

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 83/06; Petition 641-03
Session:	Hundred Twenty-Sixth Regular Session (16 – 27 October 2006)
Title/Style of Cause:	Manoel Luiz da Silva v. Brazil
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; Second Vice-President: Florentin Melendez; Commissioners: Freddy Gutierrez, Paolo Carozza, Victor Abramovich. In keeping with Article 17.2.a of the Commission’s Rules of Procedure, Commissioner Paulo Sergio Pinheiro, a Brazilian national, did not participate in the decision on this petition.
Dated:	21 October 2006
Citation:	Luiz da Silva v. Brazil, Petition 641-03, Inter-Am. C.H.R., Report No. 83/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLICANTS: the Global Justice Center, the Paraiba Pastoral Land Commission, James Cavallaro, Andressa Caldas, Mahine Dorea, Noaldo Belo de Meireles and Eduardo Fernandez de Araujo
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I. SUMMARY

1. On April 13, 2005, the Global Justice Center (GJC), the Paraiba Pastoral Land Commission (CPT/PB) and Dignitatis –Technical and Legal Consultancy, represented by James Cavallaro, Andressa Caldas, Mahine Dorea, Noaldo Belo de Meireles and Eduardo Fernandez de Araujo (hereinafter “the petitioners”), lodged a petition with the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) wherein they allege that the Federative Republic of Brazil (hereinafter “Brazil” or “the State”) violated Articles 4, 5, 8, 25 and 1(1) of the American Convention on Human Rights (hereinafter “the American Convention”) to the detriment of Manoel Luiz Da Silva.

2. The petition asserts that the State has incurred in international responsibility for violation of the rights of Mr. Manoel Luís Da Silva, a landless rural worker allegedly murdered on May 19, 1997, at the site of the “Fazenda Engenho Taipu” in the town of “São Miguel de Taipu,” in the state of Paraíba, Brazil. The petition asserts that the property in question was at the time in the process of being expropriated for public use, for the purpose of agrarian reform. The petitioners state that on the date of the event in question, the alleged victim was in the company of three (3) other landless workers. As they were crossing the property, owned by Mr. Alcides Vieira de Azevedo, they encountered three (3) private security guards in his employ, who told them that they were not allowed on the property and that they had been instructed by their employer to kill any landless rural workers found on the property. Following an exchange

between the two groups, the petition asserts, one of the guards shot the alleged victim, who died instantly. The petition affirms that the facts were reported to the police, yet as of the date on which the petition is under review, no action has been taken to establish the facts or the identity of those responsible. The petition alleges connivance on the part of the police, the judicial branch and area landowners, enabling the crimes committed against the landless workers of the region to go unpunished. This impunity, the petitioners contend, is a growing problem.

3. On June 20, 2005, the State filed a belated response to the petition, asserting that the internal legal remedies to settle the case had not been exhausted. It therefore entered the pertinent objection. The State reported that the District Court of Pilar, in the state of Paraiba was hearing a case against those indicted for the alleged crime, and had not yet handed down a ruling; the State reported that the court was still within the time frame allowed by law to decide a case. The State also pointed out that once a decision was delivered, a number of appeals were permissible in the domestic courts and would have to be exhausted before the case could be brought to an international forum. The State further asserted that the petitioners had offered no evidence of any civil suit lodged with the appropriate body to claim any damages and injuries sustained by the victim. For all these reasons, the State claims, the petition must be dismissed and the Commission's case closed.

4. After examining the parties positions in light of the admissibility requirements established in Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible with regard to Articles 4, 8 and 25 of the American Convention, in connection with the general obligation contained in Article 1.1 thereof. Accordingly, the Commission decided to notify the parties, to publish this admissibility report and to include it in its Annual Report.

II. PROCESSING WITH THE COMMISSION

5. On February 17, 2005, the Commission notified the State that a petition had been lodged against it, and forwarded it the pertinent parts thereof. It also informed the State that under Article 30.3 of the Commission's Rules of Procedure, the State was to submit its response within two months counted from the date on which the Commission's request was transmitted.

