

REPORT Nº 41/10¹
PETITION P-999-06
ADMISSIBILITY
ADÃO PEREIRA DE SOUZA and CLOTILDE DE SOUZA ROCHA
BRAZIL
March 17, 2010

I. SUMMARY

1. On September 19, 2006, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission” or “the IACHR”) received a petition claiming the international responsibility of the Federative Republic of Brazil (“the State” or “Brazil”) for the alleged arbitrary detention and torture followed by death of Adão Pereira de Souza (“the alleged victim”) at the hands of civil and military police officers from the state of Pará. The petition was presented by *Comissão Pastoral da Terra de Xinguara* – CPT/Xinguara, the Center for Justice and International Law – CEJIL and *Sociedade Paraense de Defesa dos Direitos Humanos* – SDDH (“the petitioners”).

2. The petitioners assert that on May 26, 1993, civil police officers arbitrarily arrested the alleged victim and brought him to the Police District of São Félix do Xingu, Pará. The petitioners claim that once the alleged victim was at the Police District, civil and military police officers, including the Chief of Police, violently beat him, punching, kicking and asphyxiating him with a belt while he was handcuffed. According to the petitioners, as a result of such treatment, the defenseless alleged victim died at the Police District. The petitioners add that these acts have been left unpunished by Brazilian authorities to this date, due to the unwarranted delay in the domestic proceedings. Therefore, the petitioners maintain that the State is responsible for violating Articles 4, 5, 7, 8 and 25 of the American Convention on Human Rights (“the American Convention”), in conjunction with Article 1.1 of the same instrument, as well as Articles 1, 2, 3, 4, 5, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

3. The State claims that the petition is inadmissible because domestic remedies have not been exhausted, as required by Article 46.1.a of the American Convention. Moreover, the State asserts that there has been no unwarranted delay in the criminal proceedings conducted into the matter. Lastly, the State maintains that the petitioners did not pursue a civil action for compensatory damages.

4. Without prejudging the merits of the case, and in accordance with the provisions of Articles 46 and 47 of the American Convention, the Inter-American Commission decides: to rule the petition admissible with respect to the alleged violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and, in accordance with the principle of *iura novit curia*, the IACHR also rules the petition admissible with respect to possible violations of Article 7 of the same instrument; as well as with regard to potential violations of Articles 4, 5, 7, 8 and 25 of the American Convention, in conjunction with the general obligation established by Article 1.1 thereof. The Inter-American Commission also decides to publish this report and to 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 September 19, 2006. On November 30, 2006 and September 4, 2007, the IACHR forwarded the relevant parts of the complaint to the State, with a deadline of two months in which to submit its comments. The State submitted its response to this petition on June 25, 2008. This communication was duly submitted to the petitioners.

¹ Commissioner Paulo Sérgio Pinheiro, a Brazilian national, did not participate in the discussion or decision of this petition, in accordance with Article 17.2.a of the IACHR’s Rules of Procedure.

6. The Inter-American Commission received additional information from the petitioners on August 22, 2008, and duly forwarded it to the State. The State, for its part, sent additional information to the IACHR on November 5, 2008. This communication was duly forwarded to the petitioners.

III. POSITIONS OF THE PARTIES

A. Petitioners

7. The petitioners allege that the present case is not an isolated one, but is part of a context of generalized impunity regarding human rights violations, including torture, often perpetrated or tolerated by police officers in the southeastern region of the state of Pará. According to the petitioners, the foregoing has been attested to by the Inter-American Commission itself, in its 1997 Report on the Human Rights Situation in Brazil, as well as by other international authorities, such as the United Nations Special Rapporteur on Torture, Nigel Rodley, upon his visit to Brazil (and Pará) in 2000, and Amnesty International. The petitioners add that, in cases such as this one, even with the political intervention and written appeals of local and national authorities, the Office of the Public Prosecutor and the Judiciary in southeastern Pará do not act with due diligence in investigating and prosecuting cases of police violence.

8. The petitioners claim that the alleged victim, Adão Pereira de Souza, was a rural worker in São Félix do Xingu city. On May 26, 1993, according to the petitioners, civil police officers mistook the alleged victim for a hit man who had supposedly been threatening the nephew of the local Chief of Police. As a result, the petitioners maintain that the alleged victim was arrested by those police officers, neither *in flagranti delicto* nor pursuant to an arrest warrant. He was thus arbitrarily detained and taken to the local police district.

9. According to the petitioners, upon arriving at the police district, the alleged victim was subjected to torture at the hands of civil and military police officers. Indeed, the petitioners allege that five civil police officers, as well as unidentified military police officers, brutally beat the alleged victim. The petitioners add that the Chief of Police beat and threatened the alleged victim with a gun and watched as officers tortured him. The petitioners describe how the police officers punched, kicked and asphyxiated the alleged victim with a belt while he was handcuffed and powerless. Ultimately, the petitioners assert, the alleged victim died inside the police district as a result of the aggression and torture suffered at the hands of police officers sometime between the 26th and the 27th of May, 1993.

