

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 43/06; Petitions 12.426, 12.427
Session:	Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause:	Emasculated Children of Maranhao v. Brazil
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; Second Vice-President: Florentin Melendez; Commissioners: Clare K. Roberts, Freddy Gutierrez, Paolo G. Carozza and Victor E. Abramovich. In accordance with Article 17.2 of the Commission’s Rules of Procedure, Professor Paulo Sergio Pinheiro, a Brazilian national, did not participate in the discussion or in the decision on the present case.
Dated:	15 March 2006
Citation:	Emasculated Children of Maranhao v. Brazil, Petition 12.426, Inter-Am. C.H.R., Report No. 43/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLICANTS: Centro de Defesa dos Direitos da Crianca e do Adolescente Padre Marcos Passerini and Centro de Justica Global
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On July 27, 2001, the nongovernmental organizations Centro de Defesa dos Direitos da Criança e do Adolescente Padre Marcos Passerini and Centro de Justiça Global (CJG) lodged a petition with the Inter-American Commission on Human Rights (hereinafter the “Commission” or the “Inter-American Commission”) against the Federative Republic of Brazil (hereinafter the “State”, “Brazil”, or the “Brazilian State”), in which they denounced the homicide of the boy Raniê Silva Cruz in September 1991, in the Municipality of Paço do Lumiar, State of Maranhao. On October 31, 2001, the petitioners lodged a second petition in which they denounced the homicides in June 1997 of the boys Eduardo Rocha da Silva and Raimundo Nonato da Conceição Jr., also in Paço do Lumiar, Maranhao.

2. Based on the facts alleged in the petition, the petitioners argue that Brazil violated Articles I (Right to life), VI (Right to a family and to protection thereof), VII (Right to protection for mothers and children), and XVIII (Right to a fair trial) of the American Declaration of the Rights and Duties of Man (hereinafter “the Declaration”); and Articles 4 (Right to Life), 8 (Right to a Fair Trial), 19 (Rights of the Child), and 25 (Right to Judicial Protection) of the American Convention on Human Rights (hereinafter “the Convention”).

3. The Brazilian State responded to both petitions, saying that the Civilian Police of the State of Maranhao were taking the appropriate steps and that a Federal Police task force had been assigned to help the local authorities to expedite prosecution of the crimes.

4. On December 15, 2005, the petitioners and Brazil signed a friendly settlement agreement in which the State acknowledged its international responsibility in the cases under review and gave a number of undertakings with respect to the prosecution and punishment of those responsible for the homicide and emasculation of children in the State of Maranhao; financial reparations to their next of kin; and measures to prevent sexual violence against children and adolescents. The aforementioned agreement encompasses cases 12.426 (Raniê Silva Cruz) and 12.427 (Eduardo Rocha Silva and Raimundo Nonato da Conceição), which are being processed by the Inter-American Commission, as well as the murder and mutilation of 27 (twenty seven) other children killed in similar circumstances between 1992 and 2002 in São Luis do Maranhao.

5. This Friendly Settlement Report is issued pursuant to Article 49 of the Convention and Article 41.5 of the Commission's Rules of Procedure. It reviews the facts alleged by the petitioners and the terms of the friendly settlement reached, and provides for its publication.

II. PROCESSING BY THE COMMISSION

6. The Commission took receipt of the first petition on July 27, 2001, forwarded it to the State on September 6 of the same year, and recorded it as Case 12.426 (Raniê Silva Cruz). The second petition was received on October 31, 2001, transmitted to the State on November 27 of the same year, and registered as Case 12.427 (Eduardo Rocha Silva and Raimundo Nonato da Conceição).

7. While the Commission was processing the two cases, the petitioners sent notes concerning the killing and emasculation of other children in the State of Maranhao. In light of those notes, the Commission requested the State to provide information on measures adopted.

8. The IACHR convened hearings and working meetings on the cases, which were held on different occasions at the headquarters of the Commission. On March 1, 2004, formal friendly settlement proceedings were initiated and, after several meetings, the parties signed a final agreement in the city of Sao Luis do Maranhao on December 15, 2005, the terms of which are detailed hereinbelow. The agreement was signed in a public ceremony by high authorities of the Federal Government of Brazil and of the Government of the State of Maranhao, as well as by representatives of the petitioners and of the Inter-American Commission on Human Rights, in the presence of the families of the victims.

III. THE FACTS

9. In both petitions, the petitioners argue that the Brazilian State violated its obligations under the American Convention on Human Rights and the American Declaration by its failure to adopt effective measures to prevent the torture and killing of several children in the State of Maranhao, and by its omission to investigate the crimes.

