the police investigation felt, despite the weight of the evidence, that it was too early to order any kind of preventive custody.

#### B. Position of the State

5. In its first presentation, the State admitted that the police operation had resulted in the death of 12 peasants and in 353 arrests. On July 27, 1996, the State also reported that investigations were being conducted, that the proceedings would continue, and that the Secretary for Public Security and the Police Commander in Corumbiará had been dismissed on disciplinary charges for their roles in these events. Furthermore, a special investigative commission had been appointed. The State also alleged non-exhaustion of domestic remedies but did not identify the specific remedies that had not been exhausted in this case.

### IV. PROCEEDINGS BEFORE THE COMMISSION

6. The complaint, received by the Commission on October 6, 1995, was sent on March 28, 1996, with its pertinent parts to the Government, which requested and was granted an extension to answer. On June 27, 1996, the Government presented its comments, which were sent to the Petitioner.

7. On September 16, 1996, the Petitioner presented its reply, which was sent to the Government. The Government did not send a rejoinder, despite a reminder sent by the Commission on January 23, 1997.

8. Two hearings were held on October 7, 1996, and February 24, 1997, at which the parties set forth their positions. At the first hearing, the Commission offered to begin a friendly settlement procedure for the case but did not receive an affirmative response from the Government. At the second hearing, the offer was again made and additional information was received from the Petitioner. This information was presented to the Government at that proceeding and was then sent to it on March 11, 1998, with a request for its comments within 60 days. To date, no reply has been received.

## V. ADMISSIBILITY

### 1. Admissibility requirements

9. Under Article 44 of the Convention to which Brazil is a state party, the Commission is *prima facie* competent to hear this case, because it involves a claim that alleges human rights violations guaranteed by the Convention. The Petitioner has standing and has filed complaints alleging noncompliance by the Rondonia State agents with the rules established in the Convention, with consequent international liability for the Federative Republic of Brazil.

### 2. Characterization of the alleged violation

10. The Commission believes that Petitioner's statement essentially states facts that tend to establish a violation of rights guaranteed in the American Convention, and hence deems satisfied the requirements of Article 47(b) of the Convention.

### 3. International *lis pendens*

11. It is the understanding of the Commission that this claim is not pending in another proceeding, nor does it duplicate any petition already examined by the Commission or any other international organization.

### 4. Exhaustion of domestic remedies

12. The Commission's exhaustion-of-domestic-remedies requirement for accepting a petition is established in Article 46(1)(a) and (1)(b) of the Convention, with exceptions thereto set forth in Article 46(2), whenever:

- 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.

13. Under Article 37 of the Commission's Regulations, when the petitioner contends that he is unable to meet the requirement indicated in this article, it shall be up to the government, against which the petition has been lodged, to demonstrate to the Commission that the remedies

under domestic law have not previously been exhausted, unless it is clearly evident from the background information contained in the petition. In that connection, the Inter-American Court has established that the State alleging non-exhaustion has the burden of showing that there are domestic remedies to be exhausted and their effectiveness.[FN1] Thus, under the principle onus probandis incumbit actoris, the State must prove said remedies have not been exhausted or, failing that, indicate which remedies should be exhausted or explain why they have not been effective.

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[FN1] Inter-American Court of Human Rights, Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987.

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14. The State of Brazil has limited its allegation in this case to the non-exhaustion of remedies, without even listing the remedies that might be invoked or that would be effective in this particular case. Moreover, the allegations regarding the ineffectiveness of the remedies that have been tried have not been disproved, nor has any documentary proof been presented thereon.

15. The Commission also considers that the Petitioner alleges unwarranted delay and that, although almost three years have passed since the tragic incident, the investigation has not been completed and no one responsible for those acts has been arrested.

16. In this specific case, the Commission considers that Article 46(2) of the Convention is applicable for two reasons. There was no clarification by the State regarding non-exhaustion of effective judicial remedies and, three years after the incident, no legal proceedings have been initiated--according to information available to the Commission--against any of the allegedly responsible parties. [FN2]

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[FN2] The Court first points out that failure to observe certain formalities is not necessarily relevant in international jurisdiction. What is essential is that the objectives of the different procedures be met. (Inter-American Court of Human Rights, Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987, paragraph 36).

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## 5. Timeliness of the presentation

17. As regards this period (*ratione tempore*), the Commission considers that the six-month deadline for presenting a petition, established in Article 46(1)(b) and Article 38 of the Commission's Regulations does not apply in this case. The Commission so holds because, as established in Article 46(2), there was an unwarranted delay in the judgment under the domestic remedies.

18. The international protection of human rights --"referred to in Article 46(1) of the Convention--is founded on the need to protect the victim from the arbitrary exercise of official authority." Hence, exceptions to Article 46(1) have been established to guarantee respect for the

human rights of victims when domestic remedies prove ineffective.[FN3] Accordingly, neither requirement--exhaustion of domestic remedies or presentation of the petition within six months of notification on the final ruling--is applicable in this case.

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[FN3] Inter-American Court of Human Rights, Godínez Cruz Case, Judgment of June 26, 1987.

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## VI. CONCLUSION

19. Accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible.
2. To transmit this report on admissibility to the State of Brazil and the petitioners.
3. To continue examination of relevant issues defined in this report in order to determine the merits of the case.
4. To publish this report in the Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights (IACHR), in the city of Washington, D.C. on the 25th day of the month of September 1998. (Signed): Carlos Ayala Corao, Chairman; Robert K. Goldman, Vice Chairman; Jean Joseph Exume, Second Vice Chairman; Commissioners Alvaro Tirado Mejía, Claudio Grossman and Henry Forde.