10. The petitioners maintain that the police investigation was only initiated on June 2, 1993 by the Regional Superintendent of the Civil Police after the intervention of the Mayor, a State Congresswoman, the Pará State Secretary of Public Security, and the Office of the Public Prosecutor. According to the petitioners, all these authorities intervened in order to have the investigation opened in a timely way and to assure that it would not be conducted by the same Chief of Police who might be implicated in the torture and death of the alleged victim.

11. The petitioners stress that the forensic report confirms that the cause of death of the alleged victim was torture. Likewise, the petitioners add that all eyewitness statements confirm that the alleged victim was beaten to death by civil and military police officers. The petitioners indicate that the police investigation was concluded on July 20, 1993 and sent to the judicial authority on that same day. Despite all of the foregoing, the petitioners stress that the Judge of São Félix do Xingu did not take any measures regarding the case, nor did he send the files to the Office of the Public Prosecutor for purposes of presenting the appropriate criminal indictment (*Denúncia*). According to the petitioners, this led to a delay of four months until the Public Prosecutor finally received the files and presented a *Denúncia*, on July 12, 1993. However, the petitioners maintain that the Public Prosecutor only charged two of the police officers with the crimes against the alleged victim.

12. The petitioners argue that, from this moment on, a series of irregularities and unjustifiable delays attributable to State judicial authorities took place and ultimately resulted in impunity regarding the death of the alleged victim. In this regard, the petitioners allege that, despite reiterated efforts of the

mother of the victim, Clotilde de Souza Rocha, and civil society organizations, the Office of the Public Prosecutor did not amend its indictment until May 21, 1994, in order to additionally charge the Chief of Police and three more civil police officers with the alleged victim's death.

13. From then on, the petitioners stress that there was no procedural activity due to the lack of diligence of State authorities for several prolonged periods of time. For example, the petitioners indicate that for about a year, until 1995, São Félix do Xingu lacked either a judge or a public prosecutor; it took one year (1996-1997) to hear some of the witnesses for the prosecution; and it took about three years (1997-2000) to hear the defense witnesses. The petitioners add that, since not all of the witnesses were heard, the proceedings were practically stalled for about six years, from 2000 until they presented the petition to the IACHR, in 2006. Lastly, they stress that from 2006 to 2008, no substantial procedural activity was conducted by the judicial authorities. Thus, fifteen years after the alleged death by torture of Adão Pereira de Souza, no one has been convicted of the crimes and the criminal proceedings remain at the evidentiary stage.

14. Therefore, the petitioners allege that there has been unwarranted delay in rendering a final judgment under domestic remedies, and request that the IACHR declare this petition admissible, in conformity with Article 46.2.c of the American Convention. They also maintain that Brazil is responsible for violations of Articles 4, 5, 7, 8 and 25 of the American Convention, in conjunction with Article 1.1 of the same instrument, as well as Articles 1, 2, 3, 4, 5, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

B. State

15. The State asserts that the petition is inadmissible because domestic remedies have not been exhausted, as required by Article 46.1.a of the American Convention. Additionally, Brazil denies that there has been unwarranted delay in rendering a final judgment, and thus considers inapplicable the exception provided for in Article 46.2.c of the Convention. Additionally, the State contends that neither the family of the alleged victim nor the petitioners pursued a civil action for compensatory damages, which further confirms that domestic remedies have not been exhausted.

16. According to the State, the fact that there has been no final judgment fifteen years after the death of the alleged victim does not indicate that there has been unwarranted delay in the domestic proceedings. The State adds that the time period is not the only element that the Inter-American Commission should take into account in establishing whether or not there has been unwarranted delay. Therefore, the State requests that the IACHR examine the criminal proceedings as a whole, taking into account the complexity of the case, the procedural activity of the petitioners and the conduct of the judicial authorities.

17. Based on those considerations, the State asks the IACHR to declare this petition inadmissible, due to its incompliance with Article 46.1.a of the American Convention.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence *ratione personae*, *ratione materiae*, *ratione loci*, and *ratione temporis*

18. The petitioners have standing to lodge petitions with the Inter-American Commission, pursuant to Article 44 of the Convention. The petition identifies as its alleged victim Adão Pereira de Souza, regarding whom the Brazilian State agreed to respect and ensure the rights enshrined in the American Convention. As regards the State, the Federative Republic of Brazil ratified the American Convention on September 25, 1992, thus the Inter-American Commission has competence *ratione personae* to examine the petition.

