

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 40/07; Petition 665-05
Session: Hundred Twenty-Eighth Session (16 – 27 July 2007)
Title/Style of Cause: Alan Felipe da Silva, Leonardo Santos da Silva, Rodrigo da Guia Martins Figueiredo Tavares, Eduardo Gomes da Conceicao, Carlos Alberto Rocha Ferreira, Wellington Farias da Silva, Bruno de Souza de Oliveira, Diogo Inacio da Silva, Rodrigo da Silva Linhares and Heraldo Dias de Maranhao v. Brazil
Doc. Type: Decision
Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Evelio Fernandez Arevalos, Sir Clare K. Roberts, Freddy Gutierrez.
Pursuant to the provision of Article 17(2)(a) of the IACHR's Rules of Procedure, Commissioner Paulo Sergio Pinheiro, of Brazilian nationality, did not participate in the decision of this petition.
Dated: 23 July 2007
Citation: Felipe da Silva v. Brazil, Petition 665-05, Inter-Am. C.H.R., Report No. 40/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by: APPLICANTS: the practicing Public Defenders of the Human Rights Defense Unit and the Coordinating Unit for Defense of the Rights of Children and Adolescents of the Public Defenders' Office
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I. SUMMARY

1. On June 8, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition submitted by the practicing Public Defenders of the Human Rights Defense Unit (Núcleo de Defesa dos Direitos Humanos - NUDEH) and the Coordinating Unit for Defense of the Rights of Children and Adolescents of the Public Defenders' Office (Coordenadora de Defesa dos Direitos da Criança e do Adolescente da Defensoria Pública - CDEDICA), (hereinafter “the petitioners”), alleging violation by the Federative Republic of Brazil (hereinafter “Brazil” or “the State”) of Articles 5, 19, and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), to the detriment of the following children[FN2] and youngsters[FN3]: Alan Felipe da Silva, Leonardo Santos da Silva, Rodrigo da Guia Martins Figueiredo Tavares, Eduardo Gomes da Conceição, Carlos Alberto Rocha Ferreira, Wellington Farias da Silva, Bruno de Souza de Oliveira, Diogo Inácio da Silva[FN4], Rodrigo da Silva Linhares, and Heraldo Dias de Maranhão (hereinafter “the alleged victims”).

[FN2] According to the Convention on the Rights of the Child of the UN, “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. The Brazilian Criminal Code establishes that people under eighteen years of age are criminally incompetent and are subject to special legislation. The Brazilian Statute of the Child and Adolescent establishes in its Article 2 that a child for the legal effect of that instrument are the persons as old as twelve uncompleted years and adolescents are the persons between twelve and eighteen years of age. The Commission, following the established in the Convention on the Rights of the Child uses the word “child” in the present report, to refer to the following alleged victims, who were below the age of eighteen years on May 29, 2002: Alan Felipe da Silva, 17 years old (Born on October 17, 1984, as noted in the record dated May 29, 2002, appended as an attachment to the petition); Leonardo Santos da Silva, 17 years old (Born on December 13, 1984, as noted in the record dated May 29, 2002, appended as an attachment to the petition); Rodrigo da Guia Martins Figueiredo Tavares, 16 years old (Born on February 2, 1986, as noted in the record dated May 29, 2002, appended as an attachment to the petition); Eduardo Gomes da Conceição, 16 years old (Born on January 8, 1986, as noted in the record dated May 29, 2002, appended as an attachment to the petition); Carlos Alberto Rocha Ferreira, 15 years old (Born on October 14, 1986, as noted in the record dated May 29, 2002, appended as an attachment to the petition); Wellington Farias da Silva, 15 years old (Born on October 10, 1986, as noted in the record dated May 29, 2002, appended as an attachment to the petition); Bruno de Souza de Oliveira, 13 years old (Born on April 26, 1989, as noted in the record dated May 29, 2002, appended as an attachment to the petition); and Diogo Inácio da Silva, 17 years old (Born on March 6, 1985, as noted in the record dated May 31, 2002, appended as an attachment to the petition).