10. The petitioners specifically mention the disappearance in the city of Paço do Lumiar of the children Raniê Silva Cruz, Eduardo Rocha da Silva, and Raimundo Nonato da Conceição Jr., whose bodies were later discovered bearing marks of torture and genital castration. The petitioners allege unwarranted delay on the part of the local authorities in finding the children and that the police enquiries to apportion responsibility for the crimes were too slow and ineffective. They say that this fact was due to the lack of expertise of the police of the State of Maranhao and the failure of the Federal Police to intervene in the investigations in a timely manner.

11. The petitioners argue that the two cases denounced were part of a pattern of cases of children mutilated and murdered in the State of Maranhao, reported in the Brazilian press as the “Case of the Emasculated Children of Maranhao”. They mentioned that a task force to investigate the crimes, composed of officers from the Civilian Police, Federal Police, and the Office of the Attorney General, was only set up in April 2003, 12 years after the first crime. In March 2004, the task force presented the probable perpetrator of the crimes, who confessed to having murdered 30 (thirty) children in São Luis do Maranhao and another 12 (twelve) in Altamira, in the State of Pará.

12. In relation to the situation as a whole, the petitioners mention that the human development indices in the State of Maranhao are significantly low, in particular in the child and adolescent population, who are beset with an array of problems such as exploitative child labor, high school dropout rates, and a high illiteracy rate. They say that the child and adolescent population of the region of Great São Luis (the Maranhao State capital) are deprived of basic rights in the areas of education, health, housing, leisure, and food.

13. Finally, in response to the reply of the Brazilian State with regard to the progress of the investigations, the petitioners call into question the concrete steps taken to identify the persons responsible for the crimes, prevent the occurrence of further child murders, provide reparation to the families of the victims, and improve living conditions for children and adolescents in the State of Maranhao.

IV. FRIENDLY SETTLEMENT

14. The friendly settlement agreement signed by the two parties on December 15, 2005, provides the following:

1. The Brazilian State, through the Special Secretariat for Human Rights of the Office of the President of the Republic and the Government of the State of Maranhao, and the petitioners, represented by the nongovernmental organizations Justiça Global and Centro de Defesa dos Direitos da Criança e do Adolescente Padre Marcos Passerini, enter upon the present friendly settlement agreement, with a view to the resolution of Cases 12.426 and 12.427, currently being processed by the Inter-American Commission on Human Rights of the Organization of American States (IACHR/OAS).

2. Cases 12.426 (Raniê Silva Cruz) and 12.427 (Eduardo Rocha da Silva and Raimundo Nonato da Conceição) concern boys who were emasculated and killed in the Great São Luís

region, State of Maranhao. The instant Agreement covers the aforementioned cases being processed by the IACHR and other emasculated children, in accordance with the list agreed on at the joint meeting of the State Council for Defense of Human Rights and the State Council for the Rights of Children and Adolescents of Maranhao, held on November 3, 2005.

3. The present Friendly Settlement Agreement covers compensatory damages to the families of the children Raniê Silva Cruz, Eduardo Rocha da Silva and Raimundo Nonato da Conceição, as well as of Alexandre de Lemos Pereira, Antônio Reis Silva, Bernardo da Silva Modesto, Bernardo Rodrigues Costa, Carlos Wagner dos Santos Sousa, Daniel Ferreira Ribeiro, Diego Gomes Araújo, Edivan Pinto Lobato, Evanilson Castanhede Costa, Hermógenes Colares, Ivanildo Povoas Ferreira, Jailson Alves Viana, Jonnathan Silva Vieira, Josemar de Jesus Batista, Julio César Pereira Melo, Laércio Silva Martins, Nerivaldo dos Santos Pereira, Nonato Alves da Silva, Rafael Carvalho Carneiro, Raimundo Luiz Sousa Cordeiro, Welson Frazão Serra, Alexandre dos Santos Gonçalves, Sebastião Ribeiro Borges, Jondelvanes Macedo Escócio, Emanuel Diego de Jesus Silva, hereinafter the beneficiary families, in light of the violations suffered, and with a view to the resolution of cases 12.426 and 12.427 through performance in full of the terms of this Agreement.

