Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 96/09; Petition 4-04
Session:	Hundred Thirty-Seventh Regular Session (28 October – 13 November 2009)
Title/Style of Cause:	Antonio Tavares Pereira et al. v. Brazil
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioner: Paolo G. Carozza. Commissioner Paulo Sergio Pinheiro, a Brazilian national, did not participate in the deliberation or decision of this petition, as provided in Article 17.2.a of the Inter-American Commission's Rules of Procedure.
Dated:	29 October 2009
Citation:	Tavares Pereira v. Brazil, Petition 4-04, Inter-Am. C.H.R., Report No. 96/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANTS: the Landless Rural Workers' Movement, the Pastoral Land Commission, the Center for Global Justice, and Land Rights
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I. SUMMARY

1. On January 1, 2004 the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a petition alleging the international responsibility of the Federative Republic of Brazil ("the State" or "Brazil) for the assassination of rural worker Antônio Tavares Pereira and the wounds sustained by 185 rural workers ("the alleged victims"), allegedly committed by military police of the state of Paraná during the violent repression in the context of a march for agrarian reform that was held on May 2, 2000. The petition was submitted by the Landless Rural Workers' Movement (Movimento dos Trabalhadores Rurais Sem Terra – MST), the Pastoral Land Commission (Comissão Pastoral da Terra – CPT), the Center for Global Justice (Centro de Justiça Global), and Land Rights (Terra de Direitos) (collectively, "the petitioners").

2. The petitioners state that on May 2, 2000, landless rural workers in 50 buses were headed for Paraná's capital, Curitiba, to carry out a march culminating with a demonstration for agrarian reform, when military police intercepted them. According to the petitioners, military police ahead had set up a roadblock to prevent the caravan from reaching Curitiba. The petitioners say that at km. 108 of highway BR 277, because of the roadblock, the passengers got off one of the buses to inquire what was happening, after which the military police began firing their weapons at the rural workers, fatally wounding Antônio Tavares Pereira, who they say died hours later in the Workers' Hospital from abdominal bleeding, and wounding 185 other people. Therefore the

petitioners argue that Brazil has violated Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 15 (right of assembly), 22 (freedom of movement and residence), and 25 (right to judicial protection) of the American Convention on Human Rights ("the American Convention" or "the Convention") and that it has also failed to fulfill its general obligations set forth in Article 1.1 of the same treaty.

3. The State says that the petition is inadmissible since domestic remedies were not exhausted, as required by Article 46.1.a of the American Convention, because on December 19, 2002, Antônio Tavares Pereira's widow filed a civil damages suit against Paraná State and military police soldier Joel de Lima Santa'Ana. According to the State, that action is awaiting a lower court ruling and is being processed normally by the domestic courts. The State also submits that the investigations and criminal proceedings in the case were resolved by the final judgment of July 1, 2003, which exhausted domestic remedies, so the petition received by the IACHR on January 5, 2004 was five days outside the six-month deadline. Therefore, the requirement in Article 46.1.b of the Convention was not satisfied either.

4. Without prejudging the merits of the case, and pursuant to Articles 46 and 47 of the American Convention, the IACHR decides to declare the petition admissible with respect to the alleged violation of Articles 4.1, 5.1, 8.1, 15, 22, and 25 of the American Convention, in connection with the general obligations set forth in Article 1.1 of that international instrument. In addition, based on the iura novit curia principle, the Inter-American Commission declares the petition admissible as regards Article 13 of the American Convention, and the alleged failure to comply with the obligation established in Article 2 of that treaty. Finally, the IACHR decides to publish the report and include it in its annual report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE INTER-AMERICAN COMMISSION

5. The petition was received on January 1, 2004. On January 20, 2006, the IACHR transmitted the pertinent parts of the petition to the State and gave it two months to submit observations. After an extension requested on February 16, 2006, the State submitted its responses to the petition on May 1 and May 8, 2006.