[FN3] Pursuant to the aforementioned criterium (supra, note 2), the Commission uses the word “youngster” to refer to the following alleged victims, who were over the age of eighteen years on May 29, 2000: Rodrigo da Silva Linhares, 18 years old (Born on January 10, 1984, as noted in the record dated May 29, 2002, appended as an attachment to the petition); and Heraldo Dias Maranhão, 23 years old (Born on November 9, 1978, as noted in the record dated May 27, 2002, appended as an attachment to the petition).

[FN4] Deceased according to the most recent information provided by the State.

2. The petition claims that the alleged victims were children and youngsters who needed to complete social and educational measures and were being held for a time at the Selection and Reception Center (Centro de Triagem e Recepção – CTR) (hereinafter referred to as the CTR)[FN5] located in Rio de Janeiro, where individuals are directed for selection and subsequent transfer to other units where they complete the measures in question. On May 29, 2002, the petitioners learned that these children and youngsters were being subjected to different types of abuse and even torture at the CTR. Upon meeting at the location, they confirmed these facts, as a result of which the relevant police report was filed. The investigations produced no results, amounting to a situation of unjustified delay constituting impunity.

[FN5] Literal translation: Selection and Reception Center.

3. On September 25, 2006, the State responded to the petition, filing an exception based on failure to exhaust domestic remedies. The State claims that the criminal process instituted against the CTR agents accused as being responsible for the violations is following the regular course and the delays occurring in the process were due to the difficulty of locating all the children and youngsters who allegedly suffered mistreatment. Statements from them are essential in order to ensure due process. The legal remedies under domestic law are proceeding according to the nature of the situation, and there must be respect for the competing rights of those involved, limiting the pace of the procedure. Accordingly, the State requests that the petition be declared inadmissible.

4. After analyzing the petition and pursuant to Articles 46 and 47 of the American Convention on Human Rights, as well as Article 30 and related articles of the IACHR Rules of Procedure, the Commission decided to declare the petition admissible with respect to the alleged violations of Articles 5, 8(1), 19, and 25 of the American Convention, consistent with the general obligation to respect and guarantee rights as provided in Article 1(1) of that instrument, as well as with respect to potential failure to comply with the provisions of Articles 6, 7, and 8 of the Inter-American Convention to Prevent and Punish Torture, by means of applying the principle of *iura novit curiae*. The Commission also decided to publish this decision and include it in its report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

5. The Commission received the original petition on June 8, 2005 and recorded it as Petition No. 665/2005. On June 22, 2005, the Commission informed the petitioner that it had received the petition. On May 12, 2006, the petitioner was informed that the petition had been processed and the petition was forwarded to the State on the same date so that it could respond within a period a two months, in accordance with Article 30 of the IACHR Rules of Procedure.

6. On July 11, 2006, the State requested an extension of the deadline for answering the petition and was informed on July 25, 2006 that it had been granted an additional sixty (60) days. The petitioner was informed of the extension on the same date.

7. On September 25, 2006, the State submitted its response to the petition, and receipt of its response was acknowledged. On October 11, 2006, the information submitted was sent to the petitioner, allowing a month for the petitioner to submit comments.

8. On October 16, 2006, the petitioner reported that it had not received all the files included in the State's response. On December 5, 2006, the Commission sent the petitioner the full response from the State, with a new deadline of one month for submitting comments relating thereto, as requested by the petitioner.

9. The observations requested from the petitioner were submitted on December 26, 2006 and sent to the State on December 27, 2006 for it to submit comments.

10. The State submitted the observations requested of it on January 26, 2007, receipt of which was acknowledged. These observations were forwarded to the petitioner on March 6, 2007.

III. POSITIONS OF THE PARTIES

A. Petitioners

11. The petitioners allege that the Public Defender's Office of Rio de Janeiro is an institution dedicated to providing legal assistance to those without means, as provided under Article 134 of the Federal Constitution. It has various specialized bodies, among them the CDEDICA (Coordinating Unit for Defense of the Rights of Children and Adolescents), which has been operating since June 2001 in institutions for social and educational measures. Throughout the year 2002, the CDEDICA's public defenders were operating in detention units, among them the CTR located on Maracajás Street, Ilha do Governador, in Rio de Janeiro, where children and youngsters are initially sent for selection and subsequent transfer to final detention units. The petitioners state that those are supposedly allowed to remain there for no more than three (3) days.

