

OEA/Ser.L/V/II.
Doc. 86
30 December 2016
Original: Spanish

REPORT No. 78/16
PETITION 1170-09
REPORT ON ADMISSIBILITY

ALMIR MUNIZ DA SILVA
BRAZIL

Approved electronically by the Commission on December 30, 2016

Cite as: IACHR, Report No. 78/17, Petition 1170-09. Admissibility. Almir Muniz da Silva. Brazil.
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DECEMBER 30, 2016

I. SUMMARY

1. On September 18, 2009, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition filed by the *Comissão Pastoral da Terra da Paraíba* (CPT/PB), *Dignitatis Assesoria Técnica Popular, Justiça Global*, and Mr. James L. Cavallaro (hereinafter “the petitioners”) against Brazil (hereinafter “Brazil” or “the State”). The petition was lodged on behalf of Almir Muniz da Silva (hereinafter “the alleged victim” or “Mr. Muniz”), missing since June 29, 2002.

2. The petitioners claim that the disappearance of the alleged victim is associated to his participation both as a human rights defender and a leader of rural workers, and his complaint against actions taken by the police during the land conflict in the State of Paraíba. Due to such claim, Mr. Muniz was allegedly subjected to death threats by a civil police officer, one year and a half before the alleged victim went missing. In this regard, they allege State responsibility for failure to prevent Mr. Muniz’s disappearance and fulfill its obligation to duly investigate the crime and punish the persons responsible. In turn, the State declares that the petition is inadmissible on the grounds that the case is pending settlement before an international body – as the facts were reported to the UN Working Group on Enforced Disappearances–, domestic remedies have not been exhausted, and the facts described in the petition do not tend to establish a violation of the rights protected by the Convention because the prime suspect in the disappearance allegedly did not act as a state agent but as an individual, and refuses to admit the existence of any type of permission, support or consent from the State concerning the facts.

3. Without prejudging the merits of the petition and after analyzing the position of the parties pursuant to the requirements in articles 31 to 34 of the IACHR (hereinafter “the Rules”) and articles 46 and 47 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), the Commission decides to declare the petition admissible in order to assess the arguments concerning the alleged violation of rights protected by the Convention through articles 2 (duty to adopt domestic legal provisions), 3 (Right to Juridical Personality), 4 (Right to Life), 5 (right to personal integrity), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 16 (Freedom of Association) and 25 (Right to Judicial Protection), in agreement with Article 1.1 of said treaty and Article I of the Inter-American Convention on Forced Disappearance of Persons. The Commission moreover decides to notify the parties of this decision, and to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEDURE BEFORE THE IACHR

4. On September 18, 2009, the IACHR received the petition and on June 6, 2014, it transmitted a copy of the relevant parts to the State, setting a three-month deadline for them to submit observations under Article 30.3 of the Rules. The State’s response was received on September 12, 2014 and it was forwarded to the petitioners on September 19, 2014.

¹ Under Article 17.2 (a) of the IACHR’s Rules of Procedure, Commissioner Paulo Vannuchi, Brazilian citizen, did not participate in the discussions or the decision on this petition. And, pursuant to provisions in Article 17.2 (b) of the Rules, Commissioner James L. Cavallaro did not participate in the discussions or the decision on this petition.

5. The petitioners submitted additional observations on March 6, 2015. In turn, the State submitted additional observations on May 22, 2015. These observations were duly transmitted to the opposing party.

III. POSITION OF THE PARTIES

A. Position of the petitioners

6. The petitioners allege the disappearance of Mr. Muniz, a human rights defender and an advocate of the rights of rural workers in the State of Paraíba. The petitioners allege lack of preventive measures from state authorities concerning the threats as well as the disappearance and the suffering that the alleged victim was allegedly subjected to. The petitioners allege that the State infringed its duty to investigate the disappearance of the alleged victim through all legal means available to uncover the truth and search, arrest, trial and eventually punish the perpetrators and masterminds of the disappearance. Such obligation, the petitioners say, is strengthened by the fact that state agents allegedly participated in the facts. The petitioners also allege the violation of the right of freedom of association of the alleged victim, who was purportedly subjected to death threats by a civil police officer on December 23, 2000. They declare that although the threats were reported to the police on December 26 of that same year, no investigations were open. In this context, the State allegedly did not adopt suitable measures to ensure the rights enshrined in the Convention, as it was proved that several deficiencies in the investigation procedures made it impossible to seek justice concerning this case.