6. The IACHR received additional information from the petitioners on June 12, 2006, March 13, 2009, and August 14, 2009; these communications were duly forwarded to the State. The Inter-American commission received additional information from the State on September 1, 2006, and June 18, 2009, which was transmitted to the petitioners.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. The petitioners say that the state of Paraná has a high concentration of ownership of rural land, with a few large landowners holding 65% of available land. This has presumably been the cause for the high rates of violence against landless rural workers fighting for agrarian reform, especially during the administrations of Governor Jaime Lerner (1994-1998 and 1998-2002).

8. According to the petitioners, the violations in this case occurred in the context of violent state repression against land reform in Brazil, specifically in Paraná. The petitioners hold that on May 2, 2000, landless rural workers in 50 buses were headed for Paraná's capital city of Curitiba to carry out a march for agrarian reform, which culminated with a demonstration on Labor Day (May 1) in front of the INCRA building (Instituto Nacional de Colonização e Reforma Agraria — National Institute for Settlement and Agrarian Reform).[FN2]

[FN2] The federal agency responsible for promoting agrarian reform in Brazil.

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9. The petition states that the caravan was intercepted by military police in the municipality of Irati, and that the military police searched the buses and confiscated materials from their baggage compartments.[FN3] Later, according to the petitioners, the military police escorted the caravan toward Curitiba; but farther on, at km. 108 of highway BR 227, Campo Largo municipality, the military police blocked the road without any apparent reason and forced the caravan to turn around, preventing it from reaching Curitiba.

[FN3] These materials included: 1 revolver, hundreds of steel weapons (for example, 180 scythes, 52 machetes, 2 hoes, 40 wood clubs, 13 jackknives, and 6 knives), 17 MST flags, 25 caps, 1 shirt, and 150 reais in cash (Annex 2 of the peitition – Auto de Exibição e Apreensão, Inquérito Policial 182/2000).

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10. The petitioners allege that because of this action, passengers from one bus, including Antônio Tavares Pereira, got off to find out the cause of the roadblock, after which the military police allegedly opened fire on them, with no attempt whatever at negotiation or conversation and no reason that would justify the use of deadly force. Among the military police, according to the petitioners, was military police soldier Joel de Lima Santa'Ana, who allegedly fired his carbine, hitting Antônio Tavares Pereira, who was given first aid by the rural workers and subsequently died in the Workers' Hospital from abdominal bleeding. The petitioners add that the police repression wounded 185 rural workers (identified in Annex 7 of the petition).[FN4]

[FN4] According to the list submitted by the petitioners, the alleged victims are Antônio Tavares Pereira and the following 185 landless rural workers who were wounded: Abrãao Mateus, Abel Marciano de March, Acir Alves, Adão Mendes Silvestre, Adão Ribas, Adelino Lima, Ademar de Araújo, Ademar Menegoso, Ademar Ribeiro da Silva, Ademir Ferreira dos Santos, Ademir Ruibo da Silva, Adenilson Danilo de Mello, Adenir Terezinha C. da Silva, Adilson Manoel de Jesus, Adriane Chaves, Agnaldo Ananias dos Santos, Agostinho Dimer, Airton Garcia, Airton Lopes Bueno, Albari Farias, Alcindo Ferreira, Alcino Ferreira Ortiz, Almir L. Trindade, Altair Bertoldo, Altamiro Barros Padilha, Alvaro Luiz Regin, Alvino dos Santos, Amadeu Padilha, Anderson Kenur, André Dirceu Obereck, André Luiz Trevisan, Andréia Borges Ferreira, Angelina Balbinotti, Anselmo Camargo, Antenor Alsirio, Antonio Chavier, Antonio Domingos