6. The State's belated response to the petition was dated June 20, 2005.

7. On August 5, 2005, the State's observations on the petition were forwarded to the petitioners who, by note dated August 23, 2005, requested an extension of the time period allotted to them to file their observations on the State's response.

8. On September 21, 2005, the petitioners were granted the extension they requested for filing their observations on the State's response and were notified of the decision that same day.

9. By a note received on October 24, the petitioners filed their observations on the State's response to the petition.

10. Through a submission dated April 20, 2006, the petitioners supplied the additional information requested of them in connection with the background of the petition.

11. The additional information supplied by the petitioners was forwarded to the State on May 11, 2006.

III. POSITIONS OF THE PARTIES A. The petitioners

12. According to the information that the petitioners supplied to the Commission on the aforementioned date, and which was the basis of the petition they lodged, the State is alleged to have incurred in international responsibility in the murder of the landless rural worker Manoel Luiz da Silva, on May 19, 1997, on the property of the “Fazenda Engenho Taipu” in the town of “São Miguel de Taipu”, state of Paraíba, Brazil, which property was in the process of being expropriated because of public utility reasons, for purposes of agrarian reform.

13. The petitioners further allege that on May 19, 1997, the alleged victim was traveling in the company of three other landless workers (Joao Maximiniano da Silva, Manoel da Silva and Sebastiao da Silva), all of whom lived in a camp of landless workers located on the “Fazenda Amarelo” located in that community and run by the “National Settlement and Agrarian Reform Institute.” The four landless workers had traveled from the settlement in which they lived to a store in the closest town. As they were returning to the camp, at approximately 4:00 p.m., they went by way of a wagon road that crossed the property of the “Fazenda Engenho Taipu,” owned by Mr. Alcides Vieira de Azevedo. On that road they encountered three private security guards in the employ of the aforesaid landowner. The guards, identified as José Caetano da Silva, Severino Lima da Silva and Marcelo Silva Wanderley, were on horseback and heavily armed. They told the 4 landless workers in question that they were not allowed to use that road and that the afore-named property owner, had instructed them to kill any landless workers who might be in the vicinity of his ranch. After threatening them thus, the security guards told the workers to put down the objects they were carrying, consisting of three sickles and a knife. After hurling insults at them having to do with the fact that they were landless workers, Manoel Luiz da Silva was hit by a bullet fired at close range, and died instantly. Two of the other landless workers with him (Manoel Luiz da Silva [whose name is the same as the alleged victim’s] and Sebastiao Félix da Silva) managed to escape by running, although shots were fired at them from behind. Joao Maximiniano da Silva was detained by the private security guards for a few moments and then released.

14. That very day, workers from the camp where the alleged victim had lived went to the District Police to report the murder of Mr. Manoel Luiz da Silva. Nevertheless, the petitioners contend, six years after the events in question, those responsible for the murder had still not been brought to trial. The petitioners allege that there is strong evidence suggesting that police and members of the local judiciary are conniving with landowners in the region, allowing crimes such as this one, committed against landless workers, to go unpunished. The petitioners point out that the public prosecutor’s office charged only two of the private security guards with murder and that the owner of the ranch, Alcides Vieira de Azevedo, was never charged as the intellectual author of the crime.

15. The petitioners allege that the State has incurred in international responsibility for violation of Articles 4, 1.1, 8 and 25 of the American Convention, to the detriment of the alleged victim, represented by his next of kin.

16. In the additional information received on October 24, 2005, the petitioners assert that in November 2004, the Paraiba State Court held that criminal proceedings should be prosecuted only in the case of guard Severino da Silva, because José Caetano da Silva had not been properly advised of the charge against him. The petitioners report that the date set for Severino da Silva's trial was September 21, 2005; when the day arrived, however, the trial was postponed until December 20, 2005, because the defendant was not represented by counsel.

