

REPORT No. 11/12
PETITION P-6-07
JURANDIR FERREIRA DE LIMA *ET AL.*
ADMISSIBILITY
BRAZIL
March 20, 2012

I. SUMMARY

1. On January 3, 2007, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or the "IACHR") received a petition against the Federative Republic of Brazil (the "State" or "Brazil"), alleging its international responsibility for the violation of Articles 4, 5, 11 and 25 of the American Convention on Human Rights ("the American Convention"). The petition asserts that Brazil is internationally responsible for the alleged forced disappearance of Jurandir Ferreira de Lima ("the alleged victim"), as from March 14, 1995, and the related consequences with regard to his next-of-kin ("the alleged victims"). The petition was presented by the non-governmental organization *Projeto Legal* ("the petitioner").

2. According to the petitioner, on March 14, 1995 the alleged victim left his house for the "Chico Mendes" community in Rio de Janeiro state, where he worked as a social leader, after telling his mother that he would later return for dinner. Since then, the alleged victim has been disappeared. The petitioner argues that the disappearance of Mr. Ferreira de Lima was probably motivated by the fact that, in his capacity as a community leader in charge of organizing the local residents' association, he worked to combat drug trafficking in the neighborhood. The petitioner adds that the foregoing resulted in constant threats against the alleged victim by police officers and prison guards who participated in drug trafficking activities. The petitioner stresses that the crime remains in impunity more than twelve years after the alleged disappearance.

3. The State maintains that the petition is inadmissible because domestic remedies have not been exhausted, as required by Article 46.1.a of the American Convention. In that regard, the State asserts that there is a pending police investigation related to the facts alleged in the petition, as well as an administrative investigation instituted by the Office of the Public Prosecutor. Moreover, the State claims that domestic remedies in the civil sphere have not been exhausted, since neither the alleged victims nor their representatives have pursued a civil action for compensatory damages. The State additionally argues that the petition was presented extemporaneously, in violation of the requirements contained in Article 46.1.b of the American Convention and Article 32 of the IACHR's Rules of Procedure.

4. Without prejudging the merits of the matter, and in accordance with the provisions of Articles 46 and 47 of the American Convention, the Inter-American Commission decides to declare this petition admissible with respect to the alleged violation of Articles 3, 4, 5, 7, 8, 16 and 25 of the same instrument, in conjunction with the general obligations established by Articles 1.1 and 2 therein. On the other hand, the IACHR declares this petition inadmissible as regards the alleged violation of Article 11 of the American Convention. The IACHR also decides to notify the parties, publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

5. The petition was received on January 3, 2007, and on May 15, 2007, the petitioner submitted an additional communication in response to a request for additional information from the IACHR. The relevant parts of those communications were forwarded to the State on July 12, 2007. The State replied by means of notes received by the IACHR on August 26 and September 7, 2008. The IACHR duly submitted these communications to the petitioner.

6. The petitioner submitted additional information on February 26, 2009, and the State did so on June 2 and October 27, 2009. These communications were duly submitted to the other party.

III. POSITION OF THE PARTIES

A. Position of the petitioner

7. According to the petitioner, the alleged victim was a community leader who worked at the "Chico Mendes" community, in Rio de Janeiro state. In this capacity, he worked to organize 8,365 residents of the local neighborhood association, particularly with a view to combating drug trafficking in the area. According to the petitioner, police officers routinely threatened the residents of the "Chico Mendes" community and were also responsible for promoting and managing drug trafficking in the community.

8. The petitioner claims that on March 14, 1995 the alleged victim went to work at the community and was never again seen. According to the petitioner, one day after the alleged victim's disappearance, his mother, Mrs. Beatriz Ferreira da Silva, went to look for him at the "Chico Mendes" community, where she was informed that police officers had killed her son, and then took his corpse to a nearby pigpen where they ground the alleged victim's body and mixed it with ration for pigs. The petitioner claims that the alleged victim's family promptly denounced his disappearance before the authorities at the 31st Police District. Moreover, the petitioner alleges that, after reporting the disappearance, Ms. da Silva received several telephone threats from police officers who threatened to kill every member of her family.

9. As a matter of context, the petitioner asserts that at least since the 1990s, Rio de Janeiro state authorities have been implementing inadequate public security policies that foster the disproportionate victimization of specific social and ethnic groups, particularly *favela* residents. According to the petitioner, the present case illustrates that State officials explicitly support killings by police, or frequently justify high levels of killings by police as a necessary and unavoidable product of crime control.