Alves, Antonio Ferreira de Melo, Antonio Vieira, Antonio Willerme Emke, Aparecido José Batista, Ari Zaparoci, Arnaldo da Silva Portilho, Avelino Nienow, Bacellar Jacob Oliveira, Bento Rodrigues de Oliveira, Bernardino Camilo da Silva, Celso F. Oliveira, Claudemir Felix da Silva, Clenilda Gonçalves, Dalmo Sales da Silva, Davi Sturzlucker, Domingos Gonçalves Chagas, Edson Martins da Silva, Elcio Beck, Eliane Machado Martins, Elias Dimas Barros, Erick Soares dos Santos, Eva Maria Rosa Denegá, Fábio Pereira Mendonça, Fermino Nogueira, Florentino Elísio dos Santos, Francisco Adirceu da Silva, Francisco Bordowivz, Francisco de Assis dos Santos, Gabriel Titon, Genor Titon, Gerson Ferreira, Gilmar da Silva, Gilson Atanazildo, Guilherme Marcelino Neto, Helen Bach, Hélio Luiz de Oliveira, Ibraim Amcancio Ribeiro, Istacir de Oliveira, Ivanir Sampaio de Lima Santos, Jair Casagrande, Jair Dangui, Jair de Souza Costa, Jair F. Sobrinho, Janaina Lourenço da Silva, Jelson Vieria dos Santos, João Alves de Oliveira, João Braz de Paula, João de Oliveira Cristo, João Isael de Souza, João Leonildo de Oliveira, João Maria Paz, João Maria Pereira, João Marques, João Natal Tavares da Cruz, João Oiramor Dangui, João Pedro Alves, João Prates Neto, João Prosperino Teixeira, João Valdecir das Chagas, Jocena Scheminski, Joel This da Costa, Joelmir Vieira, Jorge de Lima, Jorge Nunes de Paula, Josamar Dias de Siqueira, José A. de Moraes, José Antonio Pereira, José Batista Lopes, José da Silva, Jose de Oliveira, José Fernandes dos Santos, José Roberto Sgrinholi, José Rocha de Oliveira, José Ronaldo Bernardo Correia, José Saturnino de Lima, José Valcir Nunes de Almeida, José Valter da Rocha, Josefa Mendes, Jurandir dos Santos, Leandro Ribeiro da Silva, Leodir Rohenen, Leonardo Gonçalves Pedroso, Leozir Pereira de Quadros, Loreci Lisboa, Lorival Camargo, Lourdes de Jesus Ramos, Lucemara de Andrade, Luciana Aparecida Vieira, Luiz Ferraz Sobrinho, Luiz Medina, Lupercio Fonseca, Madalena Maria do Nascimento, Marcilio Aparecido Lopes, Márcio Undelino da Silva, Marcos Cesar Ribeiro, Maria Luiza Garcia do Nascimento, Maria Rozenilda Pingos, Maria Santos Alves, Marines Kropf Silveira, Mauro Paulo dos Santos, Miguel Carlos Borges, Miguel Korcezak Sobrinho, Mikiel Marcelo Takahara, Moacir de Barros, Moacir Sebastião de Quadro, Moacir Valdemiro Marcos, Nair Gomes dos Santos, Narciso dos Santos, Nereu de Almeida Araújo, Neuza Diba Marcos, Nilo Fagundes, Nilso Pereira, Nivaldo Neres de Noascimento, Odair José de Souza, Odair José Scongerla, Odilo Barbosa, Ordalino de Souza, Oscar Gloeden, Paulo da Silva Rocha, Paulo Fagundes, Pedro Martins dos Santos, Preo C. de Almeida, Regianaldo Sohm, Reinaldo da Silva Mendes, Remido Antonio Silveira, Rogério Mauro, Rosália de Melo, Roseli dos Santos, Sadi Pinheiro de Oliveira, Santo Soares da Silva, Setembrino Padilha, Severino dos Santos, Severino Farão, Sidnei Jahn, Valdecir Stoll, Valdemir Ferreira dos Santos, Valdinei Valim Cardoso, Valdir da Luz de Souza, Valdoir Zeferino, Valdomiro dos Santos, Valmir de Astor Jung, Veranilce dos Santos Souza, Vilmar da Silva, Vilmar Volnei Stelzer, Vilson Teodoro da Cruz, Wilson Barbosa, Zeferino Fronn, and Zilda Gonçalves da Silva.

