

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 37/07; Petition 12.200
Session:	Hundred Twenty-Eighth Session (16 – 27 July 2007)
Title/Style of Cause:	Henrique Jose Trindade and Juvenal Ferreira Trindade v. Brazil
Doc. Type:	Decision
Decided by:	President: Florentin Melendez; First Vice-President: Paolo Carozza; Second Vice-President: Victor Abramovich; Commissioners: Clare K. Roberts, Evelio Fernandez Arevalos, Freddy Gutierrez. Pursuant to the provisions of Article 17(2) of the Rules of Procedure of the IACHR, Commissioner Paulo Sergio Pinheiro, of Brazilian nationality, did not participate in the decision regarding this petition.
Dated:	17 July 2007
Citation:	Jose Trindade v. Brazil, Petition 12.200, Inter-Am. C.H.R., Report No. 37/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANTS: the Center for Justice and International Law, the Henrique Trindade Human Rights Center and the Comissao Pastoral da Terra
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I. SUMMARY

1. On February 10, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission,” or the “IACHR”) received a petition submitted by the Center for Justice and International Law (CEJIL), the Henrique Trindade Human Rights Center and the Comissão Pastoral da Terra (Pastoral Commission of the Land) (hereinafter “the petitioners”), alleging the violation of Articles I, IX, and XVIII of the American Declaration of the Rights and Duties of Man (hereinafter the American Declaration), as well as Articles 8, 24, 25, and 1(1) of the American Convention on Human Rights (hereinafter “the American Convention”) by the Federal Republic of Brazil (hereinafter “Brazil,” or “the State”), with prejudice to the rights of Henrique José Trindade and Juvenal Ferreira Trindade.

2. According to the information provided, Henrique Trindade was murdered in the Municipality of Alto Paraguai, Brazil, on November 4, 1982, by a group of six individuals. In the same event, Juvenal Ferreira Trindade, son of the deceased, was injured by a bullet from the gun of one of the aforementioned six persons. The police investigation was initiated on September 6, 1982. On September 6 of 1983, the Office of the Public Prosecutor brought charges against those responsible, before the judge of the corresponding jurisdiction. To this date the preliminary criminal proceedings of the case have yet to be concluded.

3. The State responded to the complaint, submitting a report on the status of the criminal proceedings related to the facts of the case.

4. After examining the positions of the parties in the light of the requirements for admissibility established by Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible with respect to Articles I, IX, and XVIII of the American Declaration, as well as with respect to Articles 8(1) and 25 of the American Convention, in connection with the general obligation to protect rights established by Article 1(1) of same. Likewise, the Commission decided to declare the petition inadmissible regarding the alleged violation of Article 24 of the American Convention. The Commission, consequently, decided to notify the parties and publish this Report on Admissibility, and include it in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

5. The original petition was received by the Commission on February 10, 1999, and was registered under number 12.200.

6. The Commission forwarded the relevant parts of the petition to the State on August 31, 1999, pursuant to Article 34 of the Commission's Rules of Procedure in force at the time the complaint was lodged, and, attaching the information considered relevant, granted them 90 (ninety) days to respond.

7. The State responded to the complaint in a note dated December 2, 1999, which was received by the Commission on December 6 of that same year.

8. The petitioners were informed on December 14, 1999 that the State had responded to the complaint, and they were granted 45 (forty five) days to submit their observations to the State's response.

9. In a February 14, 2000 communication, received by the Commission on February 15, 2000, the petitioners requested an extension of the time period granted to them to submit their observations on the State's response. In a February 24, 2000 communication, the petitioners were granted an extension of 30 (thirty) days.

10. On May 2, 2000, the Commission sent a communication to the petitioners stating that, in view of the fact that it had not received their required response, if the Commission did not receive a response within 60 (sixty) days, it would suspend consideration of the matter.

11. The petitioners submitted the observations required of them by the Commission regarding the State's response to the complaint, on June 30, 2000.

