

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 78/98; Case 11.566
Session:	Hundredth Regular Session (24 September – 13 October 1998)
Title/Style of Cause:	Favela Nova Brasilia 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:	Favela Nova Brasilia v. Brazil, Case 11.566, Inter-Am. C.H.R., Report No. 78/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by:	APPLICANT: the Center for Justice and International Law
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I. INTRODUCTION

1. On November 3, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission") received from the Center for Justice and International Law (CEJIL) a complaint of violation of rights protected in the American Convention on Human Rights (hereinafter "the Convention") by the Federal Republic of Brazil (hereinafter "the State," "the Brazilian State," or "Brazil") against Cosme Rosa Genoveva and another thirteen persons whose corpses have not been identified, who perished in the shantytown of Nova Brasilia, State of Rio de Janeiro, in the course of a raid by the Rio de Janeiro State police on May 8, 1995. The complaint alleges violation by the Federal Republic of Brazil of the right to life (Article 4) in conjunction with the obligation to guarantee and respect the rights protected in the American Convention on Human Rights (Article 1(1)). The State asserted that the police officers were engaged in the performance of their duties and that the domestic remedies had not been exhausted.

II. PROCESSING BEFORE THE COMMISSION

2. The case was opened on January 18, 1996 and the State was sent a request for information on the facts alleged by the petitioner. On April 19, 1996, the State replied that, owing to the complexity and breadth of the investigation in progress, it requested an extension of 30 days, which the Commission granted on April 26, 1996. Two hearings were held on the case in March and October 1996 in the course of the respective regular sessions of the Commission.

In the second hearing the Government stated its position orally. In these hearings the Commission offered to make itself available to the two parties to mediate a friendly settlement, but received no affirmative response. The State has not yet sent the Commission its written comments on the case.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

3. The petitioner alleges that on May 8, 1995, officers of the Rio de Janeiro State police entered the shantytown of Nova Brasilia to seize drug traffickers and weapons. That a confrontation took place between police and traffickers that resulted in several deaths. Three alleged traffickers died at the place of the police raid, another was killed by a bullet shot from a police helicopter, and another two died in the alleys of the shantytown. Eight persons sought refuge in a house, and are said to have exclaimed that they surrendered when the police broke in and killed them.

4. He alleges that the police investigation was opened on the same day, May 8, and after the passage of five months was not yet concluded. Brazilian legislation prescribes that such investigations are to be completed in not longer than 30 days, except in difficult cases, the time for which may be extended by judicial order, which extension was not granted in this case. He alleges that no ballistic tests were performed on the scene and that there are contradictions among the testimonies of the witnesses, and that eyewitnesses were not questioned, among other alleged irregularities in the investigation. That the promoter of the case has advised them that she concurs in the police version that the police officers fired in self-defense.

5. He alleges that the police investigations have been unjustifiably delayed, five months having elapsed since events in question without their being completed. The petitioner has therefore requested that the Commission declare the Federal Republic of Brazil in violation of article 4 of the American Convention in conjunction with its Article 1(1). He also requests that the State indemnify the families, and that it properly investigate, try and punish the culprits, and that it take steps to prevent a recurrence of acts of this nature.

6. The petitioner annexes the following documents in evidence:

a. A report in the daily "O Globo" of May 9, 1995, describing a police raid against suspected traffickers in the shantytown of Nova Brasilia, in the Complexo do Alemão," in Ramos, in which an alleged trafficker was struck by a bullet fired from one of two police helicopters;

b. A report in the daily "O Dia" of May 9, 1995, on an operation by police officers, who cornered and shot suspected traffickers;

c. The record 0252-95 of the incident from the police investigation, Secretariat of State for the Civil Police;

d. A report in the daily "Folha de São Paulo" of May 9, 1995;

e. Statements by a police officer on May 8, 1995, to the Superintendency of Judicial Police;

- f. Statements by witness Raimundo Edilson Reis, a resident of the shantytown in the said police investigation;
- g. Statements by witness Carlos Enrique de Oliveira in the same investigation.