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11. The petitioners say that the military police action was based in part on an “alert” (Ordem de Sobreaviso) from the Secretary of Public Security of Paraná regarding possible demonstrations on Labor Day. In addition, the petitioners say that the military police attempted to justify their actions on the basis of a court order (Interdito Proibitório 21/2000) that barred only the occupation of special government public buildings in downtown Curitiba to prevent their damage, but did not restrict free movement or the holding of demonstrations in streets, plazas, and other public places.

12. According to the petitioners, the assassination of Antônio Tavares Pereira and the wounds suffered by the other alleged victims have gone unpunished because of the broad authority given the military justice system in Brazil. In this regard, the petitioners indicate that a military police investigation (Inquérito Policial Militar – IPM) was begun on the events of May 4, 2000; that the representative of the Military Public Prosecutor's Office made a recommendation to archive the case on October 9, 2000; and that on October 10, 2000, the military judge archived the case. According to the petitioners, this entire process was characterized by obvious bias of the military investigators, the Military Public Prosecutor's Office, and the military judge who, instead of seeking the truth about the facts, sought to find ways to demonstrate the innocence of the military police involved, and to emphasize the allegedly criminal conduct of the alleged victims of the MST organization. Therefore, the petitioners conclude that the military justice system does not constitute an effective and impartial legal remedy for violations of rights established in the American Convention.

13. In addition to the foregoing, the petitioners allege that the action of the military justice authorities in this case also resulted in impunity in the criminal cases brought in the regular courts. On this point, the petitioners note that simultaneously with the IPM a civil police investigation (Inquérito Policial – IPL) on the assassination of Antônio Tavares Pereira was opened on May 3, 2000; the representative of the Public Prosecutor's Office filed charges on April 29, 2002, against military police soldier Joel de Lima Santa'Ana for premeditated murder; and the criminal proceeding was formally begun (recebimento da denúncia) by the Campo Largo District Judge on April 30, 2002. However, according to the petitioners, on October 21, 2002, the lawyers of defendant Joel de Lima Santa'Ana filed a habeas corpus motion for dismissal of the criminal case, since the death of Antônio Tavares Pereira had already been the subject of a decision in the military justice system. The petitioners allege that because of the broad authority given military justice by Brazilian legislation, and the weaknesses and vagueness of Law 9.299 of 1996, which restricted that authority --eliminating the authority of military justice to try "felonies against life"-- the Second Chamber of the Paraná Court dismissed the criminal case in a ruling on April 17, 2003. The petitioners consider that this decision was final, because no other criminal charges had been filed by the Public Prosecutor's Office as of July 1, 2003.

14. The petitioners therefore allege that domestic remedies were exhausted by the final judgment of July 1, 2003, as provided for in Article 46.1.a of the American Convention; and that the petition, presented on January 1, 2004, satisfies the requirement established in Article 46.1.b of that treaty, as well as the other requirements for admissibility. For these reasons they ask the IACHR to admit the petition and find violations of Articles 4, 5, 8, 15, 22, and 25 of the American Convention, in connection with the general obligation of Article 1.1 of that instrument.

B. The State

15. The State alleges that the petition is inadmissible for failure to meet two essential requirements set forth in Article 46.1 of the American Convention: the exhaustion of domestic remedies and the presentation of the petition within six months of the date that the party alleging violation of his rights was notified of the final judgment

16. With respect to the requisite of exhaustion of domestic remedies established in Article 46.1.a, the State holds that was not satisfied in this case because of a pending civil compensation suit. The State indicates that Antônio Tavares Pereira's widow filed that suit on December 19, 2002, and it has been considered in the First District Court of Curitiba, with Paraná presenting its defense. The State also points out that the case was subsequently included as part of the proceedings against military police soldier Joel de Lima Santa'Ana, which is following its regular course, awaiting his testimony.

17. In addition, the State alleges the Paraná authorities exercised diligence in the criminal court system by beginning two police investigations of the facts immediately, one civilian and one military. During these proceedings, according to the State, expert reports were prepared, witnesses were heard, and the defendant Joel de Lima Santa'Ana was acquitted after the action of the respective Public Prosecutor's Offices, the respective district court judges, and finally the Second Criminal Court of Paraná.