7. The petitioners say that the alleged victim's work as a defender of human rights is an antecedent. In this regard, they declare that Mr. Muniz was part of the board of the *Associação dos trabalhadores rurais da terra comunitaria de Mendonça* and a member of a group of rural workers who –along with the *Comissão Pastoral da Terra*– worked in regions of conflict. Likewise, the petitioners allege a situation of criminalization and generalized violence against rural workers and leaders in the State of Paraíba. With regard to this, in 2001 Mr. Muniz was invited to inform the Parliamentary Investigation Commission of the Legislative Assembly of the State of Paraíba, on the situation of rural violence and the formation of private militias in said state. According to the petition, the purported events of violence that he described in his statement were included in the Final Report of the Parliamentary Investigation Commission on the situation of human rights in the State of Paraíba of February 27, 2003.

8. The petitioners allege that on December 26, 2000, the alleged victim reported a death threat against him from a civil police officer of the State of Paraíba and manager of the Tanques country estate, at the Police Unit of Itabaiana. According to the record of the police report, on December 23, 2000, the civil police officer approached the alleged victim, warning that Mr. Muniz's "time had come" and that "he didn't like that [the alleged victim] said things about him". The petitioners state that such threats were caused by the alleged victim's work as a defender of rural workers' rights and the fact that he had denounced the involvement of, and the connivance between, members of the public security forces and the judiciary in the land conflict. In this regard, the petitioners argue that Mr. Muniz identified the police officers allegedly involved in the acts of violence against the rural workers of the region, both in the files he had formally submitted to the members of the Legislative Assembly of the State of Paraíba as well as in his visits to the *Instituto Nacional de Colonização e Reforma Agrária*, the *Ouvidoria Agrária Nacional*, the *Secretaria de Direitos Humanos* and the *Conselho de Defesa dos Direitos da Pessoa Humana*. The petitioners declare that the same civil police officer that threatened Mr. Muniz was accused in about twenty proceedings, many of which concerning acts of violence against rural workers. In said proceedings, there were alleged investigations into his relationship with extermination groups, cargo theft, drug-trafficking, gun-running, and the formation of private militias in the countryside.

9. According to the information in the file, on June 29, 2002, the alleged victim towed his brother-in-law's car with the tractor of the Association of Rural Workers to a garage in the town of Itabaiana. After he left his brother-in-law at the garage, Mr. Muniz set out for home. He was last seen at around 8.00 pm driving the tractor towards a path that goes through Veneza and Tanques country estates. Since then, Mr. Muniz's whereabouts have been unknown.

10. The petitioners argue that the evening that the alleged victim disappeared, his family members went to the corresponding police station to report his disappearance but were not allowed to file the complaint. Likewise, their request to search the Tanques country estate –managed by the prime suspect mentioned by the alleged victim’s family– was rejected on the grounds that it was impossible to access the property without prior authorization. The petitioners argue that the night of June 29, when they got the authorization, the police delegate of Itabaiana said that he did not have a means of transport available.

11. According to the information available, the disappearance of the alleged victim was recorded on file No. 356/02 on June 30, 2002. The petitioners allege that only one day after, after travelling to João Pessoa (the State’s capital city) and by intervention of the *Comissão Pastoral da Terra*, did the investigative procedures officially start; then a civil police officer was appointed to conduct the investigation and witness statements were registered. On July 3, 2002, the tractor that the alleged victim was driving on the day he disappeared was found in the Olho D’água country estate in the town of Itambé, State of Pernambuco, on the border with the State of Paraíba.

12. The petitioners say that according to the statements of witnesses, the prime suspects in connection with the alleged victim’s disappearance are the civil police officer that had threatened Mr. Muniz on December 23, 2000, and an employee at the Tanques country estate. According to these witness statements, said police officer was known for threatening rural leaders and he allegedly threatened Mr. Muniz’s brother-in-law with a firearm.