I. Acknowledgment of Responsibility

4. The Brazilian State admits its responsibility in connection with Cases 12.426 and 12.427 in the following terms: The State of Maranhao recognizes the inadequate results produced by previous lines of investigation compared with the current degree to which the facts have been clarified, and admits that mistakes and problems had prevented the necessary immediate solution of the cases, due to structural shortcomings that existed in the security system at the time, the complexity of the facts, the modus operandi, the particular geographical distribution of the crimes, and technical improprieties in a number of investigative procedures that called for special efforts to establish the responsibility of the perpetrators and to prevent risk to children and adolescents.

5. The public acknowledgement of responsibility of the Brazilian State as regards the aforementioned violations of human rights is to be made at a public ceremony held in the city of São Luís, Maranhao, on the occasion of the opening of the Integrated Complex for Protection of Children and Adolescents on December 15, 2005, in the presence of representatives of the federal and State authorities, the petitioners, and the beneficiary families.

II. Prosecution and Punishment of those Responsible

6. The Brazilian State undertakes to expedite the prosecution of the confessed perpetrator at present in custody, in the framework of due legal process and respect for human rights, and assumes the commitment to take further steps, as appropriate, to investigate and punish other possible culprits.

III. Reparation Measures

III.1 Symbolic reparation

7. The State of Maranhao shall set a plaque in symbolic homage to the murdered children at the Integrated Complex for Protection of Children and Adolescents to be opened at the public ceremony of acknowledgement of responsibility described in point 5 above.

III.2 Economic reparation

8. The Federal Union, through the Ministry for Cities, and the State of Maranhao, through the Secretariat for Cities, shall, within a period of 12 (twelve) months, include, at no cost, the beneficiary families in the Social Housing programs managed by the Ministry for Cities in their current areas of residence;

8.1 In the event it is impossible to keep the families in their current areas of residence, in keeping with the principle that all beneficiary families are to be treated equally, residents shall receive equivalent housing conditions, in consultation with each family in this situation.

8.2 The inclusion of the beneficiary families in the aforementioned programs and the possible presence of pre-existing technical factors, shall be without prejudice to the special allowance to be granted to the beneficiary families by the State of Maranhao pursuant to clause 10 of this Agreement.

9. The Federal Union, through the Ministry of Social Development, and the State of Maranhao, through the Secretariat of Social Development, shall enroll the beneficiary families in their respective social programs, including their income transfer programs, in accordance with the specific eligibility criteria for each program.

9.1 The special allowance to be granted to the beneficiary families by the State of Maranhao pursuant to clause 10 of this Agreement shall not be deemed income for the purposes of the inclusion of the beneficiary families in the aforesaid programs.

10. The State of Maranhao, by authority of its legislature, shall, by way of compensation, pay a special monthly allowance of R\$ 500,00 (five hundred reals) to each beneficiary family over a period of 15 (fifteen) years.

10.1. This monthly allowance shall be adjusted in line with the review index for state public servants.

11. Performance in full of clauses 8, 9, and 10 exempts the Brazilian State, be it the Federal Union or the State of Maranhao, from any other redress to the beneficiary families under the present Agreement.

11.1 The beneficiary families shall sign the present Agreement and, in so doing, undertake to waive their right to action against the Federal Union and the State of Maranhao. This waiver is subject to performance in full of clauses 8, 9, and 10.

IV. Measures for non-recurrence

12. In the course of 2006 the Federal Union undertakes to include the State of Maranhao in the Program of Model Integrated Measures to Combat Sexual Violence against Children and Adolescents in the Territory of Brazil (PAIR), which is coordinated by the Special Secretariat for Human Rights of the Office of the President of the Republic; in conjunction with the Ministry of Social Development, Ministry of Health, Ministry of Education, Ministry for Sport; Ministry of Justice, and Ministry of Tourism; and in partnership with the International Labour Organization (ILO), USAID, and Partners of the America.

13. The State of Maranhao undertakes to continue implementation of the State Model System to Combat Sexual Violence against Children and Adolescents and the Inter-Institutional System of Anti-Drug Measures (SIAD) in the State of Maranhao, as defined by the respective state decrees.

14. In order to provide assistance to child and adolescent victims of sexual violence, as well as to their families, the State of Maranhao, through the Secretariat of Social Development, undertakes within six months to include the municipalities of São José de Ribamar, Paço do Lumiar, and Raposa in the Surveillance Program.