18. Concerning the required deadline for presentation established in Article 46.1.b of the American Convention, the State holds that this was not met either. The State alleges that in connection with the investigations and the criminal proceedings on the facts, the final judgment that exhausted domestic remedies was handed down on July 1, 2003. According to the State, the six-month period established in Article 46.1.b must be counted from July 1, 2003, to the reception of the petition by IACHR on January 5, 2004, which is five days after the end of the six-month period. Therefore, the State considers that the requirement of Article 46.1.b of the Convention was also not met.

19. Based on the foregoing, the State asks that the IACHR declare this petition inadmissible for failure to meet the requirements established in Articles 46.1.a and 46.1.b of the American Convention.

IV. ANALYSIS OF ADMISSIBILITY

A. The Inter-American Commission's competence ratione personae, ratione materiae, ratione temporis, and ratione loci

20. The petitioners are eligible under Article 44 of the American Convention to submit petitions to the IACHR. The petition states that the alleged victims are Antônio Tavares Pereira and 185 other duly identified landless rural workers, all citizens of the State. The IACHR therefore has ratione personae competence to examine the petition.

21. The Inter-American Commission has ratione temporis competence inasmuch as the duty to respect and guarantee the rights recognized in the American Convention, ratified by Brazil on September 25, 1992, was in force at the time of the facts alleged in the petition, starting on May 2, 2000. Similarly, the IACHR has ratione materiae and ratione loci competence to consider this petition because it alleges violations of rights protected by the American Convention said to have occurred in the territory of a State Party to that instrument.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

22. Article 46.1 de the American Convention stipulates that admission by the IACHR of a petition requires that remedies under domestic law must be pursued and exhausted in accordance with generally recognized principles of international law. Paragraph 2 of that article states that the requirement shall not be applicable when domestic legislation does not afford due process of law for the protection of the right in question; or when the alleged victim has been denied access to the remedies under domestic law; or when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

23. The State's position is that domestic remedies have not been exhausted with respect to the civil damages suit filed by Antônio Tavares Pereira's widow, because that process is pursuing its normal course; and that a series of motions may be filed against the first instance ruling that may be rendered in this case, which could be effective for restoration of the rights that were allegedly violated in the domestic jurisdiction.

24. In the first place, the IACHR notes that in cases like this, concerning alleged criminal acts by the public force, the appropriate recourse is usually investigation and criminal prosecution. The Inter-American Commission notes in this regard that the requirement for exhaustion of domestic remedies is applied when the domestic system has remedies to redress the alleged violation. Article 46.2.a of the American Convention establishes that the requirement shall not be applicable when "domestic legislation does not afford due process of law for the protection of the right in question."

25. In accordance with the foregoing, in the admissibility phase the IACHR must determine whether the actions taken in the domestic jurisdiction afforded due process of law for the protection of the rights allegedly violated, as provided in Article 46.2.a of the American Convention. In this regard, the Inter-American Commission must first analyze the criminal proceedings in the military justice criminal system with respect to the exhaustion of domestic remedies. It has been established without question that the facts of this case were investigated by a military court (supra paras. 12 and 17). It is also acknowledged that the military criminal investigation was archived by a court decision on October 10, 2002.

26. The IACHR notes that the petitioners have alleged that defects in the military investigation and the military criminal proceeding, as well as the bias with which those actions were conducted, resulted in the archiving of the military criminal proceeding and were the primary cause of the dismissal (trancamento) of the criminal case in the civil courts.

27. The IACHR has repeatedly held that normally military court systems (investigations and trials) lack effective remedies for human rights violations, so individuals who only have access to the military justice system are not required to exhaust domestic remedies before resorting to the Inter-American Commission (see infra). Other international human rights organizations have systematically applied the same reasoning.[FN5]

[FN5] See United Nations Doc. E/CN.4/Sub.2/2000/44, The Administration of Justice and Human Rights, 15 August 2000, para. 30; and 1995 Report, Special Rapporteur on Torture. United Nations Doc. E/CN.4/1995/34, 2 January 1995, para. 76(g).