12. The petitioners maintain that on the afternoon of May 29, 2002, the CDEDICA Coordinator, Dr. Simone Moreira de Souza, received an anonymous complaint that the children and youngsters being held at the CTR at the time were being subjected to various forms of abuse, including torture, and one of them was even found to be shut up in a cubicle. Faced with this situation, the petitioners contacted the acting Prosecutor of the Second Court for Children and Youth, Dr. Eliane Pereira, and visited the institution.

13. The petitioners allege that at the CTR they found Heraldo Dias de Maranhão shut up in a sort of bathroom containing dark water about ten (10) centimeters high and smelling like a cesspool. They asked that the youngster be released. After being freed, the youth told them that besides being shut up under unsanitary conditions he was also subject to beatings and torture. Given the situation, the petitioners proceeded to investigate how other children and youngsters were being treated at the institution. Others[FN6] told them that they were also victims of constant mistreatment similar to that noted above.

[FN6] As in the cases of Alan Felipe da Silva, Leonardo Santos da Silva, Rodrigo da Guia Martins Figueiredo Tavares, Eduardo Gomes da Conceição, Carlos Alberto Rocha Ferreira, Wellington Farias da Silva, Bruno de Souza de Oliveira, Diogo Inácio da Silva, and Rodrigo da Silva Linhares, many of whose statements appear as appendices to the petition.

14. The petitioners state that given the situation they proceeded to contact the two Police Headquarters with jurisdiction, the 37th Legal Headquarters and the Headquarters for the Protection of Children and Adolescents. Agents from these headquarters, Liliana Santos da Silva and Gisele de Lima Pereira, went to the CTR to take statements from the children and youngsters being held there. The petitioners also maintain that the Judge of the Second Court for Children

and Youth issued a search and seizure order to search the personal cabinets of the CTR employees, searching in other areas of the unit as well for objects that were presumably used for torture.

15. According to the petitioners, the alleged victims were questioned in the presence of the public defenders and told them that the guards were subjecting them to torture by beating them with wooden instruments. The children and youngsters also alleged, according to the petitioners, that the guards would place them in cubicles full of feces and sewer water, even forcing them to ingest these substances. They also encouraged fights among the internees by betting money on them. They also maintain that the internees were constantly beaten by the guards for any behavior they considered inappropriate and often for no reason at all.[FN7]

[FN7] Statements from the imprisoned adolescents are appended to the attachments to the petition.

16. The petitioners state that ammunition, pieces of wood with cloth-covered points, broom sticks, and other materials that the alleged victims recognized as having been used by the guards during torture sessions were seized during the search in question.

17. According to the petitioners, Police Investigation No. 2864/02 of the 37th Legal Headquarters regarding these events was initiated on May 29, 2002 and concluded on July 21st of the same year. Proceeding No. 2002.207.004500-9 was also filed with the Second Criminal Court of Isla del Gobernador, with the complaint being received on August 6, 2002. This proceeding is now in progress.

18. According to the petitioners, on August 6, 2002 the aforementioned criminal proceeding ordered the preventive detention of Darcy Ferreira da Silva Junior, Lenine Augusto da Penha Junior, Ricardo Borges Carvalho, Marcus Eduardo dos Santos de Paula, Eduardo Leal Tavares, Sidney Mendes de Melo Matias, Marcelo Souza Campos, Eduardo Luis Maschetti, Laercio dos Reis Pires, and Jose Ricardo Gonçalves, guards assigned to the CTR. This preventive detention was voided on August 26, 2002, with the accused promising to appear for all proceedings to which they were summoned.

19. The petitioners state that a hearing was held on November 13, 2002 where testimony was taken from various people, among them the Director of the CTR at the time of the events; five (5) guards at the CTR; two (2) youngsters who were victims, Rodrigo da Silva Linhares and Heraldo Dias de Maranhão; as well as a police officer who took part in the search carried out after the situation was reported.

20. According to the petitioners, the guards were questioned and testified in support of their colleagues. One of the youngsters confirmed the facts of the torture and the other said he knew nothing despite having acknowledged the existence of torture on earlier occasions. Only officer Liliane Santos da Silva attended the hearing of January 30, 2003; the others did not appear. The hearing scheduled for June 2, 2003 was suspended due to the large number of activities those

called upon to testify had to carry out on that date. The petitioners allege that the proceeding has stalled, awaiting notification to the witnesses, who are none other than the alleged victims of torture at the CTR.