13. On top of the initial inaction, the petitioners allege serious deficiencies in the investigation of the events. In this sense, they say that the proceedings to search in the property managed by Mr. Azevedo did not take place until July 8, 2002. They argue that the search inside the Tanques country estate consisted in a superficial visual assessment of the property, and that there were no attempts to search for evidence in the house or collect material evidence. In addition, the petitioners declare that although the expert assessment of the tractor driven by the alleged victim was made on July 3, 2002 –when vehicle was found–, the delegate in charge of the investigation did not receive the experts’ opinion until September 5, 2002. The petitioners state that even though the pictures that the technical police took of the tractor show purported bullet holes, the experts’ opinion does not mention such holes. They allege that on August 10, 2002, the delegate in charge of the investigation requested the police of Pernambuco to provide information on possible traces of blood in the tractor; the request was not answered.

14. According to the petition, on January 5, 2004, the delegate in charge of the investigation sent an official letter to the Secretary of Public Security reporting on the investigation procedures carried out –in which he mentioned the aforementioned civil police officer as the prime suspect– and requesting financial and material aid, and staff to be able to continue investigating. On March 19, 2004, the delegate alleged lack of a basic structure to duly conduct an investigation, and remitted the case to the delegate of Itabaiana. Among his arguments to remit the case, the delegate mentioned numerous problems and administrative delays, lack of answer to requests for means and procedures necessary to advance the investigation, and lack of financial and material means and staff. On June 8, 2004, the case was transmitted to the police station of Itabaiana.

15. The petitioners allege that between 2005 and 2009, at least fourteen deadline extension requests were made at the police station of Itabaiana to finish the investigation, even when many times no procedures were carried out in between deadline extensions. They argue that on October 31, 2008, the delegate made a report stating that based on the proofs available, there was not enough evidence to prove the accusations against the civil police officer. The report mentions the arguments concerning lack of basic and necessary means to conduct the investigation, stated in previous letters and case files. On November 19, 2008, the Office of the Public Prosecutor requested to file the police investigation and on March 20, 2009, over six years later after the disappearance of Mr. Muniz, Judge Shirley Abrantes Moreira Régis accepted the request from the Public Prosecutor and ordered to file the investigation on the grounds that there was no evidence about the authorship for the crime.

16. Based on the foregoing, the petitioning party alleges that the State violated the rights enshrined in articles 1.1, 2, 4, 5, 8, 16 and 25 of the Convention, to the detriment of the alleged victim.

B. Position of the State

17. According to the State, the petition is inadmissible because it does not meet the requirements concerning international *lis pendens*, the prior exhaustion of domestic remedies, and the facts do not establish a violation of rights.

18. The State declares that under Article 46.1 (c) of the Convention, the matter of the petition must not be pending settlement pursuant to another international proceeding. It argues that in this case, as the petition states, a complaint was lodged with the United Nations Working Group on Enforced or Involuntary Disappearances, on July 9, 2009. The State declares that the Rapporteur of said working group sent a letter to the government of Brazil informing that Mr. Almir Muniz's case –registered as “Case No.: 1001977”– was under assessment, and requesting a reply from the State. Based on Article 46.1 (c) of the American Convention, the State concludes that the petition must be declared inadmissible.

19. The State also considers the petition inadmissible due to lack of exhaustion of domestic remedies. It says that the petitioners did not prove that they filed a lawsuit against state agents for the violations attributed to the State of Brazil. The State argues that the police investigation of the alleged victim's disappearance was related to the determination of the crime and the identification of the persons responsible not to state responsibility for the violation of provisions set forth in the Convention concerning the rights to life, personal integrity, a fair trial, freedom of association, judicial protection, and duty to adopt domestic legal provisions.