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28. In the specific case of Brazil and the inter-American human rights system, the IACHR has recommended to the State since 1997 "conferring on the ordinary justice system the authority to judge all crimes committed by members of the state 'military' police."[FN6] In its Report on the Human Rights Situation in Brazil (1997), the IACHR established that these courts in Brazil tend to be indulgent with police accused of human rights abuses and other criminal offenses, thereby allowing the guilty to go unpunished.[FN7]

[FN6] IACHR, report on the human rights situation in brazil, OEA/Ser.L/V/II.97, Doc. 29 rev. 1, Chapter III (September 29, 1997), para. 95(i).
[FN7] IACHR, report on the human rights situation in brazil, OEA/Ser.L/V/II.97, Doc. 29 rev. 1, Chapter III (September 29, 1997), para. 77.

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29. This position of the IACHR has been generalized to apply to all member states of the Organization of American States. In 1993, the Inter-American Commission recommended to all member states that "under no circumstances are military courts to be permitted to sit in judgment of human rights violations."[FN8] Similarly, in1994, the IACHR recommended that all cases of human rights violations must therefore be submitted to the ordinary courts.[FN9] Also, in 1998 the IACHR reaffirmed that in any case military jurisdiction must exclude crimes against humanity and human rights violations.[FN10]

[FN8] IACHR, Annual Report 1992-1993, OEA/Ser.L/V/II.83 Doc. 14 corr. 1 (March 12 1993), Chapter V(VII), para. 6.
[FN9] IACHR, Annual Report 1993, OEA/Ser.L/V/II.85 Doc. 9 rev. (February 11, 1994), Chapter V(IV), Final Recommendations, para. 4.
[FN10] CIDH, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (April 13, 1998), Chapter VII, para. 1.

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30. In recent years the IACHR has dealt with the issue of military jurisdiction in Brazil in several decisions on admissibility and merits. In deciding on admissibility of a case involving Brazil (Diniz Bento da Silva Case) in 2002, the IACHR stated:

Regarding the inquiry carried out by the military, the Commission has firmly established jurisprudence that human rights violations tried by the military justice system does not constitute an adequate remedy, thus the petitioners were not obliged to exhaust domestic remedies under military jurisdiction. [FN11]

[FN11] IACHR, Case 11.517, Report No. 23/02, February 28, 2002, para. 25.

31. Similarly, in its decision on admissibility of Case 11.820 (Eldorado dos Carajás) in 2003, the IACHR said that "the Commission does not consider the military police to have the independence and autonomy needed to impartially investigate alleged violations of human rights allegedly carried out by military police."[FN12] The IACHR emphasized that investigation of human rights violations by the military justice system entails serious problems, and stated:

When the military justice system conducts the investigation of a case, the possibility of an objective and independent investigation by judicial authorities which do not form part of the military hierarchy is precluded. Thus, when an investigation is initiated in the military justice system, a conviction will probably be impossible even if the case is later transferred to the civil justice system. The military authorities will probably not have gathered the necessary evidence in an effective and timely manner. In those cases which remain in the military justice system, the investigation will frequently be conducted in such a manner as to prevent the case from reaching the final decision stage. [FN13]

[FN12] IACHR, Case 11.820, Report No. 4/03, February 20, 2003, para. 27.
[FN13] IACHR, Case 11.820, Report No. 4/03, February 20, 2003, para. 28.

32. In the decision on admissibility of Eldorado dos Carajás, the IACHR concluded that "Brazilian law does not provide the due process necessary for the effective investigation of alleged human rights violations perpetrated by military police."[FN14] Exhaustion of domestic remedies is therefore not required, because "although formally there does exist a remedy in Brazil for investigating human rights violations by military police, the power that Brazilian law grants to the military police itself to investigate such violations in practice constitutes a legal ground that prevents said remedies being exhausted, for lack of the requisite due process."[FN15]

[FN14] IACHR, Case 11.820, Report No. 4/03, February 20, 2003, para. 32.
[FN15] IACHR, Case 11.820, Report No. 4/03, February 20, 2003, para. 31.