17. Summarizing, the petitioners are requesting that the Commission recommend that the State investigate and criminally prosecute and punish those responsible for the alleged victim's murder; that it compensate his next of kin; that effective measures be taken to protect the rights of landless rural workers, and that legislative measures be adopted to clear the way so that the federal justice system can prosecute human rights crimes, committed in areas where agrarian disputes are occurring.

B. The State

18. The State begins by asserting that the remedies under domestic law to settle the case have not been exhausted and enters an objection to that effect. It argues that the District Court of Pilar, in the state of Paraiba is hearing a criminal case against defendants José Caetano da Silva and Severino Lima da Silva. It alleges that while the court has not yet handed down its ruling on the case, it is within the time frame that the law prescribes for that purpose. It further contends that once a decision is delivered, domestic law provides a number of remedies against it, starting with an appeal, then a special remedy filed with the Superior Court, and finally another remedy with the Supreme Court. All these appeals, the State argues, have to be exhausted before the case can be brought to an international forum. The State also contends that the petitioners have offered no evidence to show that civil actions have been filed to claim compensation for the damages and injuries sustained by the alleged victim. For that reason, it argues, no claim seeking compensation in an international forum, as in the instant case, can be entertained.

19. As for Criminal Case No. 028.1997.000177-3, now before the District Court of Pilar, the State contends that 16 (sixteen) "cartas precatórias" (directives requesting court measures) have been issued, in which the judge is asking judges in other court districts to take certain measures. This, the State argues, invariably causes delays in criminal cases. The State further alleges that in October 2001, an order came down nullifying all proceedings in the case subsequent to dossier 259 in the case file, which meant that a number of proceedings had to be conducted a second time, which further delayed the case. In conclusion, the State requests that for all these reasons, the petition should be declared inadmissible and the case closed.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

1. The Commission's competence *rationae personae*, *rationae loci*, *rationae temporis* and *rationae materiae*

20. Under Article 44 of the American Convention, the petitioners are entitled to lodge complaints with the Inter-American Commission. The petition names Manoel Luiz Da Silva, a natural person, as the alleged victim. The Commission is, therefore, competent *rationae personae* to examine the petition.

21. The IACHR is competent *rationae loci* to examine the petition, inasmuch as it alleges violations of rights protected under the American Convention, said to have taken place within the territory of a State Party to the Convention.

22. The Inter-American Commission is competent *rationae temporis*, since the obligation to respect and ensure the rights protected under the American Convention was in effect for the State on the date the facts alleged in the petition were said to have occurred.

23. Finally, the Commission is competent *rationae materiae* because the petition alleges violations of human rights protected by the American Convention.

2. Exhaustion of domestic remedies

24. Under Article 46.1.a of the American Convention, for a petition lodged under Article 44 of the Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of the rule requiring exhaustion of domestic remedies is to allow the national authorities to take cognizance of the alleged violation of a Convention-protected right and, where appropriate, to resolve the matter before an international forum takes up the case. The record shows that the punishable offense occurred on May 19, 1997, and that a police investigation and judicial inquiry were instituted. The court inquiry is still underway. The record also shows that on October 9, 2001, the District Judge of Pilar, Nieto Xavier de Lira, nullified all proceedings subsequent to 259 of the court record. The examining phase of the criminal case had to be conducted again. Once all these proceedings were completed, on September 15, 2003 –almost 6 years after the crime was committed- the very same judge issued a ruling in which he found probable cause to prosecute the case against José Caetano da Silva and Severino Lima da Silva, and bound them over for trial by jury. However, the observations filed by the petitioners on October 24, 2005, on the State's response to the petition, reveal that in November 2004, the court in question decided that only Severino da Silva should stand trial, since José Caetano da Silva had not been properly notified of the indictment accusing him of the commission of a punishable offense, as shown in Annex F. The record also shows that on March 16, 2005, the Public Prosecutor's Office entered the indictment against Severino da Silva, and the jury trial was set for September 21, 2005; however, when the day for the trial arrived, it was postponed until December 20, 2005, because the defendant was not represented by counsel. In this regard, the Commission has found that as by the time the petition is examined, 9 (nine) years have passed without the domestic courts settling the case, then this constitutes an "unwarranted delay" in rendering a final judgment which, under Article 46.2.c of the Convention and Article 37.2 of the

