

REPORT No. 5/11*
PETITION 702-03
ADMISSIBILITY
IVAN ROCHA
BRAZIL
March 22, 2011

I. SUMMARY

1. On May 28, 2003, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint submitted by the Inter-American Press Association (“the IAPA” or “the petitioner”) alleging that the Federal Republic of Brazil (“the State” or “Brazil”) was internationally responsible for the disappearance and presumed murder of the radio host known as Ivan Rocha, whose real name was Valdeci de Jesus (“the alleged victim” or “Ivan Rocha”).

2. According to the petitioner, Ivan Rocha was disappeared on April 22, 1991, in alleged retaliation for his denouncement of death squads that were operating in the south of the state of Bahia and in which both police officers and a legislator were alleged to have been involved. According to the petition, the alleged victim disappeared after having reported during his radio program - “The Voice of Ivan Rocha” - that he would submit a list to authorities that included the names of several police officers and even a legislator supposedly involved in crimes carried out by death squads. The petitioner indicates that the lack of an adequate investigation following the disappearance and presumed murder were a violation of articles 4 (right to life), 8 (right to a fair trial), 25 (judicial protection) and 13 (freedom of expression) of the American Convention on Human Rights (“the American Convention”). The petitioner emphasizes that as of the present day, the State has not found the perpetrators and/or the masterminds of the crime, nor has it determined the whereabouts of the alleged victim.

3. For its part, the State alleges first of all that the petition is inadmissible for being extemporaneous- that is, it was not submitted by the 6-month deadline stipulated in Article 46(1)(b) of the American Convention. According to the State’s criteria, the parties were notified of the final ruling upon which domestic remedies were exhausted on September 13, 1994, and the petition was submitted on May 28, 2003. In this regard, the State emphasizes that the petitioner itself argues that domestic remedies were exhausted in 1994, meaning that nine years passed between the exhaustion of remedies and the submission of the petition before the IACHR. The State also indicates that the criminal proceeding initiated domestically was exhaustive, impartial and enjoyed all the guarantees of due process, having complied with its international obligations, since the obligation to investigate and criminally prosecute is an obligation of means and not ends. The State also argues that the IACHR does not have *ratione temporis* jurisdiction to hear the petition based on the American Convention, as the State deposited its instrument of ratification on September 25, 1992, or one year after the alleged disappearance was said to have occurred.

4. After examining the positions of the parties in light of the admissibility requirements established in articles 46 and 47 of the American Convention, and without prejudging the merits of the matter, the Inter-American Commission decides to declare the petition admissible with regard to the alleged violation of articles 4, 8, 13 and 25 of the American Convention. Also, by virtue of the principle of *iura novit curia*, the Inter-American Commission declares that the petition is admissible with regard to articles I, IV, XVII, XVIII, and XXV of the American Declaration of the Rights and Duties of Man (“the American Declaration”), and of articles 1(1), 2, 3, 5 and 7 of the American Convention. Finally, the Commission decides to publish this report and include it in its Annual Report to the general Assembly of the Organization of American States.

* Commissioner Paulo Sérgio Pinheiro, of Brazilian nationality, did not participate in the deliberations nor in the decision in this report, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the IACHR.

II. PROCEEDING BEFORE THE INTER-AMERICAN COMMISSION

5. The petition was received by the IACHR on May 28, 2003, and on February 17, 2005, the Commission sent the pertinent parts to the State, requesting that it submit its response within two months. On June 20, 2005, the State submitted its response to this petition, and its pertinent parts were sent to the petitioner on August 5, 2005.

6. The petitioner submitted additional observations on August 3, 2006. For its part, the State sent additional observations on October 17, 2006. These communications were duly transmitted to the opposing party.