12. The Commission informed the petitioners on July 6, 2000 that it was in receipt of the additional information transmitted to it by them, and on this same date forwarded the information to the State, which was granted 30 (thirty) days to submit its own observations.

13. On September 7, 2006, both the petitioners and the State were requested by the Commission to provide, within 15 (fifteen) days, up-to-date information on the situation of the alleged victim, and regarding their interest in pursuing the case.

14. On October 3, 2006, the petitioners submitted the information required of them.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

15. The petitioners maintain that the complaint they have lodged against the State is based on the murder of Henrique José Trindade, and the injuries sustained by his son, Juvenal Ferreira Trindade, on September 4, 1982, in the Municipality of Alto Paraguai, State of Matto Grosso, Brazil. To this should be added the manner, characterized by negligence and omission, in which the State's available domestic resources have been used: these have not been effective to provide compensation for the human rights violations incurred. In this connection, it is necessary that the State be held responsible for the murder of Henrique Trindade and for the injuries suffered by his son, and for not having taken any punitive measures against those responsible, from the time of the facts up to the time of the filing of the petition, 16 (sixteen) years later.

16. The petitioners contend that on the aforementioned date, at around 20:00 hours, Henrique Trindade was murdered near his home by a group of six individuals under the command of the police station chief [delegado policial] Nelson Tokashike. The alleged victim was in possession of public land, which he farmed for a living, in the Municipality of Alto Paraguai, State of Matto Grosso. This land, not being his nor destined to some federal, state, territorial, or municipal use, did not constitute private property. He and other similar possessors of the region, the petitioners contend, had been receiving threats from rancher of the area since 1979, due to disputes over the possession of the land on which they had settled. The estate owner had bought a ranch next to the land cultivated by the aforementioned possessors and, according to the petitioners, had attempted to take it from them, but had encountered their resistance, under Henrique Trindade's leadership.

17. The petitioners further contend that, on August 26, 1981, Henrique and other farmers in possession of state lands, the aforementioned rancher, and the president of the Rural Workers Union of Alto Paraguai, met at the headquarters of the agency in charge of the management of lands owned by the state, in order to reach an agreement on the lands in question. The rancher offered the possessors compensation for the land they were using. The lawyer of the agency told them that said land belonged to the state, and could not be transferred by them. This information gave the men a sense of security, encouraging them to remain in possession of the lands.

18. The petitioners assert that, from the time at which they refused to sign an agreement, the rancher devised a plan to kill Henrique Trindade, Benedito Gomes and Julio Arao da Silva, and hired certain individuals for this purpose, including the police station chief of Alto Paraguai, and the local sheriff (comisario). In the report filed by the Office of the Prosecutor on April 4, 1984, according to the petitioners, the rancher gave orders to kill Henrique Trindade under the pretext that he had stolen goods in his home.

19. The petitioners state that on September 4, 1982, under heavy rain, a group headed for Henrique Trindade's house, intending to murder him. Since he was wearing no shirt, the aforementioned sheriff ordered him to go to his bedroom to dress. The moment he entered the house to comply with the order, the police chief and sheriff came in after him, shooting, and wounded him in the arm. Trindade reacted by also shooting. As he left the room, the petitioners contend that Henrique was shot twice. In another bedroom in the same house, was the son of the wounded man, Juvenal Ferreira Trindade, 15 (fifteen) years of age, who was carrying a shotgun for his defense. Upon seeing him, the police station chief shot him, wounding him in the right hand, which caused him to escape to the house of Benedito Gomes, another possessor who also was "sworn to death."

20. The petitioners assert that Henrique's wife, who was eight-months' pregnant when she was a witness to these facts, fled to her father's house, taking her two children with her. After these events, the murderers forced Henrique, who was still alive, to take them to the houses of Julio Arao da Silva and Benedito Gomes. When they arrived, and found the houses empty, killed Henrique Trindade then and there by another shot, after gouging out one of his eyes, on the orders of the rancher who had hired them. The body was abandoned under a tree next to Julio's house, to be found with signs of torture the next day by local villagers who were searching for him. The police station chief of Diamantino, they go on to say, was informed of the finding, but he refused to hold an inquest.

