REPORT No. 70/12
PETITION P-1330-07
PEDRO AUGUSTO DA SILVA, INÁCIO JOSÉ DA SILVA *ET AL.*
ADMISSIBILITY
BRAZIL
July 17, 2012

I. SUMMARY

1. On October 12, 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 1.1, 4, 5, 8, 19 and 25 of the American Convention on Human Rights ("the American Convention"). The petition asserts that Brazil is internationally responsible for the killing of Pedro Augusto da Silva and Inácio José da Silva and the attempted killing of Marluce Maria da Silva, Sebastião João de Andrade, Antônio Pedro da Silva, Oscar José de Santana, E.M.O.N., and J.M.O.N.[1] ("the alleged victims"), on June 9, 1997. The petition was presented by the non-governmental organizations *Comissão Pastoral da Terra* and *Rede Social de Justiça e Direitos Humanos* ("the petitioners").

2. According to the petitioners, on June 5, 1997, the area corresponding to the "Camarazal" sugar mill (*Engenho Camarazal*), in Nazaré da Mata, Pernambuco state, was occupied by landless rural workers who claimed the land in order that it be expropriated for agrarian reform. On June 9, 1997, just after midnight, the petitioners allege that approximately 30 individuals in six to ten vehicles arrived at the landless workers' campsite and started shooting indiscriminately at everyone. The petitioners add that, as a result, 6 people were left injured with gunshot wounds, while 2 men were killed and had their bodies disposed of in a nearby river. The petitioners state that years after these crimes, they remain in impunity.

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 indictment related to the facts alleged in the petition, which was presented before the judicial authority by the Office of the Public Prosecutor on April 15, 2008. According to the State, the judicial authority would soon reach a decision as to whether to formally accept the indictment. The State thus argues that the petition was presented prematurely, and fails to meet the requirement contained in Article 46.1.a of the American Convention and Article 31 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 4, 5, 8, 19 and 25 of the American Convention, in conjunction with the general obligations established by Article 1.1 of the same instrument, to the detriment of the alleged victims and their family members. 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 October 12, 2007. The relevant parts of the petition were forwarded to the State on March 27, 2008. The State replied by means of notes received on July 15 and 30, 2008. The IACHR duly submitted these communications to the petitioners. The petitioners submitted additional information on September 5, 2008. This communication was duly submitted to the State. The State has not presented additional information to this date.

III. POSITION OF THE PARTIES

[1] Although not specifically requested by the petitioners, the IACHR is protecting the identity of these two alleged victims because they were children of one and six years of age, respectively, at the time of the events.

A. Position of the petitioners

6. As a matter of contextual background, the petitioners assert that the "Camarazal" sugar mill (*Engenho Camarazal*) is located in the Municipality of Nazaré da Mata, in the northeastern state of Pernambuco. According to the petitioners, the area corresponding to *Engenho Camarazal* totals 544 hectares and was considered unproductive by the National Institute of Colonization and Agrarian Reform (*Instituto Nacional de Colonização e Reforma Agrária* – INCRA). Therefore, the petitioners argue that *Engenho Camarazal* was fit for expropriation for agrarian reform, and it was accordingly occupied by landless rural workers on June 5, 1997. These landless workers, according to the petition, set up their campsite in the area, and aimed at using the land to develop agricultural activities.

7. According to the petitioners, on June 9, 1997, just after midnight, approximately 30 individuals in six to ten vehicles arrived at the landless workers' campsite and started shooting indiscriminately at everyone. The petitioners add that, as a result, the following 6 people were left injured with gunshot wounds: one-year-old E.M.O.N., six-year-old J.M.O.N, Marluce Maria da Silva, Sebastião João de Andrade, Antônio Pedro da Silva and Oscar José de Santana; while Pedro Augusto Inácio da Silva and Inácio José da Silva were killed and had their bodies disposed of in the "Capiberibe" river, in the neighboring Municipality of Paudalho. The petitioners state that this episode became publicly known as the "Camarazal Massacre," and they allege police participation in the attack.

8. The petitioners state that several years after those crimes, they remain in impunity. In this regard, the petitioners argue that the police inquiry about the facts denounced herein was initiated on June 9, 1997. They add that after June 27, 1997, the corresponding police investigation remained suspended without any meaningful activity for several years. Finally, the petitioners argue that more than ten years after the events at *Engenho Camarazal* took place, there is still no final judgment regarding the facts.

9. Based on the foregoing, the petitioners claim that the State violated Articles 1.1, 4, 5, 8, 19 and 25 of the American Convention. With regard to this petition's admissibility, the petitioners add that the conduct of the authorities and the unwarranted delay in the police inquiry about the facts indicate that the exception provided for in Article 46.2.c of the American Convention is applicable to this matter.

B. Position of the State

10. The State argues 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 indictment related to the facts alleged in the petition, which was presented before the judicial authority by the Office of the Public Prosecutor on April 15, 2008. According to the State, the judicial authority would soon reach a decision as to whether to formally accept the indictment. The State observes that the inter-American human rights system is subsidiary and complementary to domestic jurisdictions. Lastly, the State argues that in this matter the domestic system is adequately handling the situation by means of the necessary investigations.