33. In another decision published in 2003 (Parque São Lucas Case), on allegad violations of due process and personal integrity, the IACHR analyzed the wide scope of military jurisdiction iin Brazil in these terms:

As a corollary, a military court or tribunal that acts as judge and party in the trial of common crimes committed by the members of the military police [footnote omitted] cannot offer the necessary guarantees for ensuring the exercise of those rights for the victims and their next-of-kin.[FN16]

[FN16] IACHR, Case 10.301, Report 40/03, October 8, 2003, para. 63.

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34. Finally, on this aspect, the IACHR refers to its 2004 decision in Case 11.556 (Corumbiara Massacre), also dealing with conflicts between military police and landless rural workers, in which it ratified in the following terms its conclusion that the military justice system, including investigations, should be restricted and must exclude human rights violations:

[...] Human rights violations must be investigated, judged, and punished pursuant to law, by regular criminal courts. Change of jurisdiction shall not be permitted in these cases, since it distorts judicial guarantees, on the false pretense of the effectiveness of military justice, with serious institutional consequences, which in fact cast doubts on the civilian courts and the effective rule of law.[FN17]

[FN17] IACHR, Case 11.556, Report No. 32/04, March 11, 2004, para. 265.

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35. The IACHR notes that in this case there were parallel investigations through the military inquérito policial and the civil inquérito policial, because of the alleged vagueness of Law 9.299 of 1996 concerning the matter. However, based on the foregoing, and taking into account the uncontested statements that the ruling by the military court on October 10, 2000 was the primary reason for the final judgment of dismissal of the criminal action in the common courts, the IACHR concludes that Brazilian legislation lacks due process of law for protection of the rights that have allegedly been violated. Therefore, the IACHR concludes that this situation qualifies for the exception to the requirement for exhaustion of domestic remedies contained in Article 46.2.a of the American Convention.

36. Finally, it should be noted that invoking the exceptions to the rule of exhaustion of domestic remedies is closely linked to determining possible violations of certain rights established in the American Convention, such as the guarantees of access to justice, and in this case, by virtue of the lack of due process of law deriving from Brazilian legislation, the possible failure to comply with the general obligation to adopt domestic legislation to give effect to the rights. Nonetheless, Article 46.2 of the American Convention, by its nature and purpose, has its own autonomous content vis á vis the substantive norms of that international instrument. Therefore, the determination as to whether the exceptions to the prior exhaustion rule provided for in that provision apply to the instant case must be made prior to and separate from the analysis of the merits, since it depends on a standard of appreciation different from that used to determine the violation of Articles 2, 8, and 25 of the American Convention.[FN18] The IACHR clarifies that the causes and effects that have led to the lack of due process of law in the instant case will be analyzed, as applicable, in the IACHR's report on the merits of the case, to determine whether the in fact constitute violations of the American Convention.

[FN18] IACHR, Report No. 72/08, Petition 1342-04, Admissibility, Márcio Lapoente da Silveira (Brazil), October 16, 2008, para. 75; Report No. 23/07, Petition 435-2006, Admissibility, Eduardo José Landaeta Mejía et al,(Venezuela), March 9, 2007, para. 47; Report No. 40/07, Petition 665-05, Admissibility, Alan Felipe da Silva, Leonardo Santos da Silva, Rodrigo da Guia Martins Figueiro Tavares, et al (Brazil), July 23, 2007, para. 55

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2. Deadline for presentation

37. Article 46.1.b of the American Convention requires that petitions be submitted within six months of notification of the final judgment. Article 32.2 of the IACHR's Rules of Procedure stipulates:

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.

