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Decided by: President: Juan Mendez;
First Vice-President: Marta Altolaguirre;
Second Vice-President: Jose Zalaquett;
Commissioners: Robert K. Goldman, Clare Kamau Roberts, Julio Prado Vallejo, Susana Villaran.
Dated: 20 February 2003
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Represented by: APPLICANTS: The Movement of Rural Workers without Land and the Center for Justice and International Law
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I. SUMMARY

1. On September 5, 1996 the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition from The Movement of Rural Workers without Land (MST) and the Center for Justice and International Law (CEJIL) against the Federal Republic of Brazil (hereinafter “Brazil” or “the State) alleging violation of Articles 4, 5, 8, 25 and 1(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), resulting in harm to Mr. Oziel Alves Pereira and other persons.
2. The petitioners allege that on April 17, 1996 agents of the Brazilian State murdered 19 rural workers and wounded dozens more when dislodging them from a public roadway where they were camped as part of a much larger group of workers.
3. The State maintains that domestic remedies have not been exhausted.
4. After studying the petition and in accordance with Articles 46 and 47 of the American Convention, the Commission concluded that the case is admissible with regard to the alleged violation of Articles 4, 5, 8, 25, 2 and 1(1) of the American Convention.

II. PROCEEDING BEFORE THE COMMISSION

5. In accordance with the rules of procedure in force at the time, on October 31, 1996 the Commission opened the case and forwarded the pertinent parts of the petition to the State,

requesting that the State provide information within 90 days. The State responded by submitting reports on November 4, November 25 and December 9, 1997. On February 24, 1998, the petitioners submitted their observations on the State's comments.

6. Hearings were held on February 24, 1998 and October 5, 1999. During the second hearing, the Commission asked both parties to report to it every 45 days on any developments regarding domestic remedies. The State submitted 12 reports, the last of which was received by the IACHR on February 25, 2002.

7. Each of the parties made various submissions of arguments and supporting documentation, each being duly passed on to the other party. On December 12, 2002, the petitioners provided an updated account regarding domestic remedies, a copy of which was given to the State on January 13, 2003.

III. POSITION OF THE PARTIES

A. Petitioners

8. The petitioners claim that at approximately 4.00 p.m. on April 17, 1996, 155 military police surrounded a group of approximately 1,500 rural workers that were then camped on the shoulder of national route PA 150 in the municipality of El Dorado do Carajas, state of Pará.

9. They point out that the events must be seen in the framework of the precarious situation of rural workers and their families in Brazil and especially in the state of Pará, due to the fact that they do not have sufficient land to be able to make a decent living.

10. They point out that the workers affected were on their way to Belém, the capital of Pará, to demand that an agreement made with the National Institute for Land Settlement and Agrarian Reform (INCRA) and the Pará State Government providing for the expropriation of the "Macacheira" hacienda, be respected. They add that the workers had set up camp demanding that State authorities provide them with food and transportation so that they could reach their destination.

11. The petitioners allege that after surrounding the workers on both sides of the road, the military police began to fire upon them. They state that as a result 19 workers died, 6 killed by the initial fire and 13 summarily executed once the road was cleared as they had been wounded by the initial fire and were not able to flee. They add that 69 other workers were seriously wounded and dozens more suffered minor wounds.

12. They point out that two police investigations of the events were opened. The Military Police opened one on homicide, bodily harm and other offenses that would come under the jurisdiction of the state military justice system. The civil police opened their own investigation into the very same events, but with regard to offenses coming under the jurisdiction of the civil justice system, such as abuse of authority.

13. The petitioners maintain that the investigation carried out by the military police was the principal investigation, and that carried out by the civil police was in effect subordinated to it. They add that the investigation was marked by distortion of fact and destruction of basic evidence, and that there were flaws in the examination of the site of the incidents, in the forensic reports on the corpses, in ballistic tests, in the taking of testimony from witnesses and in all other stages of the initial investigation.