Commission's Rules of Procedure, is grounds for the exception to the rule requiring exhaustion of local remedies.[FN2]

[FN2] I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, para. 191, *The Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C No. 79, par. 114; *Case of the "Five Pensioners"*. Judgment of February 28, 2003. Series C No. 98, and *Juan Humberto Sánchez Case*. Judgment of June 7, 2003, para. 121.

25. In keeping with the general principle in evidentiary matters, the Commission has consistently held that a State alleging a failure to exhaust local remedies must indicate what internal remedies remain to be exhausted and must show that they are effective.[FN3] While the State did indicate the remedies by which to challenge the pending court decision, the punishable offense took place more than 9 (nine) years ago. Such remedies are patently ineffective and very likely will mean an unwarranted delay in affording justice to the alleged victims.

[FN3] IACHR, Report No. 32/05, petition 642/03, Admissibility, *Luis Rolando Cuscul Pivaral et al (persons living with HIV/AIDS), Guatemala*, March 7, 2005, paras. 33-35; I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community Case*. Preliminary Objections, *supra* note 3, para. 53; *Durand and Ugarte Case*. Preliminary Objections. Judgment of May 28, 1999, Series C No. 50, para. 33; and *Cantoral Benavides Case*. Preliminary Objections. Judgment of September 3, 1998, Series C No. 40, para. 31.

26. Lastly, it bears noting that application of the exceptions to the rule requiring exhaustion of domestic remedies, provided for in Article 46.2 of the Convention, is closely linked to the determination of possible violations of certain Convention-protected rights, such as the guarantees of access to justice. However, given its nature and purpose, Article 46.2 stands separate and apart from the Convention's substantive provisions. Therefore, the determination as to whether the exceptions to the rule of prior exhaustion of domestic remedies apply to the case in point must be done prior to and separate from the analysis of the merits. The determination of whether the exceptions apply relies on a standard of assessment that is different from the standard used to determine possible violations of Articles 8 and 25 of the Convention. It is worth noting that the causes and effects that prevented exhaustion of domestic remedies will be examined in the report that the Commission adopts on the merits of the case, to determine whether violations of the American Convention have occurred. The prima facie assessment for admissibility purposes does not constitute a prejudgment of the case. The final determination as to whether violations occurred will come on the heels of an exhaustive analysis.

3. Time frame for lodging a petition

27. In the petition under consideration, the IACHR has concluded that the remedies that the law provided to the petitioners to obtain redress of the rights that they claim were violated have not been sufficiently exhausted. However, it will defer examination of this issue until the phase

during which the merits of the case are addressed. Further, the provision of the Convention requiring that domestic remedies be exhausted is independent from the provision requiring that the petition be lodged within six months from the date on which the party alleging violation of his rights was notified of the final judgment within the domestic system.

28. This consideration aside, the Commission must still determine whether the petition in this case was lodged within a reasonable period, in accordance with Article 32 of its Rules of Procedure. It bears noting that the petition itself asserts that the alleged victim's next of kin have been unable to obtain justice because of the excessive and unwarranted delays in the justice system. As previously noted, the punishable offense took place on May 19, 1997. While it is true that an investigation of the case was undertaken and that events occurred in the course of that inquiry that might reasonably explain the delay, such as the nullification of proceedings and the rescheduling of the trial of the defendant in the case, it is also true that as of the date on which this case is being examined, 9 (nine) years have passed since the events in question occurred. The State has taken too long to solve this case. In a previous case, the Commission held that since the time of the events, "sluggishness and lack of results in th[e] investigation constitute[d] an obvious case of unjustified delay in the administration of justice that, in fact, impl[ie]d a denial of same"[FN4] Thus, the question of whether a petition is lodged within the six months from the date on which the remedies under domestic law were exhausted may depend upon how effective and efficient those remedies are in producing results for the alleged victims. Hence, the decision as to whether the time period established in Article 46(1)(b) of the American Convention is exigible in this case must also be deferred until the examination of the merits.