11. Consequently, the State argues that the petition was presented prematurely since effective domestic remedies are ongoing. The State thus claims that the petition is inadmissible because domestic remedies have not been exhausted, in accordance with the requirement contained in Article 46.1.a of the American Convention and Article 31 of the IACHR's Rules of Procedure.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

12. The petitioners have 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 American 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.

13. 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

14. 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.

15. 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 murder and attempted murder-- the suitable and effective remedy is normally a criminal investigation and trial before the ordinary judicial system. The IACHR also notes that it is undisputed that to this date there is no final determination of those responsible for the murders and attempted murders of the alleged victims (*supra* paras. 8 and 10).

16. The Inter-American Commission takes particular note that the respective police inquiry regarding the facts denounced herein was initiated on June 9, 1997 before the Municipal Police District of Nazaré da Mata,[2] and it took over ten years to be concluded.[3] Indeed, according to the documentation in the file, the Office of the Public Prosecutor presented the respective indictment against nine people (including one police officer) before the judicial authority on April 15, 2008.[4] Therefore, for purposes of admissibility, the IACHR must take into account that the alleged human rights violations against the presumed victims would have commenced as from June 9, 1997; that is to say, fifteen years ago as of the date of approval of this report. According to the information provided by both parties, the indictment presented by the Office of the Public Prosecutor remained pending as of July 2008, i.e. the case had not formally reached the Judiciary almost eleven years after the facts. In addition to that, nothing in the file indicates that there has been a trial to this date.

17. 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.[5] After a close examination of the files of the police inquiry, the IACHR observes that, for 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 fifteen years after the so-called "Camarazal Massacre".

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[2] Copy of the police investigation file (*Inquérito Policial*) nº 011/1997, pages 3-4 – Attachment to the petition.

[3] Communication of the Office of the Public Prosecutor signed by prosecutor Paulo Henrique Queiroz Figueiredo and dated February 18, 2008 – Attachment 2 of the State's response.

[4] Indictment (*Denúncia*) of the Office of the Public Prosecutor signed by prosecutor Paulo Henrique Queiroz Figueiredo and dated April 15, 2008 – Attachment 1 of the State's response.

[5] *See*, *mutatis mutandi*, IACHR. Report No. 11/12, Petition 6-07, Admissibility, *Jurandir Ferreira de Lima et al.* (Brazil), March 20, 2012, para. 20. *See also* IACHR. Report No. 9/00, Case 11.598, Admissibility and Merits, *Alonso Eugênio da Silva* (Brazil), February 24, 2000, para. 25; and Report No. 10/00, Case 11.599, Admissibility and Merits, *Marcos Aurélio de Oliveira* (Brazil), February 24, 2000, para. 23.

18. The IACHR also notes in this regard that the Inter-American Court of Human Rights has held that the rule requiring prior exhaustion must never "lead to a halt or delay that would render international action in support of the defenseless victim ineffective."[6] In the case at hand, 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.

19. 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.[7]

C. Timeliness of the petition

20. 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.

21. 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 October 12, 2007. In the specific circumstances of this petition, particularly the fact that it denounces the presumed continued impunity regarding the attack against the alleged victims, and also taking into account the allegations of denial of justice related to the police investigation and judicial process, 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*

22. 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

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

[7] 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.

23. 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.[8]

24. 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.

25. In this case, the IACHR concludes that, if proven true, the allegations of the petitioners could tend to establish violations of Articles 4, 5, 8 and 25 of the American Convention, in conjunction with Article 1.1 of the same treaty, to the detriment of the alleged victims and their family members. In making the foregoing determination, the Inter-American Commission takes particular note of the allegation of indiscriminate shooting against all alleged victims and the alleged objective to kill them all, including those who survived with gunshot wounds.[9] Moreover, the IACHR observes that the petitioners allege that the attack was supposedly conducted with the participation of State agents, and that the State failed to utilize due diligence to investigate, prosecute and punish those responsible. Lastly, the IACHR observes that two alleged victims who suffered gunshot wounds were children of one and six years of age at the time of the events, so the Inter-American Commission also declares this petition admissible with regard to potential violations of Article 19 of the American Convention to the detriment of these two alleged victims.

26. 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 4, 5, 8, 19 and 25 thereof, in conjunction with Article 1.1 of the same instrument, as detailed above.

V. CONCLUSIONS

27. 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 4, 5, 8, 19 and 25 of the American Convention, in conjunction with Article 1.1 of the same instrument;

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

[9] See, *mutatis mutandi*, IACHR, Report No. 40/10, Petition 590-05, Admissibility, *Márcio Aurélio Gonçalves* (Brazil), March 17, 2010, para. 33; and 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. 59. See also I/A Court, *Case of La Rochela Massacre*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 126, citing ECRH. Acar and Others v. Turkey; and Makaratzis v. Greece

2. To notify both parties about this decision;

3. To continue with its analysis of the merits of this case;

4. 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 July, 2012. (Signed): Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.