14. They state that on August 16, 1999, a first trial regarding the events was held within the ordinary criminal court system, but that it was later annulled due to procedural flaws. They go on to say that between May 14 and June 10, 2002, a second trial took place, also before an ordinary criminal court, and of the 144 military police officers charged, 142 were declared not guilty and only two were judged to be guilty of homicide. Colonel Mário Colares Pantoja was sentenced to 258 years in prison and Major José Maria Oliveira to 158.

15. The petitioners maintain that the two men sentenced to prison were allowed to remain free pending the outcome of their appeal.

16. They also point out that the majority of those responsible for the acts mentioned in the petition have been acquitted, and that due to a clear lack of impartiality on the part of the bodies of the justice system charged with hearing the case, domestic remedies have in practice proven ineffective. Citing said ineffectiveness, they ask the Commission to declare the case admissible without all domestic remedies having been exhausted, pursuant to Article 46(2)(a) of the American Convention.

B. The State

17. The State maintains that domestic remedies have not been exhausted. In this regard, Brazil has kept the Commission informed on the situation of domestic remedies from the very beginning of the case.

18. After the IACHR hearing of October 5, 1999, the State submitted to the Commission twelve special reports on the evolution of domestic remedies being pursued.

19. These reports have kept the Commission duly informed of all procedural steps that have been taken in the domestic proceedings undertaken to assign responsibilities for the acts reported to the Commission, which have not been otherwise commented upon by the State.

20. In its last report submitted on February 25, 2002, the State informed the IACHR that motions raised by the defense and certain evidentiary proceedings requested by the Public Prosecutors Office (Ministerio Público) in the name of justice, led to a stay of the proceedings that had been scheduled to commence on June 18, 2001.

21. The State also pointed out that the Public Prosecutors Office and the Judiciary were very determined to assure that those accused of the acts alleged in the instant case be brought to trial as soon as possible.

IV. ANALYSIS

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

22. Pursuant to Article 44 of the American Convention and Article 23 of the IACHR Rules of Procedure, the petitioners, as legally established non-governmental entity, have the power to file petitions with the Commission in regard to alleged violations of the rights enshrined in the American Convention. As for the State, Brazil is party to the Convention and thus responsible on the international level for any violations of the same. The petitioners name as alleged victims Oziel Alves Pereira and other persons, whose rights as enshrined in the Convention the State had promised to safeguard. Thus the Commission has *ratione personae* competence to hear the case.

23. Seeing that the petition refers to the possible violation of human rights protected by Articles 4, 5, 8, 25 and 1(1) of the Convention, The Commission has *ratione materiae* competence. Given that Brazil ratified the American Convention on September 25, 1992, it is clear that the alleged events occurred when the State was indeed under the obligation to respect and safeguard all rights enshrined in the Convention, giving the Commission *ratione temporis* competence. The IACHR has *ratione loci* competence as the alleged events occurred in the territory of the Federal Republic of Brazil, which has ratified the American Convention.

B. Requirements for Admissibility

a. Exhaustion of domestic remedies

24. The requirement that all domestic remedies be exhausted for a petition to be admitted by the Commission is established by Article 46(1) of the Convention. Article 46(2) of the Convention stipulates that an exception may be made 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.

25. The requirement that all domestic remedies be exhausted before the State is subjected to international proceedings is tied to the State's capacity to investigate and punish human rights violations committed by its agents through its domestic judicial bodies. This assumes that on the domestic level there is indeed due legal process available for the investigation of such violations and that such investigations are effective. To the contrary, the Inter-American Commission can hear a case before domestic remedies are exhausted, pursuant to Article 46(2)(a) of the Convention.

26. The independence, autonomy and impartiality of the domestic bodies charged with investigating and punishing alleged human rights violations is an essential prerequisite of due process.

27. In this regard, the Commission does not consider the military police to have the independence and autonomy needed to impartially investigate alleged violations of human rights allegedly carried out by military police.