21. The petitioners accuse as responsible for the events the guards who were assigned to the CTR at the time the events took place, claiming violations of the rights contained in Articles 5, 19, and 25 of the American Convention.

22. The petitioners go on to allege that the public criminal action is the responsibility of the Office of the Attorney General, which already reported the facts to the judicial authorities, who in turn initiated the criminal proceeding. However, as of the petition submission date, three (3) years have passed since the events took place and the proceeding has not concluded, despite the fact that all the documents and statements needed to confirm the complaint and to characterize the typical conduct that Law No. 9.455/97 defines as torture have been provided.

23. Under these conditions, the petitioners assert that, although the domestic remedies have not been exhausted, there is an unwarranted delay with respect to the decision in the case. Thus, the exceptions established regarding the issue are admissible and the submission falls within parameters considered to constitute a reasonable timeframe.

24. As asserted by the petitioners, the judicial process has been waiting on statements from the witnesses, children who were deprived of liberty at the CTR. It is alleged that these children have not been found because some of them provided incorrect addresses for fear of being persecuted by the accused, others have moved, and other excuses. The court has issued various orders in an attempt to find them but has not yet notified the “General Department for Social and Educational Activities” (hereinafter DEGASE) where the children’s criminal records, containing all the information necessary, can be found. The petitioners allege that the Guardianship Councils and the Detention and Shelter Institutions to which the children were sent have not been notified either.

25. Nonetheless, the petitioners note that the statements existing in the record are sufficient since they were taken at the CTR in the presence of the police officers in charge and the Public Defenders, and others statements were taken at Police Headquarters as well. They are all consistent and concrete in terms of confirming the substance of the crime defined as torture.

26. The petitioners state that the proceeding did not include the testimony of those who were present on May 29, 2002 at the CTR, which recorded the human rights violations in question. This testimony includes statements from the Prosecutor, the Public Defenders, sociologists, psychiatrists, social workers, and others who were working there, which could attest to the commission of the crimes.

27. The petitioners maintain that the civil damages action that the public defenders could file to ensure that the alleged victims receive compensation for the mistreatment suffered has not been filed yet because the criminal action has not been completed.

28. Based on the foregoing, the petitioners assert that all the legal steps taken by the State to move ahead with the case have been unsatisfactory, that the measures necessary to determine the culpability of those responsible have not been taken to date, and that no action has been taken to compensate the alleged victims. For this reason, the complaint has been brought before the Commission.

29. The petitioners conclude by asserting that most of the affected children were not located, which may mean that they are in danger as often happens in cases of minors in conflict with the law who have the courage to denounce the mistreatment and torture that are so common in institutions where they complete social and educational measures.

30. Finally, the petitioners ask that the State be condemned for the violations committed, that the State be given the recommendation to investigate the events that took place, punish those responsible, and compensate the alleged victims.

B. The State

31. On September 25, 2002 the State submitted its comments regarding the facts and bases alleged by the petitioning party.

32. First, it notes that the fact that led to the complaint consists of an alleged unwarranted procedural delay in the criminal action filed against ten (10) guards accused of having committed acts of torture against the alleged victims, who were being held at the CTR of Isla del Gobernador, State of Rio de Janeiro in May of 2002. It asks that this petition be declared inadmissible given the failure to comply with the rule requiring the exhaustion of domestic remedies before processing any petition.

33. The State asserts that the criminal action against the CTR officers is being handled in the normal fashion by the domestic courts, and the petitioners' reasons for asserting a delay in the provision of justice by the State are unfounded. If the aforementioned criminal action has not reached a conclusion, this is due to the lack of information regarding the location of the alleged victims, for which the State cannot be assigned any blame since it has been trying to locate the individuals affected by the alleged torture at the CTR since the criminal proceeding was filed.