10. Lastly, the petitioner stresses that, despite the denunciation of the alleged victim's disappearance before the authorities in March of 1995, to date the police investigation remains pending with no determination of the whereabouts of the alleged victim or of those responsible for his disappearance. Moreover, the petitioner observes that there has been more than one witness elimination, including that of an eye-witness by the name of "Marcel", on top of various threats that the alleged victim's family has received. They further indicate that "Marcel" was a friend of the alleged victim and was killed in retaliation despite having been placed under protection in the Witness Protection Program. Based on all the foregoing, the petitioner claims that the State violated Articles 4, 5, 11 and 25 of the American Convention. The petitioner adds that the conduct of the authorities and the delays in the police investigation regarding the facts have effectively denied access to the remedies under domestic law. Therefore, the petitioner concludes that the exception provided for in Article 46.2.b of the American Convention is applicable to this petition.

B. Position of the State

11. The State argues, preliminarily, that the petition describes contextual information which is unrelated to the facts therein, such as the precariousness of Brazil's prison system and social discrimination, among others. Specifically with regard to the petition's admissibility, 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. In this regard, the State asserts that there is a pending police investigation related to the facts alleged in the petition. This investigation, according to the State, was initiated in 1995 by the 31st Police District, and later transferred to the jurisdiction of the 39th Police District in 2007, when the police investigation file was renumbered. The State asserts that this police investigation is ongoing and is following its due course.

12. In addition to that, the State claims that an administrative procedure was instituted in 2004 by the Office of the Public Prosecutor of Rio de Janeiro in order to investigate the alleged victim's disappearance. According to the State, this administrative procedure is also pending. Moreover, the State stresses that the petitioner failed to exhaust domestic remedies in the civil sphere, since neither the alleged victims nor their representatives have pursued a civil action for compensatory damages.

13. The State additionally asserts that the petition does not meet the requirement of timely filing, in conformity with Article 46.1.b of the American Convention and Article 32 of the IACHR's Rules of Procedure. Indeed, the State observes that the petition was not filed within a period of six months from the final judgment, nor was it presented within a reasonable period of time, taking into account when the alleged violations took place.

14. Therefore, the State concludes that effective domestic remedies are ongoing and that the petition is inadmissible because domestic remedies have not been exhausted, and because the petition was presented extemporaneously. Consequently, the State argues that this petition does not comply with the requirements stipulated in Article 46 of the American Convention and Article 32 of the Inter-American Commission's Rules of Procedure.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

15. The petitioner has standing to file petitions with the Inter-American Commission pursuant to Article 44 of the American Convention. The alleged victims are persons regarding whom the Brazilian State agreed to respect and ensure the rights enshrined in the Convention. As regards the State, Brazil ratified the American Convention on September 25, 1992, thus the Inter-American Commission has competence *ratione personae* and *ratione materiae* to examine the petition.

16. The potential violations described in this petition allegedly took place under the jurisdiction of Brazil, a State Party to the American Convention; therefore, the IACHR has competence *ratione loci*. Finally, the Inter-American Commission has competence *ratione temporis*, since the petition describes potential violations of rights protected by the American Convention, which allegedly occurred after that international treaty was already in force for Brazil.

B. Exhaustion of domestic remedies

17. Under Article 46.1 of the American Convention, for a petition to be admitted by the IACHR, the remedies offered by the domestic jurisdiction must have been exhausted in accordance with generally recognized principles of international law. The second paragraph of Article 46 indicates 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.

18. Preliminarily, the Inter-American Commission observes that in cases such as the one at hand, which involve alleged criminal offenses prosecutable *sua sponte* in Brazil --namely forced disappearance of persons-- the suitable and effective remedy is normally a criminal investigation and trial before the ordinary judicial system. The IACHR also notes that it is an undisputed fact that to this date there is no final judgment regarding the alleged victim's disappearance (*supra* paras. 10 and 11), that is

to say, the police investigation remains pending with no determination of the whereabouts of the alleged victim or of those responsible for his disappearance.