21. The petitioners further assert that the police investigation was initiated on September 6, 1982, in the territory (comarca) of Cuiabá, state of Mato Grosso, and that there were serious indications of irregularities in its management, because the officers of said organ, having bonds of friendship with some of the accused, were in connivance with them. One fact, they contend, that is worthy of attention, is that the police station chief involved was not brought immediately into preventive custody, although there was evidence indicating that he should have been. They claim that the police station chief responsible for the investigation received the gift of a house from the aforementioned rancher, in payment for having sent his subordinates to kill Henrique Trindade, a homicide which despite having been reported, was never investigated. The autopsy report of the deceased, they go on to say, was negligent, as it omitted any signs of torture.

22. The petitioners state that on September 6, 1983, the investigation, classified as No. 1182/84 was forwarded to the Criminal Judge of Diamantino/Matto Grosso. The Office of the Public Prosecutor brought charges on April 4, 1984, against six individuals, including the aforementioned police station chief and the sheriff. At this point in time the accused were summoned to court through letters rogatory (official judicial communications between judges with different jurisdictions); proceedings were delayed excessively because the individuals could not be found, until, on October 6, 1998, they were found in contempt and bench warrants were issued against them. The criminal proceedings had remained in their preliminary stage until the complaint was brought before the IACHR, with no convictions or sentences being handed down; not even one of the suspects had been arrested, which in turn demonstrates the complete state of impunity that characterizes the region.

23. The petitioners maintain that all domestic remedies have been ineffective, which consequently exempts them from the requirement of exhausting them, that the time period within

which the petition has been lodged is reasonable, and that the rights to life, liberty, personal security, to the inviolability of the home, to a fair trial, to judicial guarantees, to equality and to the judicial protection of the alleged victims, as well as the general obligation to protect established by Article 1.1 of the American Convention, have been violated.

24. In the report they submitted on October 3, 2006, the petitioners state that, 24 (twenty-four) years after the Office of the Public Prosecutor filed criminal charges, the case has not yet been decided. Moreover, on June 2, 2006, the Criminal Judge of the city of Diamantino found that the statute of limitations for criminal proceedings had expired. The petitioners conclude that, in addition to having had to wait for more than 20 (twenty) years for the responsible parties to be investigated and tried in court, they are now in a condition of absolute impunity, brought about the expiration of the statute of limitations.

25. The petitioners request that the case be declared admissible, and that the Commission find that the State has violated Articles I, IX, and XVIII of the American Declaration, and Articles 8, 24, 25, and 11 of the American Convention.

B. Position of the State

26. The State, in its concise submission of December 2, 1999, received by the Commission on December 6 of the same year, only says that it attaches information relating to the case. The attachment is comprised of a single page containing a report issued from a staff member of the Human Rights Secretariat of the Ministry of Justice, stating that, according to the Attorney General of the State of Mato Grosso, the initiation of criminal proceedings was registered on April 23, 1984. Regarding the current stage of the proceedings, it simply says that an order was issued to bring all the accused into preventive custody; that the corresponding warrants for their arrest had been issued, and that dates had been set for the hearing of testimony.

IV. ANALYSIS REGARDING COMPETENCE AND ADMISSIBILITY

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

27. The petitioners are granted standing to lodge petitions before the IACHR by Article 44 of the Convention. The petition identifies Henrique José Trindade and Juvenal Ferreira Trindade, citizens of the State, as alleged victims. Therefore, the Commission is competent *rationae personae* to examine the petition. Regarding the State, the Commission finds that it ratified the American Convention on September 25, 1992, and deposited its instrument of ratification of the OAS Charter on March 13, 1950.

28. The Commission is competent *rationae loci* to examine the petition, because it contains allegations regarding violations of rights protected by the American Declaration and the American Convention, which are claimed to have occurred within the territory of a State party to said instruments.