III. POSITION OF THE PARTIES

A. Position of the petitioner

7. The petitioning organization alleges in its complaint that the journalist and radio host Ivan Rocha was disappeared on April 22, 1991, allegedly due to his critical journalism activity exposing acts of corruption that could make certain individuals in the south of the state of Bahia uncomfortable. The petitioner indicates that at the moment of his disappearance and presumed murder, the alleged victim worked as a radio host in the city of Teixeira de Freitas, in the south of the state of Bahia, in Brazil. It indicates that the alleged victim had a radio program called "The Voice of Ivan Rocha," broadcast by the radio station *Alvorada AM*. During his program, the host denounced organized crime and the alleged participation of local authorities in death squads that were active in the region. The petitioner states that the alleged victim had already received threats over his statements on the radio program. It indicates that the day prior to his disappearance, he announced during his program that he would submit, to state authorities who would be visiting the city, a report containing the names of police officers and even a legislator who were involved in the crimes that the radio host was denouncing.

8. The petitioner maintains that a day after Ivan Rocha's statement on the radio, on April 22, 1991, the alleged victim was on his way to meet his girlfriend, Rosária Monti, at the university and was kidnapped, after which he was never seen again. According to the petitioner, this crime is related to a context of violence against Bahia journalists who, like the alleged victim, expressed their opposition to groups with great local influence and power. The petitioner highlights that, according to the Baiana Press Association (ABI), 10 journalists were murdered between 1991 and 1997 in Bahia.

9. The petitioner indicates that a civilian police investigation was opened into the disappearance of Ivan Rocha. It concluded on July 19, 1991. The petitioner indicates that based on this criminal investigation, the representative filed criminal charges for the crime of kidnapping, provided for in Article 148 of the Brazilian Penal Code, against three individuals: the military police officers Antônio Carlos Ribeiro de Souza and Domingos Cardoso dos Santos, and journalist Salvador Rodrigues Brandão Filho, who worked at a radio station owned by a politician who was a rival of the group for which the alleged victim worked. The SIP reports that during this criminal proceeding, the mother of the alleged victim acted as Assistant to the Prosecution for the Office of the Public Prosecutor.

10. According to the petitioner, several individuals involved in the investigations were threatened and pressured to refrain from testifying and to stop investigating the facts and the whereabouts of the alleged victim. For example, the petitioner notes that the eyewitness changed her testimony in the hearing before the lower court. That change, according to the petitioner, meant that the Office of the Public Prosecutor was forced to request the criminal complaint be declared inadmissible due to lack of evidence.

11. However, the petitioner holds that the lower court judge in charge of the case found that the change in the testimony was due to the threats and intimidation of which the witness was probably a victim and proceeded to convict Salvador Rodrigues Brandão Filho and Antônio Carlos Ribeiro de Souza of the kidnapping of the alleged victim, while acquitting Domingos Cardoso dos Santos. The judgment was dated February 17, 1992.

12. The petitioner holds that both the Office of the Public Prosecutor and the prisons convicted appealed the ruling before the Bahia Tribunal of Justice. According to the petitioner, this higher court overturned the ruling of the lower court and on March 3, 1994, absolved the individuals who were originally convicted, concluding that given the change in testimony by the main witness, the kidnapping of the alleged victim was not proven because there was sufficient evidence neither of the fact of the crime nor of its authorship.

13. According to the petition, the criminal process suffered from serious irregularities. For example, it is noted that in May of 1991, some bones and clothing were found that could have belonged to the disappeared journalist, but they were not subject to a forensic examination. Another of the petitioner's arguments as far as the irregularities of the proceeding and apart from the threats against officials in charge of the case was the alleged kidnapping of the crime's only eyewitness. According to the petitioner, the witness was kidnapped in August of 1991 after stating to the police that she had seen Salvador Rodrigues Brandão Filho, Antônio Carlos Ribeiro de Souza, and two other individuals she did not recognize get out of a vehicle in order to later place the alleged victim into that vehicle.

14. Finally, the petitioner alleges that the judicial remedies regarding the disappearance were exhausted in 1994 and that impunity in the case persists, as at the time the petition was submitted, more than nine years had passed since the end of the the aforementioned criminal trial without the crime being effectively investigated and those responsible for the crime punished. It is also stated that the whereabouts of the alleged victim have still not been established. Based on these considerations, the petitioner alleges that the State is responsible for the violation of articles 4, 8, 13 and 25 of the American Convention.

B. Position of the State

15. The State requested that the petition be declared inadmissible based on the stipulations of Article 46(1)(b) and on the principle of legal certainty for failing to comply with the requirement of the 6-month deadline in the submission of the petition, counted from the date - September 13, 1994 - on which the representatives of the alleged victim were notified of the definitive decision that, in its opinion, exhausted domestic remedies.