19. The Inter-American Commission takes particular note that the police investigation regarding the disappearance of the alleged victim was initiated after his wife reported his disappearance to the 31st Civil Police District of Albuquerque, on March 17, 1995, by means of occurrence form (*registro de ocorrência*) n° 000543/95.¹ Therefore, for purposes of admissibility, the IACHR must take into account that the presumed disappearance of the alleged victim began on March 14, 1995 and was duly reported to the authorities on March 17, 1995; that is to say, seventeen years ago as of the date of approval of this report. According to the information provided by both parties, the police investigation remains pending to this date, i.e. the case has not formally reached the Judiciary.

20. Under the circumstances of this petition, the Inter-American Commission finds that this period of time significantly exceeds what might be considered reasonable for an initial police inquiry to take place so that a judicial process may eventually commence. After a close examination of the files of the police investigation, the IACHR observes that, for the purposes of the admissibility ruling, the State failed to point to precise information or provide specific evidence of particular circumstances applicable to this petition that could justify the absence of a complete investigation and trial seventeen years after the alleged victim's disappearance.

21. The IACHR notes in this regard that the Inter-American Court of Human Rights has held 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."² In the case at hand, since the police investigation has been inconclusive for seventeen years, the prior exhaustion requirement cannot be interpreted in a way that would cause a prolonged or unjustified hindrance of access to the inter-American system. Therefore, the IACHR rules that there has been an unwarranted delay in rendering a final judgment, and that the exception provided for in Article 46.2.c of the American Convention is applicable in this matter. Also, the Inter-American Commission asserts, as it has repeatedly, that in cases of forced disappearance of persons, a civil action for compensation need not be pursued or exhausted prior to seeking recourse before the inter-American system, since that remedy would not respond to the principal claims being raised in this petition concerning what is alleged to have been a forced disappearance followed by the lack of due diligence to investigate, prosecute and punish those responsible.³

22. Finally, it must be pointed out that the unwarranted delay exception is closely related to the possible violation of certain rights protected by the American Convention, specifically under Articles 8 and 25 therein. Nevertheless, Article 46.2 of that international instrument is, by its very nature and purpose, a provision with autonomous content *vis-à-vis* its substantive precepts. Consequently, whether or not the American Convention's exceptions to the rule requiring the prior exhaustion of domestic remedies are applicable in the case at hand must be decided prior to, and separately from, the analysis of the merits of the case. This is so because the analysis of admissibility 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; the latter will be examined, as appropriate, in the report on the merits of the matter.⁴

¹ Copy of the police investigation file (*Inquérito Policial*) n° 406/2007, 39th Police District of Pavuna, pages 90-93 – Attachment I of the State's communication of September 7, 2008.

² I/A Court H. R., *Velásquez Rodríguez Case*. Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, para. 93.

³ See IACHR. Report No. 126/10, Petitions 1448-06, 1452-06, 1458-06 and 65-07, Admissibility, *Roberto Carlos Pereira de Souza et al.* (Brazil), October 23, 2010, para. 44; Report No. 51/10, Petition 1166-05, Admissibility, *Tibú Massacres* (Colombia), March 18, 2010, paras. 110 and 120; Report No. 38/10, Petition 1198-05, Admissibility, *Ivanildo Amaro da Silva et al.* (Brazil), March 17, 2010, paras. 29 and 33; and Report No. 61/09, Petition 373-03, Admissibility, *Josenildo João de Freitas Jr. et al.* (Brazil), July 22, 2009, para. 28.

⁴ 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

C. Timeliness of the petition

23. 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 IACHR'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 [Inter-American] Commission. For this purpose, the [Inter-American] Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

24. Having ruled above that an exception to the rule requiring the exhaustion of domestic remedies is applicable, the Inter-American Commission must now determine whether the petition was lodged within a reasonable time. The petition was filed on January 3, 2007. In the specific circumstances of this petition, particularly the fact that it denounces the presumed forced disappearance of the alleged victim which continues to this date, and also taking into account the allegations of denial of justice and impunity related to the police investigation which remains inconclusive to this date, the IACHR concludes that the petition was lodged within a reasonable period of time. Accordingly, the requirement set by Article 32.2 of the IACHR's Rules of Procedure has been met.