29. The Commission is competent *rationae temporis* because the obligation to respect and guarantee rights internationally protected either by the American Declaration or by the American Convention was already in force for the State at the time that the facts are alleged by the petition to have occurred. The Commission clarifies that the facts allegedly in violation of the human rights of Messrs. Henrique José Trindade and Juvenal Ferreira Trindade took place before September 25, 1992, the date on which Brazil ratified the American Convention. Consequently, one of the sources of law applicable to the case is the American Declaration. Both the Court and the Commission have found that the American Declaration is a source of international obligations for the member states of the OAS.[FN2] Regarding the facts occurred before September 25, 1992, the aforementioned claims should be examined in connection with the American Declaration.

[FN2] See: I/A Court H. R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989, Series A and B No. 10, para. 35-45; IACHR, James Terry Roach and Jay Pinkerton v. United States, Res. 3/87, Case 9647, September 22, 1987, Annual Report 1986-1987, para. 46-49, and Rafael Ferrer-Mazorra et al., v. United States, Report No. 51/01, Case 9903, April 4, 2001. See: Article 20 of the Statute of the IACHR.

30. Finally, the Commission is competent *rationae materiae*, because the petition reports violations of human rights protected by the American Convention and the American Declaration.

B. Requirements for Admissibility

1. Exhaustion of domestic remedies

31. Article 46 of the American Convention establishes requirements in order for a petition to be consider admissible, as well as exceptions to the application of the requirement of exhaustion of domestic remedies and the presentation of the issue within a time frame of six months. Specifically Article 46(1) of the American Convention establishes, as a requirement for the admissibility of a petition, that the remedies under domestic law have been exhausted in accordance with generally recognized principles of international law.

32. Petitioners have stated that their petition is based on the impunity of the death of a Brazilian citizen, and the personal injury of another. In addition petitioners have indicated that criminal proceedings have been paralyzed due to innumerable and unjustifiable delays, given the existing blocks within a legal system that confers exclusive capacity to initiate and further public criminal proceedings to the Office of the Prosecutor. In the petitioners' communication submitting additional information on October 3, 2006, they assert that according to the statute of limitations the action expired on June 2, 2006.

33. The State responded to the petition in a concise fashion. It did not lodge the objection of lack of exhaustion of domestic remedies. The Inter-American Court has reiterated several times that "the objection asserting the non-exhaustion of domestic remedies, to be timely, must be

made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed.”[FN3]

[FN3] The Inter-American Court has stated that: “the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed.” See: Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, para. 88; Fairén Garbí and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, Series C No. 2, para. 87; Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987, Series C No. 3, para. 90; Gangaram Panday Case, Preliminary Objections, Judgment of December 4, 1991, Series C No. 12, para. 38; Neira Alegría et al. Case, Preliminary Objections, Judgment of December 11, 1991, Series C, No. 13, para. 30; Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, Series C No. 24, para. 40; Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, para. 40.

34. The Commission notes that, given that the expiry of the statute of limitations for the criminal charges has been decreed on June 2nd of 2006, there has been an exhaustion of domestic remedies accordingly with article 46(1)(a) of the American Convention.

35. In the light of the foregoing, it is the opinion of the IACHR that domestic remedies have been exhausted, and the hence the requirement established by Article 46(1) of the Convention have been met.

2. Timeliness of the petition

36. Article 46(1)(b) of the Convention requires that the petition 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.” According to Article 46(2) of the Convention this requirement of Article 46(1)(b) shall not be applicable one of the exceptions provided for by same is found to exist.

37. The IACHR notes that although “the Convention’s requirement that domestic remedies be exhausted is independent of the requirement that the petition be lodged within six months following the judgment exhausting domestic jurisdiction,”[FN4] the exceptions provided for by Article 46(2) of the American Convention are the same for both requirements.

[FN4] IACHR, Report N° 81/01, Case 12.228, Alfonso Martín del Campo Dodd, México, October 10, 2001, para. 20.