20. The State declares that the petitioners did not pursue the adequate domestic means available to protect the rights purportedly violated and that, as a result, the State was unable to settle the alleged violation of rights, which violates the subsidiarity principle of the Inter-American System. With respect to this, the State argues that the judiciary of Brazil recognizes the State's civil responsibility in certain cases of death, citing the example of the remedy of *agravo regimental no agravo em recurso especial* in the civil procedural and administrative venue concerning the civil responsibility of the State.

21. In particular, as to Article 16 of the Convention, the State declares that the violation of the right of freedom of association was not considered in the case that was filed –which was a criminal case. It argues that if there was a violation of the right of freedom of association set forth in the Constitution of the Federal Republic of Brazil, the petitioners should have filed a *mandado de segurança* established in Article 5, paragraph LXX of said law to protect rights at risk due to actions by state agents. The State argues that apart from the *mandado de segurança*, the petitioners could have pursued the *ação de conhecimento*, a remedy whereby it is possible to obtain either a judgment of declaratory or constitutive type, or a conviction.

22. The State also argues that the petition is inadmissible because the facts do not tend to establish a violation of the rights set forth in the Convention. In this regard, it argues that the facts described in the petition cannot result in state responsibility for violation of the right to life and personal integrity of the alleged victim, even when one of the suspects identified by the petitioners is a civil police officer, since the reported facts are allegedly related to the suspect's behavior as a land owner, not as a state agent.

23. With respect to this, the State declares that according to the witness statements attached to the petition, the disagreement between the alleged victim and the civil police officer identified by the petitioners stemmed from the invasion of the Tanques country estate, managed by said civil police officer. Therefore, such differences were allegedly related not to his functions as a civil police officer but to his functions as a manager of said property. Consequently, the State denies that this is a case of forced disappearance as defined by the Inter-American Convention on Forced Disappearance of Persons because the alleged victim was not deprived of liberty by the State. Concerning this, the State argues that although the manager was a civil police officer at the time that the events occurred, he did not act as a state agent but as a private person, and it denies any type of permission, support or consent from the State concerning the events.

24. Regarding the purported violation of articles 8 and 25 of the Convention, the State argues that during the investigation, many witness statements were recorded, an expert assessment was made, and a

police delegate was appointed to conduct the investigation. It alleges that the fact that the investigation eventually did not allow to identify the persons responsible does not amount to the State's violation of articles 8 and 25 of the Convention, since those are obligations of means not of results. In this regard, it alleges that the police and judicial procedures were carried out pursuant to due process and the presumption of innocence of the accused, which are constitutionally protected rights.

25. The State furthermore alleges that it never failed to comply with the duties set forth in articles 1 (1) and 2 of the Convention. Instead, it argues that its efforts have been focused on the protection of human rights defenders through the creation of the Program of Protection of Human Rights Defenders of 2004, to adopt and articulate measures that enable the protection of people in situations of risk and/or threat due to their work as human rights defenders. Concerning the alleged violation of Article 16 of the Convention, the State declares that this right is protected by the Constitution and that its exercise does not allow for State interference unless there is a judicial order. To conclude, the State argues that the petition is inadmissible given that it does not meet the requirements concerning international *lis pendens* or the prior exhaustion of domestic remedies, and that the facts do not tend to establish a violation of rights, and requests the IACHR to so declare.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

26. In principle, the petitioners are entitled to lodge complaints with the Commission under Article 44 of the American Convention and Article 23 of the IACHR's Rules. In the petition, the alleged victim is an individual person whose rights are protected by the American Convention, which the State of Brazil is bound to comply with. As to the State, the Commission declares that Brazil is a State Party to the American Convention since September 25, 1992, when it deposited its instrument of ratification of said treaty. The Commission is also competent *ratione loci* to assess the petition, as it reports violations that allegedly occurred within the territory of Brazil.

27. The Commission is competent *ratione temporis*, since by the time that the reported facts are said to have taken place, the State was already bound to respect and ensure the rights protected by the American Convention. Finally, the Commission is competent *ratione materiae* concerning the alleged violations of human rights protected by the Convention.

28. In addition, the Commission notes that on February 3, 2014, Brazil deposited its instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons, pledging to respect and ensure the rights enshrined in this Convention as of March 5, 2014, the date that the treaty came into force. As a result, the Commission is also competent *ratione temporis* to hear the alleged violations that allegedly persisted since the date mentioned.