B. Position of the State

7. In the hearing on the case the State Representatives advised in reply that the deaths had occurred in a dispute between rival groups of traffickers, and said that the Office of the Public Prosecutor was taking the requisite steps and that the Office of the Public Defender was gathering evidence to ensure that the culprits would not elude justice. They said that the events were under investigation and were of the view that, until the statute of limitations runs out on a criminal proceeding, the domestic remedies have not been exhausted, for, theoretically, if new facts emerge that invalidate or prevail over the evidence, the case can be reopened.

8. The Commission deferred analysis of the substance of the petition and the State's defense to the next stage of the present proceeding.

IV. FACTS NOT IN DISPUTE

9. As stated in the information supplied by the petitioner and corroborated or not contested by the State, on May 8, 1995, the Rio de Janeiro State Police conducted a raid in the shantytown of Nova Brasilia against an alleged gang of drug traffickers. In this raid, police gunfire took the lives of at least fourteen persons. The police officers were part of the Bank Robbery and Theft Delegation; they numbered fourteen effectives armed with rifles and machine guns and were covered by two helicopters.

10. The police investigation was opened the same day, and was not completed five months after the date of the complaint.

11. The promoter of the case told the petitioners that the police officers had fired in self-defense.

V. JURISDICTION OF THE COMMISSION TO HEAR THE COMPLAINT

12. The Commission has prima facie jurisdiction to consider the petition in question. Petitioner has locus standi and has presented grievances against the manner of compliance by the agents of the State party with the provisions of the Convention. The facts alleged in the petition took place when the obligation to respect and guarantee the rights established in the Convention was already in force for the Brazilian State.

VI. ADMISSIBILITY OF THE CASE

1. Exhaustion of domestic remedies

13. The petitioner stated when lodging the complaint that the legal deadline for completing the investigation had already passed without its being completed. In the hearing held in October

1996 the State maintained that the investigation was continuing, and since then has not said that it has been completed.

14. More than three years after the events in question, the State has yet to assert that the investigation has been completed. On the subject of the obligation of a state to investigate acts in violation of human rights protected by the Convention, the Inter-American Court of Human Rights has this to say:

The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. [FN2]

[FN2] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, pr. 177, p.156.

15. The Commission considers that the investigation has gone on too long, and there is no indication of any satisfactory conclusion. The Commission accepts the claim that the domestic remedies established in Article 46(1) of the Convention have been exhausted on the grounds of the unwarranted delay in rendering final judgment under those remedies as provided in Articles 46(2)(c) of the Convention and 37(2)(c) of the Commission's Regulations.

2. Timeliness of presentation

16. The Commission holds applicable to the case Article 38(2) of its Regulations, which reads as follows:

In the circumstances set forth in Article 37(2) of these Regulations, the deadline for presentation of a petition to the Commission shall be within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case.

17. The petition was presented five months after the events in question because the investigation, which was to have been completed in 30 days, had not been, nor had a judicial extension been granted. The petition was subsequently repeated at the hearings in March and October 1996 inasmuch as the investigation had not been completed, as the Government acknowledged. The Commission finds on consideration that the petition was presented within a reasonable period of time considering the characteristics of the case.

3. Consideration in other venues

18. It is the understanding of the Commission that the matter of the petition is not pending settlement in another international proceeding, nor does it duplicate a petition already examined by it or another international organization. It therefore considers that the requirements established in Articles 46(1)(c) and 47(1)(d) have also been met.

4. Basis of the petition

19. The Commission finds that, in principle, petitioner's presentation refers to acts that could characterize a violation of rights guaranteed in the American Convention. Inasmuch as there is no evidence of groundlessness or impropriety in the petition, the Commission is of the view that the requirements of Article 47(b) and (c) of the Convention have been met.

VII. CONCLUSIONS

20. The Commission finds that it has jurisdiction to hear the present case, which is admissible in the terms of the requirements established in Articles 46 and 47 of the American Convention.

Based on the arguments of fact and law set forth above:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To send this report to the State and the petitioner.
3. To make itself available to the parties with a view to arriving at a settlement grounded in respect for the rights recognized in the American Convention, and to invite the parties to respond within 30 days on whether they wish to invoke the friendly settlement proceeding established in Article 48(1)(f) of the Convention.
4. To continue its analysis of the issues of substance.
5. To publish this report and to include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights, 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.