28. The Commission has pointed out that the question of impunity within the military criminal justice system is not related exclusively to acquittal of the defendants, and that “the investigation of human rights violations by the military courts itself entails problems...”[FN1]. The IACHR has also stated that:

[FN1] IACHR, Second Report on the Situation of Human Rights in Peru, Chapter II, Section E, paragraph 210.

When the military justice system conducts the investigation of a case, the possibility of an objective and independent investigation by judicial authorities which do not form part of the military hierarchy is precluded. Thus, when an investigation is initiated in the military justice system, a conviction will probably be impossible even if the case is later transferred to the civil justice system. The military authorities will probably not have gathered the necessary evidence in an effective and timely manner. In those cases which remain in the military justice system, the investigation will frequently be conducted in such a manner as to prevent the case from reaching the final decision stage.[FN2]

[FN2] IACHR, Third Report on the Human Rights Situation in Colombia, 1999, Chapter V, paragraph 19.

29. The Commission carefully examined Brazilian law in this area. Until 1996, military bodies had competence to investigate and try human rights violations perpetrated by military police. In that same year, new legislation was passed to establish that, “The ordinary justice system shall have jurisdiction (over)...criminal attempts on life committed against civilians.”[FN3] Nonetheless, investigation of such cases was left in the hands of the military police. The Commission has pointed out that:

[FN3] IACHR, Report on the Human Rights Situation in Brazil, September 1997, Chapter III, paragraph 83.

This means that the “military” police will continue to be judged by special jurisdiction for crimes against humanity, such as criminal homicide, bodily injury, torture, kidnapping, illegal imprisonment, extortion, and battery.

Investigations (inquiries) will then be the responsibility of the military authority, even in cases of criminal attempts on life, despite the fact that, under the new law, these crimes would fall under the jurisdiction of the ordinary justice system. This new standard is in contradiction with Article 144.4 of the Constitution, which assigns judicial police functions and the investigation of criminal offenses, other than military offenses, to the civil police. Indeed, if criminal attempts on life cease to be military offenses under the new law, the criminal investigation should be handled by the civil police who, pursuant to Article 144.4 of the Constitution, have “the functions of judicial police and the investigation of criminal offenses.” By leaving the initial investigation in the hands of the “military” police, the latter are given the authority to decide, from the outset, whether or not there is criminal intent. This means that law 9299 of the Republic is incapable of significantly reducing impunity.[FN4]

[FN4] IACHR, Report on the Human Rights Situation in Brazil, paragraphs 84 and 86. This reasoning led the Commission to recommend that the Brazilian State “(Confer) on the ordinary justice system the authority to judge all crimes committed by members of the state “military” police (...) (Transfer) to the jurisdiction of the federal justice system the trial of crimes involving human rights violations, with the federal government assuming direct responsibility for initiating action and due process for such crimes.”

30. When it examined absence of due process as cause for exception to the rule of exhaustion of internal remedies, the Inter-American Court of Human Rights pointed out that:

Article 46(2)(a) applies to situations in which the domestic law of a State Party does not provide appropriate remedies to protect rights that have been violated. Article 46(2) is applicable to situations in which the domestic law does provide for remedies, but such remedies are either denied the affected individual or he is otherwise prevented from exhausting them. These provisions thus apply to situations where domestic remedies cannot be exhausted because they are not available either as a matter of law or as a matter of fact.[FN5]

[FN5] Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, paragraph 17.

31. Applying such considerations to the instant case, the Commission notes that although formally there does exist a remedy in Brazil for investigating human rights violations by military police, the power that Brazilian law grants to the military police itself to investigate such violations in practice constitutes a legal ground that prevents said remedies being exhausted, for lack of the requisite due process.

32. For the reasons mentioned in the preceding paragraphs, it is the belief of the Commission that Brazilian law does not provide the due process necessary for the effective investigation of alleged human rights violations perpetrated by military police.