34. The State maintains that the criminal action shows that, in addition to steps taken by Court Officials, many official communiqués have been sent to public agencies and social agencies in order to verify the domiciles of the affected parties. The attachments include the requests from the Second Court for Children and Adolescents of Isla del Gobernador to the CTR in that district, the Penitentiary System Department of Rio de Janeiro, the General Directorate of DEGASE, to Civil Registry, and institutions providing protection for minors. Furthermore, it is alleged that on July 18, 2005, the Office of the Attorney General requested the issuance of Official Communiqués to the Regional Electoral Court and the Federal Revenues Secretariat in another attempt to locate those who needed to present testimony.

35. Up to the time when the information was sent, according to the State only the youngsters Rodrigo da Silva Linhares and Heraldo Dias de Maranhão had been located and they submitted

statements on November 13, 2002. Diogo Inácio da Silva died in April of 2003, and Leonardo Santos da Silva submitted a statement on March 29, 2006. This activity, according to the State, belies any assumption of unwarranted delay in the judicial process, although procedures are taking longer than usual given the inability to find the alleged victims indicated as witnesses in the action by the Office of the Attorney General.

36. In this context, the State asserts that the petitioners' allegations to the effect that the State is not taking measures to notify the witnesses are unfounded. Contrary to what is asserted by the petitioners, the statements obtained to date are not sufficient to obtain a conviction since they were produced in a pre-trial investigation phase, without conducting the constitutionally protected adversarial action, so that it is essential to again interrogate the witnesses in the context of the proceeding.

37. The State claims that a hurried conclusion in the criminal action could even benefit the accused since, given the absence of judicially obtained testimony, the court might acquit the accused due to insufficient evidence or, in the absence of an acquittal, might hand down a light sentence that could be easily overturned in view of the failure to follow due process of law.

38. The State asserts Brazil's commitment to human rights, to be noted when the petitioner is itself an agency of the State that monitors compliance with criminal process, and one of the persons signing the complaint, Public Defender Moreira de Souza had submitted a statement in the case.

39. The State concludes by asserting that the petitioners' intention to seek out the Inter-American system is hasty since the issue can be resolved within the domestic jurisdiction and the competence of the Commission is subsidiary should the domestic remedies be ineffective to resolve the situation. Thus, the petition must be declared inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

40. The petitioners are empowered under Article 44 of the Convention to lodge petitions with the IACHR. The petition indicates as alleged victims the following children and youngsters: Alan Felipe da Silva, Leonardo Santos da Silva, Rodrigo da Guia Martins Figueiredo Tavares, Eduardo Gomes da Conceição, Carlos Alberto Rocha Ferreira, Wellington Farias da Silva, Bruno de Souza de Oliveira, Diogo Inácio da Silva, Rodrigo da Silva Linhares, and Heraldo Dias Maranhão, citizens of Brazil. Thus, the Commission is competent *rationae personae* to examine the petition.

41. The State ratified the American Convention on September 25, 1992 and the Inter-American Convention to Prevent and Punish Torture on July 20, 1989.

42. The Commission is competent *rationae loci* to hear the petition in that the petition alleges violations of rights protected under the American Convention occurring with the territory of a

State Party to that Convention, the Commission having determined ex officio that the facts may constitute alleged failure to comply with provisions contained in the Inter-American Convention to Prevent and Punish Torture.

43. The IACHR is competent *rationae temporis* in that the obligation to respect and guarantee the rights protected by the American Convention and the Inter-American Convention to Prevent and Punish Torture were already in effect for Brazil on the date the events alleged in the petition would have occurred.

44. Finally, the Commission is competent *rationae materiae* because the petition claims violations of human rights protected by the American Convention and an ex officio determination has been made that the facts may constitute possible violations of the Inter-American Convention to Prevent and Punish Torture.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

45. Article 46(1) of the American Convention establishes as a requirement for the admissibility of a claim that remedies available within the State's domestic jurisdiction be exhausted first, in accordance with generally accepted principles of international law.

46. Point 2 of the same article establishes that provisions relating to the exhaustion of domestic remedies shall not apply 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 an unwarranted delay in rendering a final judgment under the aforementioned remedies.