38. In the present case, the IACHR commented supra on the applicability to these facts of an exception to the rule for exhaustion of domestic remedies, so it is necessary to determine whether the petition was submitted within a reasonable period. It was submitted on January 1, 2004, i.e., six months after the decision to dismiss the criminal action that made it res judicata on July 1, 2003.[FN19] Therefore, the IACHR concludes that the petition was submitted within a reasonable period, hence complying with Article 32.2 of the IACHR Rules of Procedure.

[FN19] On this point, the Commission notes that the State, considering that criminal remedies were exhausted with the final judgment of July 1, 2003, alleged that the petition had not met the requirement of Article 46.1.b of the American Convention. However, the IACHR has confirmed that the petition was sent and received by e-mail and fax on January 1, 2004 (See Annexes I and II of the petitioners' communication of June 12, 2006, verifying that the petition was sent by e-mail at 2:41 p.m. on January 1, 2004, and that the fax was transmitted at 15:41:11 – duration of 31:51 minutes – on January 1, 2004).

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3. Duplication of proceedings and international res judicata

39. The case file has no information that would indicate that the subject is pending in another international proceeding for settlement, nor that it has been previously studied by the IACHR or other international organization. Therefore, the requirements of Articles 46.1.c and 47.d of the American Convention have been met.

4. Nature of the allegations

40. The IACHR must decide whether the facts set forth in the petition tend to establish violations of human rights guaranteed the American Convention, as required in Article 47.b, or

whether the petition, under Article 47.c, must be rejected as "manifestly groundless" or "obviously out of order." At this stage of the process, the Inter-American Commission makes a prima facie evaluation, not to establish the existence of violations of the American Convention, but to see if the petition refers to facts that could tend to establish violations of the American Convention. This analysis does not imply any prejudice or preliminary opinion on the merits of the case.[FN20]

[FN20] IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luis Tapia González et al (Chile), February 24, 2004, para. 33.

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41. The IACHR notes that if the petitioners' allegations of excessive use of force by the military police of Paraná, resulting in the death of Antônio Tavares Pereira and the wounding of 185 persons, are proved, these facts could constitute violations of Articles 4.1 and 5.1 of the American Convention, in connection with Article 1.1 of the same instrument. If it is proved that the assassination and the injuries remained unpunished because of competence granted to the military justice system by Brazilian legislation, even in the parallel criminal proceeding in the common courts, the IACHR considers that this could constitute a violation of Articles 8.1 and 25 of the American Convention and --in application of the iura novit curia principle-- failure to adopt domestic legislative measures pursuant to Article 2 of that international instrument.

42. Moreover, if it is proved that the military police action was carried out for the purpose of unjustified restriction of the right of assembly without arms and the movement of alleged victims in the context of a gathering to conduct a march for agrarian reform, the IACHR decides that it could be a violation of Articles 15 and 22 of the American Convention. In relation to the foregoing, and in application of the iura novit curia principle, the IACHR considers that if these facts are proved, it could be a violation of Article 13 of the American Convention.[FN21]

[FN21] The IACHR has said: "societal participation through public demonstrations is important for the consolidation of democratic life of societies. In general, as an exercise of freedom of expression and freedom of assembly, it is of crucial social interest, which in turn leaves the State with very narrow margins to justify restrictions on this right." IACHR. Annual Report 2005, Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter V: Public demonstrations as an exercise of freedom of expression and freedom of assembly, para. 91.

V. CONCLUSIONS

43. The IACHR concludes that it has competence to consider the merits of this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention. Based on the foregoing arguments of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the petition admissible with respect to the alleged violation of Articles 4.1, 5.1, 8.1, 15, 22, and 25 of the American Convention, in connection with the general obligations set forth in Article 1.1 of that international instrument;
2. To declare the petition admissible based on the iura novit curia principle, as regards Articles 2 and 13 of the American Convention;
3. To notify the parties of this decision;
4. To continue with the analysis of the merits of the case; and
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C. on the 29th day of the month of October 2009. (Signed): Luz Patricia Mejía Guerrero, President; Victor Abramovich, First Vice-President; Felipe González, Second Vice-President; and Paolo G. Carozza, Commission Member.