19. Under Article 23 of the IACHR's Rules of Procedure, the Inter-American Commission has competence *ratione materiae* to examine this petition, since it refers to alleged violations of human rights recognized in the American Convention and in the Inter-American Convention to Prevent and Punish

Torture, treaties over which the IACHR has competence *ratione materiae*. The potential violations described in this petition allegedly took place under the jurisdiction of Brazil, a State Party to both the American Convention and the Inter-American Convention to Prevent and Punish Torture; therefore, the IACHR has competence *ratione loci*.

20. Finally, the Inter-American Commission also has competence *ratione temporis*, since the petition describes potential violations which allegedly took place after the American Convention² and the Inter-American Convention to Prevent and Punish Torture³ were already into force as regards Brazil.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

21. Under Article 46.1 of the American Convention, for a petition to be admitted by the Inter-American Commission, the remedies offered by domestic jurisdiction must have been exhausted in accordance with generally recognized principles of international law. The second paragraph of that article states that those provisions shall not apply when domestic legislation does not afford due process of law for the protection of the right in question, when the alleged victim has been denied access to the remedies offered by domestic law, or when there has been an unwarranted delay in rendering a final judgment under those remedies.

22. The IACHR notes that in cases involving torture, which is a criminal offense prosecutable *sua sponte* in Brazil, the suitable and effective remedy is normally a criminal investigation and trial. It is an undisputed fact in the instant case that to this date there has been no final judgment regarding the facts alleged herein, nor has there been a first instance decision.

23. In fact, nothing in the file before the IACHR indicates that the evidentiary stage of the criminal proceedings regarding the death of the alleged victim has concluded to this date. Additionally, the Inter-American Commission takes particular note that, since the indictment and its amendment were presented by the Public Prosecutor, on November 12, 1993 and May 21, 1994, respectively, almost sixteen years have passed and the State judicial authorities still have not been able to hear all relevant witnesses and subsequently conclude the evidentiary stage.

24. The State has argued that, in examining whether or not there has been unwarranted delay in conformity with Article 46.2.c of the American Convention, the Inter-American Commission must take into account the complexity of the case, the procedural activity of the petitioners and the conduct of the judicial authorities. In this regard, the Inter-American Commission firstly stresses that the State did not present any information that might lead the IACHR to conclude that this case is particularly complex or that the petitioners and the alleged victim's next-of-kin inappropriately interfered in the investigation and criminal proceedings so as to cause a delay of almost sixteen years in rendering a final judgment. Moreover, the Inter-American Commission observes that the petitioners alleged, and the State did not refute, that there were several time periods in which there was no procedural activity on the part of the judicial authorities, which according to the petitioners, confirms that the judicial authorities have been negligent in investigating and prosecuting the death of the alleged victim.

25. The Inter-American Commission notes that the prior exhaustion rule must never "lead to a halt or delay that would render international action in support of the defenseless victim ineffective."⁴ In the case at hand, since there has been no first instance judgment almost sixteen years after the alleged death by torture, the prior exhaustion requirement cannot be interpreted in a way that would cause a

² Brazil ratified the American Convention on September 25, 1992.

³ Brazil ratified the Inter-American Convention to Prevent and Punish Torture on July 20, 1989.

⁴ I/A Court H. R., *Velásquez Rodríguez Case*, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, para. 93.

prolonged or unjustified hindrance of access to the inter-American system. Therefore, the IACHR rules that the exception provided for in Article 46.2.c of the American Convention is applicable.

26. Finally, it must be pointed out that the invocation of the exceptions to the rule requiring the exhaustion of domestic remedies bears a close relation to the possible violation of certain rights protected by the American Convention, such as the guarantee of access to justice. Nevertheless, Article 46.2 of the American Convention is, by its very nature and purpose, a provision with autonomous content *vis-à-vis* the substantive precepts of that international instrument. Consequently, whether or not the exceptions to the rule requiring the prior exhaustion of domestic remedies are applicable in the case at hand must be decided prior to and in isolation from the analysis of the merits of the case, as it depends on a standard of appreciation that is different from the one used to determine whether or not Articles 8 and 25 of the American Convention have been violated.⁵ Consequently, the Inter-American Commission notes that the causes and effects of the unwarranted delay in domestic remedies in the case at hand will be analyzed, as appropriate, in the Commission's future report on the merits of the matter, in order to verify whether or not they constitute possible violations of the American Convention.

2. Timeliness of the petition

27. Article 46.1.b of the American Convention requires that petitions be lodged within a period of six months following notification of the final judgment. On the other hand, Article 32.2 of the Commission's Rules of Procedure provides 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.