47. The petitioner has indicated that the complaint is based on judicial delay in determining criminal culpability relating to the acts of torture and mistreatment committed by the accused against the alleged victims. As of the petition review date, although there is a criminal indictment against ten (10) CTR officers, there is still no conviction or acquittal with respect to any of the accused. The State has asserted that four (4) years after criminal action No. 2002.207.004500-9 was filed with the Second Criminal Court of Isla del Gobernador on August 6, 2002 only two (2) of the ten (10) children and youngsters who suffered the alleged torture have submitted testimony as witnesses and one of them has died.

48. The basis for the State's argument for opposing the exception to the exhaustion of domestic remedies is that the criminal proceeding against the ten (10) accused is following the normal course according to a timeframe established for the purpose by domestic law.

49. It is essential to mention that there is express recognition by the State^[FN8] that as of March 29, 2006 only two (2) of the ten (10) alleged victims of torture have appeared as witnesses, and one of the victims has died. In addition, the State asserted that the delay with respect to summoning the victims is due to the fact that they are children and youngsters who were subject to socio-educational measures along with imprisonment and it is thus difficult to locate them, and doing so requires the help of various State agencies that should respond to the respective official communiqués.

[FN8] Paragraph 11 of the brief submitted by the State.

50. The Commission's view is that the State is required to investigate and judge any situation in which a violation of human rights is reported within a reasonable period of time. Any deficiency in the investigation that limits the State's ability to establish the culpability of the perpetrators could produce an error in the standard required for this purpose.^[FN9] Accordingly, as a general rule a criminal investigation should be conducted promptly in order to protect the interests of the victims and to preserve the evidence. In this case, the Commission notes that the acts of torture with respect to the ten (10) alleged victims were reported to the police authorities on May 29, 2002, and the indictment that followed upon conclusion of the police investigation was filed on August 6, 2002.

[FN9] See, *mutatis mutandi* *Anguelova v. Bulgaria*, no. 38361/97, § 139, ECHR 2002-IV.

51. According to the information received as of the date of this report, more than four (4) years after the events were reported, there is no final ruling against even one of the accused. Furthermore, as of March 29, 2006, witness statements had been obtained from only two (2) of the surviving nine (9) alleged victims of the acts of torture.

52. Evaluating the considerations presented, with the argument made by the State regarding the excessive complexity of locating the witnesses, and the passage of time since the events took place, achieving only two (2) of the nine (9) appearances needed, the Commission considers applicable in this case the exception provided in Article 46(2)(c) of the Convention regarding unwarranted delay in decisions in remedies under domestic jurisdiction.

53. The exceptions established in Article 46(2) of the Convention seek precisely to ensure international action when remedies under domestic jurisdiction and the domestic judicial system itself are not effective in guaranteeing respect for the human rights of the victims.

54. The principles set forth mean nothing other than that since the State is required to investigate and judge any human rights violations that come to be known to the responsible agencies of the State, if the processing of internal remedies is unduly delayed, it can be inferred that these remedies have lost their effectiveness for producing the result for which they were established, "thereby placing the victim in an unprotected condition."^[FN10] It is at this point

that it is appropriate to apply the mechanisms of international protection, including the exceptions provided under Article 46(2) of the Convention.

[FN10] I/A Court H.R., Godínez Cruz Case. Preliminary Exceptions. Judgment of June 26, 1987. Series C, No. 3, para. 95.

55. It only remains to point out that invoking the exceptions to the rule of the exhaustion of domestic remedies provided under Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined therein such as the guarantee of access to justice. However, Article 46(2) of the American Convention, based on its nature and purpose, is a rule with autonomous content vis-à-vis the substantive rules of the Convention. Therefore, the determination as to whether the exceptions to the rule of exhaustion of domestic remedies provided in the Convention are applicable to the instant case must be made prior to and separately from the merits of the case, since it depends on a standard of assessment different from that used to determine the violation of Articles 8 and 25 of the Convention. It should be made clear that the causes and effects that have impeded the exhaustion of the domestic remedies in the instant case will be analyzed, as relevant, in the report adopted by the Commission on the merits of the dispute, in order to confirm whether they actually constitute violations of the American Convention.

56. As a result, the Commission concludes that the petition under review is admissible in accordance with the provisions of Article 46(2)(c) cited above.