38. In the present case, although the petition was filed before the exhaustion of domestic remedies, it should be borne in mind that at the time of said submission, the domestic instance was already unwarrantedly delayed in bringing about a resolution of the case, since the facts took place on September 4, 1982, and to date more than twenty-four years have transpired with no

results in terms of domestic convictions of the parties responsible and consequently no sentence of imprisonment being passed, which would in turn have given standing to the victims to sue for compensation in civil courts.

39. At the time of the filing of the petition, more than sixteen years had gone by since the facts occurred, without a resolution regarding them within the domestic jurisdiction. The IACHR therefore concludes that, since the criminal actions took place on September 4, 1982, and criminal proceedings were initiated with the filing of charges against six individuals on April 23, 1984, against all of whom arrest warrants were issued, at the time the petition was submitted there was an evident unjustified delay in the solution that domestic remedies could have provided; moreover, there was a subsequent decree of expiry of the statute of limitations regarding the criminal charges.

40. Pursuant to Article 32(2) of the IACHR's Rules of Procedure, in those cases where 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.

3. Duplication of procedures and international *res iudicata*

41. There is no evidence in the record that the subject matter of the petition is pending another international settlement procedure, or that it essentially duplicates a petition pending or already examined and settled by the Commission or by another international governmental organization. Therefore, the requirements established by Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the facts alleged

42. For purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged tend to establish a violation of human rights protected by the applicable instruments, and, pursuant to paragraph (c) of same, whether the petition is "manifestly groundless" or "obviously out of order."

43. The standard for the analysis of these points is different from that required to decide on the merits of a complaint. The IACHR must make a *prima facie* evaluation to examine whether the complaint establishes the apparent or potential violation of a right guaranteed by the American Convention or the American Declaration, and not to establish the existence of a violation. Such an examination is a summary analysis that does not imply any prejudice or preliminary opinion on the merits.[FN5]

[FN5] IACHR, Report N° 21/04, Petition 12.290, Admissibility, José Luis Tapia González et al., Chile, February 24, 2004, para. 33.

44. After an exhaustive analysis of the case, the Commission does not find that the petition is "manifestly groundless," or that it is "obviously out of order." Therefore, it is the opinion of the

IACHR that, prima facie, the petitioners have met the requirements provided for by Article 47, paragraphs (b) and (c) of the Convention.

45. Bearing the aforementioned in mind, the Inter-American Commission considers that, should the facts alleged be proven regarding the violation of the rights to life, security, to the inviolability of the home, to a fair trial and to judicial protection, rights enjoyed by Henrique José Trindade and Juvenal Ferreira Trindade, a violation of Articles I, IX, and XVIII of the American Declaration, as well as Articles 8 and 25 of the American Convention, in connection with the general obligation to protect rights provided for by Article 1(1) of same, could be established.

46. The description of the facts that shape this case lead the Commission to determine that they do not constitute a potential violation of the right provided for by Article 24 of the Convention, because it cannot be inferred that the alleged victims have suffered a different treatment with respect to their exercise of the rights and liberties protected by the Convention than other citizens under similar conditions. For this reason, and in this respect, the petition must be found inadmissible.

V. CONCLUSIONS

47. Based on the foregoing considerations in fact and in law, and without prejudging the merits of the case, the Commission concludes that the instant case meets the requirements for admissibility established by Articles 46 and 47 of the American Convention,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare petition No. 12.200 admissible, pursuant to Articles I, IX, and XVIII of the American Declaration, and Articles 8(1) and 25 of the American Convention, in connection with the general obligation to protect established by Article 1(1) of the latter instrument.
2. To declare the petition inadmissible with respect to the alleged violation of Article 24 of the American Convention.
3. To transmit this report to the State and to the petitioners.
4. To continue with the examination of the merits of the case.
5. To publish this report in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 17th day of the month of July, 2007.
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President, Víctor E. Abramovich, Second Vice-President; Clare K. Roberts, Evelio Fernández Arévalos, and Freddy Gutiérrez, Commissioners.