B. Admissibility requirements

1. Exhaustion of domestic remedies

29. Under Article 46.1 (a) of the American Convention and Article 31.1 of the Rules, for a petition to be admissible, domestic remedies must have been pursued and exhausted, in accordance with generally recognized principles of international law. This requirement is aimed at allowing national authorities to hear the alleged violation of a protected right and, if applicable, reverse the situation before it is heard by an international body.

30. The petitioners allege that they exhausted all of the adequate means to investigate and determine the criminal responsibility of the authors in cases of forced disappearance pursuant to the Inter-American jurisprudence. As to the right of freedom of association, the petitioners allege that the threats against the alleged victim and his murder were the result of his leadership of the rural workers' association, which was stated during the police investigation eventually filed. Concerning both issues, the petitioners

argue that the Brazilian legal framework has no remedy against the decision to file a police investigation. In turn, with respect to the alleged disappearance, the State alleges lack of exhaustion of the remedy of *agravo regimental no agravo em recurso especial* of the civil procedural and administrative court in civil matters concerning the State's civil responsibility. As to the right of freedom of association, the State declares that the petitioners should have pursued the remedy of *mandado de segurança* or the remedy of *mandado de segurança coletivo*, or even the *ação de conhecimento*.

31. The IACHR notes that the reported facts in this case involve the alleged forced disappearance of Mr. Muniz, and that such type of crime requires an expeditious investigation at the State's own initiative. In such cases, a regular criminal trial is the adequate means to establish the facts, trial the persons responsible, and decide on the criminal punishments applicable, as well as allow for other ways of monetary reparation.

32. Furthermore, the Inter-American Commission stresses that in cases like this, there is no need to exhaust a civil action before resorting to the Inter-American system, since that remedy would not settle the main issue in this petition –the alleged enforced disappearance of Mr. Muniz and the lack of diligence throughout the investigation, search and punishment of the persons responsible².

33. Concerning the arguments of the State as to the freedom of association, the IACHR establishes that the requirement of prior exhaustion of domestic remedies does not mean that alleged victims are necessarily obliged to exhaust every available means. That is to say, if the alleged victim presented the matter to a domestic court through one of the suitable judicial procedural means pursuant to the domestic legal framework, and if through such means the State had the opportunity to reverse the situation presented to it, the requirement of prior exhaustion of domestic remedies is met³. With respect to this, the IACHR notes that the information about the possible connection between the alleged victim's purported disappearance and his participation as a leader of the association of rural workers was mentioned in the witness statements presented during the police investigation. As a result, insofar as this connection was acknowledged during the police investigation and reported through any of the legal means suitable pursuant to the domestic legal framework, the State did hear the alleged violation.

34. Therefore, the Commission decides that in this case domestic remedies have been pursued and exhausted in accordance with Article 46.1 (a) of the American Convention and Article 31.1 of the Rules.

2. Timeliness of the petition

35. Under Article 46.1 (b) of the American Convention and Article 32.1 of the IACHR Rules, for a petition to be declared admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment. In the case of this complaint, the decision made by the full judge of Itabaiana, Mrs. Shirley Abrantes Moreira Régis, was notified on March 20, 2009; the petition to the IACHR was filed on September 18, 2009. Therefore, the Commission decides that this petition meets the requirement set forth in Article 46.1 (b) of the Convention and Article 32.1 of the Rules.

3. Duplication of proceedings and International *res judicata*

36. The State declares that this petition does not meet the requirement set forth in Article 46.1 (c) of the Convention given that on July 9, 2009, the petitioners lodged a complaint with the Working Group on Enforced or Involuntary Disappearances, of the Human Rights Commission of the United Nations, regarding the alleged disappearance of the alleged victim.

37. In this regard, the Commission establishes that there is a duplication of procedures or international *res judicata* when a petition is under the assessment of, or settled by, an international body that

² IACHR, Report No. 11/12, Petition 6-07, Admissibility, Jurandir Ferreira de Lima and Others, Brazil, March 20, 2012, para. 21.