16. The State indicated that the petition before the IACHR is dated May 23, 2003, which is to say that it was submitted nine years after the publication of the final judgment issued by domestic courts, failing to comply with the minimum admissibility requirements for a petition. The State considers that the petition should not even have been initially processed because it does not meet the minimum requirements provided for in articles 28 and 32(1) of the Rules of Procedure of the Inter-American Commission.

17. With regard to the investigation and the criminal proceeding related to the events, the State said that based on the testimony of a visual witness, the police investigation into the disappearance of Ivan Rocha concluded that the journalist had been kidnapped by Salvador Rodrigues Brandão Filho, Antônio Carlos Ribeiro de Souza and Domingos Cardoso dos Santos. According to the State, this investigation was the basis for the Office of the Public Prosecutor pressing criminal kidnapping charges against these three individuals under Article 148 of the Brazilian Penal Code.

18. However, the State emphasizes that during the preliminary investigation before the judge in the case, the aforementioned witness retracted all the accusations that had been made previously, alleging that she had been coerced into giving false statements against the accused. The State indicates that this moved both the Office of the Public Prosecutor and the mother of the alleged victim (Assistant to the Prosecution) to ask the judge to rule the complaint invalid for having insufficient evidence with which to convict the defendants. The State maintains that even so, the lower court judge convicted two of the defendants, Antônio Carlos Ribeiro de Souza and Salvador Rodrigues Brandão Filho, for the crime of

kidnapping to the detriment of Ivan Rocha. The defendant Domingos Cardoso dos Santos was acquitted in a judgment dated February 17, 1992.¹

19. Brazil states that in a March 3, 1994, higher court judgment on the appeal filed by prisoner Antônio Carlos Ribeiro de Souza, the Bahia Tribunal of Justice acquitted him. The Tribunal of Justice found that the contradictions in the testimony of the main witness in the case combined with the lack of other evidence resulted in insufficient evidence to determine the fact of the crime and eventual authorship. The State indicates that the Tribunal could not determine with certainty whether Ivan Rocha was kidnapped or if he simply disappeared from the city due to the threats he received previously over the accusations that he made in his radio program.² Later, the State indicates, pursuant to the *Embargos de Declaração* on the higher court judgment, on August 4, 1994, the acquittal was extended to the co-defendant, Salvador Rodrigues Brandão Filho. The State alleges that given the absence of evidence, neither the Office of the Public Prosecutor nor the Assistant to the Prosecution (the mother of the alleged victim) appealed the acquittal, meaning it became *res judicata* on August 26, 1994.

20. Finally, with regard to the criminal proceeding carried out, the State argues that domestic remedies were exhausted on September 13, 1994, with the publication of the acquittal of the defendants, which was handed down in the higher court judgment dated March 3, 1994, by the Bahia Tribunal of Justice. It states that the petitioner itself recognized that domestic remedies were exhausted in 1994 and that the petitioner did not respond to State arguments on the extemporaneousness of the petition at the proper procedural moment. The State emphasized that the investigation of the case was carried out “exhaustively and impartially,” but that nevertheless, sufficient evidence could not be found to establish evidence of the crime or eventual criminal responsibility. It also argues that an investigation is an obligation of means, not ends, and that the parties could have filed extraordinary remedies in response to the ruling of the Bahia Tribunal of Justice, yet they did not.

21. Separately, Brazil argues that the Inter-American Commission does not have *ratione temporis* jurisdiction to hear the petition based on the American Convention, as the facts alleged took place on April 22, 1991, more than a year before the ratification of the American Convention. Thus only the provisions of the American Declaration were applicable to the State. The State indicates that due to the fact that Brazil ratified the American Convention on September 25, 1992, only violations of that instrument that took place after this date can be subject to examination by the Inter-American Commission, in keeping with Article 74 of the American Convention.