D. Duplication and international *res judicata*

25. Nothing in the present file indicates 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.

E. Colorable claim

26. For purposes of admissibility, the Inter-American Commission must determine whether the facts denounced 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." At this stage in the proceedings it falls to the IACHR to carry out a *prima facie* evaluation, not to establish alleged violations of the American Convention or other applicable treaties, but to examine whether the petition describes facts that could tend to establish violations of rights protected by the inter-American instruments. This examination in no way constitutes a prejudgment or preliminary opinion on the merits of the case.⁵

27. Neither the American Convention nor the IACHR's Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Inter-American Commission, although petitioners may do so. It is for the Inter-American Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements. In this case, the IACHR notes that the alleged victim was purportedly disappeared, possibly at the hands of State agents. The petitioner also asserts that the crime has remained in impunity, since the police investigation has not produced any effective results.

28. With regard to the forced disappearance of the alleged victim, following the *jurisprudence constante* of the inter-American system of human rights, the IACHR declares this petition admissible with regard to Articles 3, 4, 5 and 7 of the American Convention, in conjunction with the obligations to respect

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.

⁵ IACHR, Report No. 61/09, Petition 373-03, Admissibility, *Josenildo João de Freitas Jr. et al.* (Brazil), July 22, 2009, para. 36.

rights recognized therein and give them effect, as provided for in its Articles 1.1 and 2. Moreover, the Inter-American Commission considers that if the allegations regarding the lack of due diligence in the criminal investigations are proven, they could tend to establish violations of Articles 8 and 25 of the American Convention. In addition, given the nature of the alleged violations described in this petition -- which include forced disappearance-- as well as specific threats, fear of retaliation and the treatment received by surviving family members who have searched for justice; those elements could tend to establish violations of Article 5.1 of the American Convention to the detriment of the family members of the alleged victim, including Beatriz Ferreira de Lima (mother), Solange Ribeiro de Lima (wife), João Maria Ferreira de Lima (brother), Maria Alba Ferreira de Lima (sister), and others who might be identified at the merits stage.⁶ Finally, with regard to the allegations that the disappearance of the alleged victim was motivated by his work as a community leader of the “Chico Mendes” residents’ association who helped local residents associate for various purposes, particularly with a view to combating drug trafficking in the community, if proven true, they might tend to establish violations of Article 16 of the American Convention.⁷ On the other hand, the IACHR considers that the petitioner has not presented basic elements to establish *prima facie* a claim concerning a potential violation of Article 11 of the American Convention; thus this petition is inadmissible in this respect, in conformity with Article 47.b of the American Convention.

29. In conclusion, the IACHR decides that this petition is not manifestly groundless or obviously out of order; and as a result, declares that the petitioner has met *prima facie* the requirements set by Article 47.b. of the American Convention as regards potential violations of Articles 3, 4, 5, 7, 8, 16 and 25 thereof, in conjunction with Articles 1.1 and 2 of the same instrument, as detailed above.

V. CONCLUSIONS

30. The Inter-American Commission concludes that it is competent to examine the merits of this case, and decides 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 this petition admissible as regards the alleged violation of the rights protected in Articles 3, 4, 5, 7, 8, 16 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 of the same instrument;
2. To rule inadmissible the alleged violation of Article 11 of the American Convention;
3. To notify both parties about this decision;
4. To continue with its analysis of the merits of this case;
5. To publish this decision and to include it in its Annual Report to the General Assembly of the Organization of American States.

⁶ See IACHR. Report No. 126/10, Petitions 1448-06, 1452-06, 1458-06 and 65-07, Admissibility, *Roberto Carlos Pereira de Souza et al.* (Brazil), October 23, 2010, para. 64; Report No. 38/10, Petition 1198-05, Admissibility, *Ivanildo Amaro da Silva et al.* (Brazil), March 17, 2010, para. 40; and Report No. 61/09, Petition 373-03, Admissibility, *Josenildo João de Freitas Jr. et al.* (Brazil), July 22, 2009, para. 38.

⁷ See, *mutatis mutandi*, IACHR. Report No. 71/08, Petition 1290-04, Admissibility, *José Dutra da Costa* (Brazil), October 16, 2008, para. 47; Report No. 73/08, Petition 1236-06, Admissibility, *Gabriel Sales Pimenta* (Brazil), October 16, 2008, para. 36; and I/A Court H.R., *Case of Fleury et al. v. Haiti*. Merits and Reparations. Judgment of November 23, 2011. Series C No. 236, paras. 99-102.

Done and signed in the city of Washington, D.C., on the 20th day of the month of March 2012.
(Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.