15. Bearing in mind the specialized assistance required to deal with cases of violence against children and adolescents, the State of Maranhao, through the State Secretariat for Public Security, undertakes to:

15.1 Provide, within three months at the latest, training courses for civilian and military police to deal with crimes that involve children and adolescents;

15.2 Include violence against children and adolescents as a curricular subject of the Civilian and Military Police Training Course;

15.3 Establish regulations for and adopt, within six months, special procedures for dealing with incidents that involve child and adolescent victims, so as to avoid constraints in the initial assistance provided to victims;

15.4 Establish regulations for channeling more-complex incidents that involve children and adolescents reported at police stations of the so-called Great São Luís Region to the Office for Protection of Children and Adolescents (DPCA);

15.5 Reorganize and equip the police station of the Municipality of Raposa, Maranhao, so as to ensure that incidents concerning child and adolescent victims are appropriately dealt with;

15.6 Inaugurate and ensure the continued operation, with an effective professional staff, of the Official Technical Examination Center in cases of sexual violence against children and adolescents.

16. With a view to improving assistance provide in schools for children and adolescents in Great São Luís and the use of schools for sporting and cultural activities, the State of Maranhao, through the State Secretariat for Education, undertakes to:

16.1. Make arrangements, from February 2006 onward, to enable weekend sporting and cultural activities at all public schools in the municipalities of the Greater São Luís Region;

16.2. Coordinate with the National Union of Municipal Education Directors (UNDIME), in order to enable weekend sporting and cultural activities at all schools in the municipal education network in Great São Luís;

16.3. Build, by the end of 2006, a middle school with at least six classrooms in the Maiobinha area, in Paço do Lumiar; and

16.4. Conclude, within six months, construction of a middle school with 15 classrooms, as well as an elementary school with 12 classrooms, in Cidade Operária, in São Luís.

17. With the aim of enhancing the legal assistance provided by the Office of the Ombudsman, the State of Maranhao undertakes to re activate in 6 (six) months time, the nucleus of Paço do Lumiar with the designation of a public defendant in a contest.

V. Follow-up Mechanism

18. The State Council for Defense of Human Rights, the State Council for the Rights of Children and Adolescents of the State of Maranhao, and representatives of the petitioners shall meet in joint session every four months to monitor performance of the present Agreement.

19. The Brazilian State and the petitioners undertake to provide semi-annual reports to the IACHR in 2006, and, thereafter, annual reports on compliance with the terms of the Agreement.

20. The IACHR shall hold hearings to receive information and arrange for on-site visits, should it deem appropriate.

21. Finally, the parties request the IACHR to ratify the present agreement and to draw up the appropriate Friendly Settlement Report.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

15. The Commission reiterates that in conformity with articles 48.1.f and 49 of the Convention, this mechanism is used “with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The State’s consent to pursue this avenue is evidence of its good faith in fulfilling the purposes and objectives of the Convention based on the principle of *pacta sunt servandae*, according to which States must discharge in good faith the obligations assumed in treaties. It also wishes to reiterate that the friendly settlement procedure provided for in the Convention permits individual cases to be

settled in a non-contentious manner and in cases involving various countries has proven to be a useful vehicle that both parties can use for the settlement of disputes.

16. The Inter-American Commission accompanied the friendly settlement reached in the instant case from beginning to conclusion, and values the efforts of both parties to arrive at this solution. The Commission considers that the terms of the above-transcribed agreement are compatible with the obligations contained in the American Convention and, therefore, decides to ratify it. The Commission draws attention to the fact that the inclusion in the instant agreement of other beneficiaries not mentioned in the original petitions is consistent with the object and purpose of the American Convention and with the friendly settlement process.

17. Finally, the Commission underscores the importance of the participation of the authorities of the State of Maranhao and of the federal government in this process, and recalls that in federal States, the obligations contained in the Convention apply both to the federal government and to state governments.[FN1]

[FN1] Articles 1,2, and 28.1.2 of the American Convention.

VI. CONCLUSIONS

18. Based on the foregoing considerations and in accordance with the procedure set forth in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its profound thanks to the parties for their efforts as well as its satisfaction with the friendly settlement agreement reached in this case in accordance with the purposes and provisions of the American Convention.

19. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement agreement that the parties signed on December 15, 2005.
2. To continue to monitor and supervise each and every point of the friendly settlement agreement whose fulfillment remains pending, and, accordingly, to remind the parties of their obligation to report to the IACHR on the performance of this friendly settlement.
3. To make this report public 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., on the 15th day of March 2006. (Signed): Evelio Fernández Arévalos, President; Florentín Meléndez, Second Vice President; Clare K. Roberts, Freddy Gutiérrez, Paolo G. Carozza and Víctor E. Abramovich, Commissioners.