28. The IACHR has already ruled above that an exception to the rule requiring the exhaustion of domestic remedies is applicable, and so it must now determine whether the petition was lodged within a reasonable time. The petition was filed on September 19, 2006, thirteen years after the death of the alleged victim and while the criminal proceedings were still pending a first instance decision. Bearing in mind the circumstances of the case at hand, particularly the course of the domestic criminal proceedings and the claims made regarding an alleged unjustified delay and denial of justice, the Inter-American Commission concludes that the petition was lodged within a reasonable time and that consequently the requirement set by Article 32.2 of the IACHR's Rules of Procedure has been met.

3. Duplication of proceedings and international *res judicata*

29. The case file does not indicate that the subject of this petition is pending in any other international proceeding for settlement, or that it is substantially the same as another petition previously studied by the Inter-American Commission or by any other international organization. Hence, the requirements set forth in Articles 46.1.c and 47.d of the American Convention have been met.

4. Characterization of the alleged facts

30. For purposes of admissibility, the Inter-American Commission must determine whether the facts alleged in the petition tend to establish a violation of the rights guaranteed by the American Convention, as required by Article 47.b thereof, or whether the petition should be rejected as "manifestly groundless" or "obviously out of order," pursuant to Article 47.c of the American Convention. The criteria for evaluating these points are different from those applied to determine the merits of a petition. At this

⁵ IACHR, Report No. 61/09, Petition 373-03, Admissibility, *Josenildo João de Freitas Jr. et al.* (Brazil), July 22, 2009, para. 31; IACHR, Report No. 72/08, Petition 1342-04, Admissibility, *Márcio Lapoente da Silveira* (Brazil), October 16, 2008, para. 75; Report No. 23/07, Petition 435-06, 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.

stage in the proceedings, the IACHR must make a *prima facie* assessment, not to establish the existence of a violation of rights, but rather to examine whether the petition presents facts that tend to establish a possible violation of a right guaranteed by the American Convention. This examination in no way constitutes a prejudgment or preliminary opinion on the merits of the case.⁶

31. The Inter-American Commission observes that, if proven to be true, the petitioners' allegations regarding the direct responsibility of State agents from the Civil and Military Police of Pará for torturing the alleged victim to death, could tend to establish violations of the Inter-American Convention to Prevent and Punish Torture. However, the IACHR is mindful that Articles 2, 3, 4 and 5 of that instrument are provisions that merely define the concept of torture, indicate who might be considered a perpetrator thereof, and establish that there are no exemptions to the prohibition of torture. In view of the foregoing, the Inter-American Commission decides that the petitioners' allegations regarding acts intentionally performed by public servants acting in that capacity that potentially amount to torture and resulted in the alleged victim's death, tend to establish a possible violation of the rights guaranteed under Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and, in accordance with the principle of *iura novit curia*, under Article 7 of the same instrument.

32. On the basis of the same allegations, if proven, as well as the claims regarding the arbitrary detention of the alleged victim, the Inter-American Commission holds that they could tend to establish violations of Articles 4, 5 and 7 of the American Convention, in conjunction with the obligation of respecting rights guaranteed therein, as provided for in its Article 1.1.

33. The IACHR also holds that, should the allegations regarding the lack of due diligence in the criminal investigations, despite reiterated efforts of the mother of the victim in her search for justice, be proven; and given the nature of the alleged violations described in this petition, they could tend to establish violations of Article 5, 8 and 25 of the American Convention, in conjunction with Article 1.1 of the same instrument, to the detriment of Clotilde Souza Rocha, mother of the alleged victim.

34. In conclusion, the IACHR decides that the petition is not "manifestly groundless" or "obviously out of order" and, as a result, declares that the petitioners have met the *prima facie* requirements set by Article 47.b. of the American Convention as regards potential violations of Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture, as well as of Articles 4, 5, 7, 8, and 25 of the American Convention, in conjunction with Article 1.1 of the same international instrument.

V. CONCLUSIONS

35. The Inter-American Commission concludes that it is competent to examine the merits of this case and that the petition is admissible under Articles 46 and 47 of the American Convention. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To rule the instant petition admissible as regards the alleged violation of the rights protected in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. To rule the instant petition admissible, pursuant to the principle of *iura novit curia*, as regards potential violations of the rights protected in Article 7 of the Inter-American Convention to Prevent and Punish Torture;

3. To rule the instant petition admissible with regard to potential violations of Articles 4, 5, 7, 8 and 25 of the American Convention, in conjunction with Article 1.1 thereof;

⁶ IACHR, Report No. 21/04, Petition 12.190, Admissibility, *José Luís Tapia González et al.*, Chile, February 24, 2004, para. 33; and Report No. 61/09, Petition 373-03, Admissibility, *Josenildo João de Freitas Jr. et al.*, Brazil, July 22, 2009, para. 36.

4. To notify both parties about this decision;
5. To continue with its analysis of the merits of this case;
6. To publish this decision and to 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 17th day of the month of March, 2010.
(Signed: Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).