³ IACHR, Report No. 18/06, Petition 12353, Admissibility, Arley José Escher and others (Tapping of the telephone lines of social organizations), Brazil, March 2, 2006, para. 28.

is competent to decide on the specific facts in the petition and take measures aimed at effectively settling the matter at issue. The Commission believes that the aforementioned Working Group is not part of the category of international bodies whose mandates may lead to the duplication referred to in articles 46.1 (c) and 47.1 (d) of the American Convention. In fact, said body does not have a case system to issue rulings that can attribute specific responsibilities. Consequently, the procedure of the Working Group is mainly a non-adversarial urgent action whose most important end is to establish a communication channel between the victims and the governments to effectively search for the disappeared. In turn, the procedure before the Inter-American System of Human Rights Protection is of conventional and adversarial nature, and the Inter-American Commission has an adjudicative function within such procedure.

38. As a result, the IACHR decides that the inadmissibility requirements set forth in articles 46.1 (c) and 47 (d) of the Convention and Article 33.1 parts (a) and (b) of the Rules do not apply⁴.

4. Colorable claim

39. Before a petition is admitted, the Commission must decide if the reported facts tend to establish a violation of rights, under Article 47 (b) of the American Convention and Article 34 (a) of the Rules, or if the petition is 'manifestly groundless' or 'obviously out of order,' under Article 47 (c) of the Convention and Article 34 (b) of the Rules. The criteria to assess the admissibility of a petition differs from those used to assess its merits, as the Commission only undertakes a *prima facie* analysis to determine whether the petitioners have established the apparent or possible violation of a right protected by the Convention. It is a general analysis that does not prejudge, or issue a preliminary opinion on, the merits of the matter.

40. Moreover, under the corresponding legal instruments, petitioners are not obliged to identify the specific rights allegedly violated by the State in the petition filed to the Commission, although petitioners may do so. Based on the system's jurisprudence, it is for the Commission to determine in its admissibility report which provisions of the relevant Inter-American instruments apply and could be considered to have been violated if the alleged facts are proven through sufficient elements.

41. The petitioners allege that the State is responsible for the enforced disappearance of the alleged victim, which took place due to his work as a human rights defender and, particularly, his complaint against the involvement of the police in the land conflict in the State of Paraíba. Moreover, they allege state responsibility due to the lack of measures to prevent and investigate the disappearance. In turn, the State declares that the civil police officer whom the petitioners identify as the author of the crime did not act as a state agent but as the manager of the Tanques country estate, and therefore refuses to admit the existence of any permission, support or consent from the State regarding the reported facts.

42. In view of the elements of fact and law filed by the petitioners, along with the nature of the matter brought to the attention of the Commission, the IACHR believes that, if proved, the purported absence of preventive measures against the death threats from a civil police officer, the possible participation of said state agent in the alleged forced disappearance, and the subsequent lack of an effective investigation may tend to establish possible violations of human rights protected by articles 2, 3, 4, 5, 7, 8, 16 and 25 of the Convention to the detriment of Mr. Almir Muniz da Silva; articles 5, 8 and 25 of the Convention regarding his family members, all these articles being in agreement with Article 1.1 of said treaty; and Article I of the Inter-American Convention of Forced Disappearance of Persons regarding the alleged lack of investigation occurred after said instrument came into force in Brazil.

V. CONCLUSIONS

43. Based on the above elements of fact and law, the Inter-American Commission concludes that this petition meets the admissibility requirements set forth in articles 31 to 34 of the Rules and articles 46 and 47 of the American Convention, and without prejudgment of the merits of the matter,

⁴ IACHR, Report No. 147/10, Admissibility, Petition 497-03, Jesús Ángel Gutiérrez Olvera, Mexico, November 1, 2010, para. 50.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible in relation to Articles 2, 3, 4, 5, 7, 8, 16 and 25 of the American Convention, in agreement with Article 1.1 of said instrument, and Article I of the Inter-American Convention on Forced Disappearance of Persons;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 30th day of the month of December, 2016. (Signed): Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.