[FN4] Inter-American Commission on Human Rights, Resolution No. 17/87, Case 9425, Peru, March 28, 1987, in Annual Report of the Inter-American Commission on Human Rights 1986-1987, p. 127, Consideranda 6.

4. Duplication of international proceedings and res judicata

29. Nothing in the file of this petition suggests that the subject matter of the petition is pending decision in another international proceeding for settlement, or that it replicates a petition already decided by the Inter-American Commission. The Commission therefore concludes that the requirements established in Articles 46.1.c and 47.d of the Convention have been met.

5. Characterization of the facts alleged

30. For admissibility purposes, the IACHR has to decide whether the allegations state facts that tend to establish a violation of the American Convention, as stipulated in Article 47(b) of this instrument, and whether the petition is or is not "manifestly groundless" or "obviously out of order," as stipulated under Article 47.c.

31. The standard for assessing these requirements differs from the requirements for deciding the merits of a petition. The IACHR must do a prima facie assessment to determine whether the petition states facts that tend to establish a possible violation of a right guaranteed by the

Convention, but not to establish the existence of a violation. At this stage, it is a summary analysis and does not imply a prejudgment of the merits or advance any opinion thereon.[FN5] The present petition describes a possible violation of such basic rights as the right to life, the right to humane treatment, and the right to a fair trial, to the detriment of the alleged victim, committed by private individuals in complicity with or with the acquiescence of the local authorities. Therefore, the Commission must undertake to examine the petition.

[FN5] IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luis Tapia González et al., Chile, February 24, 2004, para. 33.

32. The Commission does not find that the petition is “manifestly groundless” or “obviously out of order.” It therefore considers that, prima facie, the petitioners have satisfied the requirements established in Article 47.b and c. However, the nature of the described facts lead this body to conclude that the potential violation of Article 5 of the American Convention, is subsumed in this occasion in Article 4 of the same Treaty. Because of that matter, the allegation that the first of these norms was violated has to be declared inadmissible.

33. Based on the information provided by the petitioners, and without prejudging the merits of the case, the IACHR concludes that the petition contains allegations of fact that, if proven, would establish violations of the right to life, right to humane treatment, right to a fair trial and right to judicial guarantees, protected under Articles 4, 8, 25 and 1.1 of the American Convention since, prima facie, the factual description of the situation has credibly established that the case involves a possible violation of the rights under those Convention Articles. Now, it has to be clarified that the potential violation of the rights protected by the alleged norms, are referred to Mr. Manoel Luiz Da Silva in relation to Article 4 of the American Convention, and to his forced heirs in relation to Articles 8 and 25 of the same instrument.

34. The possible violations will be examined in relation to the general obligations undertaken in Articles 1.1 and 2 of the American Convention.

VI. CONCLUSIONS

35. Based on the foregoing considerations of fact and of law and without prejudging the merits of the case, the Commission concludes that the present case satisfies the admissibility requirements set forth in Articles 46 and 47 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant petition admissible in relation to Articles 4, 8 and 25 in relation with the general obligations contained in Articles 1.1 and 2 of the American Convention.
2. To declare the petition inadmissible in relation to Article 5 of the American Convention.
3. To notify the State and the petitioner of its decision.

4. To proceed with its analysis of the merits of the case.
5. 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 Washington, D.C., on October 21, 2006 (Signed): Evelio Fernández Arévalos, President; Florentín Meléndez, Second Vice-president; Freddy Gutiérrez, Paolo Carozza and Víctor Abramovich, Commissioners.