33. In the instant case, the fact that the main investigation was carried out by the military police is not disputed. There are allegations that said investigation was characterized by distortion of fact and destruction of basic evidence, and that there were flaws in the investigation of the scene of the alleged crimes, the forensic examination of corpses, ballistic tests, the taking of testimony and in all other stages of the initial investigation.[FN6]

[FN6] Among other things, the petitioners allege that: (a) the forensic examinations carried out by official doctors on April 18 and 19, 1996 showed that all 19 dead workers had wounds typically resulting from a conflict and that there was no sign of summary executions. They add, however, that another forensic doctor did find clear signs of summary execution; (b) the military police concealed registers that listed the exact weapons carried by each of the soldiers that participated in the events; (c) the uniforms worn by military police that participated in the events were never examined for blood or powder stains; (d) the military police removed the bodies of the dead workers before an expert examination of the scene was carried out.

34. The Commission notes that domestic proceedings regarding the events of April 16, 1996 in the municipality of El Dorado do Carajas have not run their full course, as there is still an appeal pending against the decision resulting from the trial carried out from May 14 to June 10, 2002, which found two officers guilty of the charges against them and sentenced them to prison. Nonetheless, given that initial investigations were carried out by a body without independence, autonomy and impartiality, such as the military police, the effectiveness of the investigation was never guaranteed. This is a flaw that affected the proceedings from the very beginning, even though the trial itself was later carried out in courts of ordinary criminal jurisdiction.

35. The Commission thus concludes that, although domestic remedies have not been exhausted, the aforementioned exception to the rule for lack of due process in domestic law providing for the investigation and trial of human rights violations, as established in Article 46(2)a) of the American Convention, is applicable in this case.

b. Timeliness of the Petition

36. According to Article 46(1)(b) of the American Convention, to be admissible a petition must be 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 exhausting domestic remedies. Article 32 of the Commission's Rules of Procedure, similar to Article 38(2) of the rules of procedure in effect when the petition in question was lodged, says that, "In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case."

37. In the case under examination, the Commission has ruled that the exception to the rule on exhaustion of domestic remedies shall be applied. Taking into account the specific circumstances of the case, especially the date of the events and the fact that the military police were charged with the initial investigation, the Commission considers that the petition, lodged by the petitioners on September 5, 1996, was presented within a reasonable period of time.

c. Duplication of Proceedings and *res judicata*

38. The Commission is of the view that the subject matter of the petition is not pending settlement before any other international organization and has received no information to the contrary. The petition does not reproduce a petition already examined by this or any other international organization. Therefore, the requirements established at Articles 46(1)(c) and 47(d) of the Convention are satisfied.

d. Colorable Claim

39. The Commission deems that on at first sight the alleged acts can be considered a violation of Articles 4, 5, 8, 25 and 1(1) of the American Convention, as they would indicate failure to respect the rights to life, personal integrity, a fair trial and judicial protection of the victims cited in this case, assuming that, as regards possible violations of Articles 8 and 25, any victims involved would be those wounded, as well as the relatives of those who died during those events. Furthermore, and although this was not argued in the petition, the Commission decides, based on the *iura novit curia* principle, also to admit the instant case in respect of possible violations of Article 2 of the American Convention, particularly since, as noted above and in the context of analysis of domestic remedies, the Commission decided to admit it because it considers that Brazilian law does not afford due legal process to effectively investigate alleged violations of human rights committed by the military police.

V. CONCLUSION

40. The Commission concludes that it is competent to take cognizance of the petition and that the petition meets the admissibility requirements set forth at Articles 46 and 47 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. Without prejudging the merits of the case, to declare the petition admissible with respect to the acts therein cited and the alleged violations of Articles 4 (right to life), 5 (right to personal integrity), 8 (judicial guarantees), 25 (right to recourse) of the American Convention, and 2 (obligation to adopt domestic law provisions) of the American Convention, in conjunction with Article 1(1) of said Convention (obligation to respect the rights contained therein).
2. To remit a copy of this report to the State and the petitioners.

3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., the 20th day of February 2003. (Signed): Juan Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Commissioners: Robert K. Goldman, Clare Kamau Roberts, Julio Prado Vallejo, and Susana Villarán.