2. Deadline for submitting the petition

57. Pursuant to Article 46(1)(b) of the American Convention, the submission of petitions within six (6) months of notification to the alleged injured party of the decision exhausting domestic remedies is a requirement for admissibility. Article 32(2) of the Commission's Rules of Procedure establishes 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." [FN11]

[FN11] IACHR, Report No. 31/ 99 Case 11.763, Plan de Sánchez Massacre, Admissibility, March 11, 1999.

58. In the instant case, the Commission ruled *supra* on the applicability to the situation of the exception to the requirement of prior exhaustion of domestic remedies. Therefore, the Inter-American Commission must determine whether the petition was submitted within a reasonable period of time as established under Article 32(2) of its Rules of Procedure. In this regard, the Commission feels that the petition submitted by the petitioners on June 25, 2005 was filed within

a reasonable period of time, taking into account the specific circumstances of this case, particularly the date on which the events were reported (May 29, 2002), and the matter of unwarranted delay in the processing of the criminal case (which is immersed in the investigative phase) in which the accused are the alleged perpetrators of the ten (10) acts of torture reported.

59. The combination of these circumstances leads the Commission to believe that the petition was submitted within a reasonable period of time in terms of the provisions of Article 32 of its Rules of Procedure, giving weight to the amount of time elapsed since the occurrence of the events and the judicial activity initiated as a result.

3. Duplication of international proceedings and *res judicata*

60. The record does not indicate that the substance of the petition is pending any other procedure in the international arena nor that it duplicates any petition already reviewed by this or any other international body. Therefore, it is appropriate to consider that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the alleged facts

61. For admissibility purposes, the IACHR must decide whether the petition presents facts that could characterize a violation, as stipulated by Article 47.b of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” pursuant to paragraph (c) of the same article.

62. The standard for assessing these points is different from that required to decide on the merits of a petition. The IACHR must perform a *prima facie* evaluation to examine whether the petition provides the basis for an apparent or potential violation of a right guaranteed by the Convention, not to establish the existence of a violation. This examination is a summary analysis that does not imply any prejudice or preliminary opinion on the merits.[FN12]

[FN12] IACHR, Report No. 21/04, Petition 12.190, José Luíz Tapia González et al., Admissibility, Chile, February 24, 2004, para. 33.

63. The Commission does not find the petition to be “manifestly groundless” or “obviously out of order.” As a result, it believes that the petitioners have *prima facie* established the points required in Article 47, paragraphs (b) and (c) of the Convention.

64. In view of the foregoing, the Commission feels that should the facts be proven with respect to the violation of rights to personal integrity, the enjoyment of judicial guarantees, and the rights of the child to the detriment of the alleged victims who are surviving and the relatives of the alleged victim who is deceased, it would be possible to find that Articles 5, 19, and 25 of the Convention as they relate to the general obligation contained in Article 1(1) of the Convention have been violated. Employing the principle of *iura novit curiae*, the Commission finds that the facts may constitute a violation of the guarantee contained in Article 8(1) of the

American Convention, as well as a failure to comply with the provisions contained in Articles 6, 7, and 8 of the Inter-American Convention to Prevent and Punish Torture.

65. The conclusions indicated above are reached based on the fact that the right to personal integrity and the rights of the child may be injured by the torture suffered by the ten (10) alleged victims, and the rights to enjoy due judicial protection, guarantees, and protection could be affected as they relate to the surviving nine (9) alleged victims and the relatives of Diogo Inácio da Silva, based on the potential ineffectiveness of the criminal process.

V. CONCLUSION

66. The Commission concludes that it is competent to hear this petition and that the petition satisfies the admissibility requirements pursuant to Articles 46 and 47 of the American Convention and Article 30 and related articles of the IACHR Rules of Procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare, without prejudice regarding the merits of the complaint, that the petition is admissible in terms of the facts reported and with respect to Article 5 (right to personal integrity); Article 8.1 (right to judicial guarantees), Article 19 (rights of the child), and Article 25 (right to judicial protection) of the American Convention, as well as with respect to the obligation to respect and guarantee the rights referred to in Article 1(1) of the Convention. Additionally, the petition is declared to be admissible as it relates to potential failures to comply with provisions contained in Articles 6, 7, and 8 of the Inter-American Convention to Prevent and Punish Torture.
2. To convey this report to the State and to the petitioners.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of July, 2007. (Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Freddy Gutiérrez, Commissioners.