22. Based on these two considerations, the State requests that the IACHR declare this petition inadmissible for not meeting the requirements of articles 46(1)(b) and 74 of the American Convention.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

23. In accordance with Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, the petitioner has *locus standi* to submit petitions before the Inter-American Commission. With regard to the State, Brazil is party to the American Convention, and therefore responsible internationally for violations of that instrument. The alleged victim is a natural person whose rights enshrined in the American Convention the State has committed itself to guaranteeing. As a consequence, the IACHR has *ratione personae* jurisdiction to hear the complaint.

24. The IACHR has *ratione materiae* jurisdiction due to the fact that the petition refers to alleged violations of human rights protected under the American Convention and the American

¹ Lower court ruling of February 17, 1992. Annex 4 of communication with the State, October 17, 2006.

² Higher court ruling, March 3, 1994. Annex 5 of communication with the State, October 17, 2006.

Declaration. With regard to *ratione temporis* jurisdiction, the IACHR notes that the supposed disappearance of the alleged victim took place on April 22, 1991, prior to Brazil's ratification of the American Convention on September 25, 1992. By virtue of this, the source of law initially applicable is the American Declaration.³ Nevertheless, the IACHR notes that for the facts that took place after September 25, 1992, or those that could be considered a situation of continued violation of rights that continued to exist after that date, the Inter-American Commission also has *ratione temporis* jurisdiction to examine this petition under the American Convention.

25. Finally, the American Commission has *ratione materiae* and *ratione loci* jurisdiction to hear the petition in so far as the petition alleges violations of rights protected by the American Declaration and the American Convention that would have taken place within Brazil's territory.

B. Exhaustion of domestic remedies

26. Article 46(1)(a) of the American Convention holds that in order for a complaint submitted before the Inter-American Commission to be admissible, it is necessary for the complaint to have sought and exhausted all domestic remedies, in keeping with generally accepted principles of international law. For its part, Article 46(2) stipulates that this requirement is not applicable when: a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been an unjustified delay in the ruling on the aforementioned remedies. Also, as will be examined further, according to Article 31(2) of the Rules of Procedure of the Commission, in cases in which the existence of an exception to the requirement of exhaustion of domestic remedies has been verified, the petition must have been submitted within a reasonable time period.

27. In this case, the Commission must examine first of all if, as the State argues, domestic remedies were exhausted, or if one of the exceptions to the rule of prior exhaustion of domestic remedies would apply.

28. In this respect, the IACHR has verified that in this case a complaint was submitted according to which the journalist was forcibly disappeared on April 22, 1991. Also, the IACHR takes note of the specific circumstances of the case under examination, which include allegations that the disappearance of the victim took place due to journalistic revelations on acts of corruption and the participation of local authorities and police officers in death squads. In effect, the pleadings before the IACHR indicate that Ivan Rocha suffered various threats before he disappeared.⁴ According to the information available to the Commission, as of the moment of this report's approval Ivan Rocha remains disappeared.

29. In response to the complaint submitted, the State initiated an investigation that resulted in the preliminary accusation of six individuals, five of whom were officers with the police force. Later, the Office of the Public Prosecutor decided to formally charge three of those six individuals and requested that the investigation continue with regard to the other three.⁵ According to the petitioners, that preliminary investigation was characterized by serious irregularities, among them the intimidation of witnesses and officials pursuing the investigation, particularly of the eyewitness who was allegedly kidnapped in order to intimidate her into changing her original testimony before the judicial authorities.

³ See Inter-American Court, Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights, July 28, 2010, Series A No. 10, paras. 35-45; IACHR, James Terry Roach and Jay Pinkerton (United States), Case 9647, Res. 3/87, September 22, 1987, paras. 46-49; and Rafael Ferrer-Mazorra et al. (United States), Report N° 51/01, Case 9903, April 4, 2001. Also see Article 20 of the Statute of the Inter-American Commission.

⁴ Juízo de Direito da Comarca de Teixeira de Freitas – Bahia. February 17, 1992. Judgment in proceeding No. 881/91, pp. 6 and 7. Communication from the State dated October 16, 2006. Annex 4.

⁵ Juízo de Direito da Comarca de Teixeira de Freitas – Bahia. February 17, 1992. Judgment in proceeding No. 881/91, p. 2. Communication from the State dated October 16, 2006. Annex 4.

30. In effect, the official information available to the Commission indicates that the eyewitness changed parts of her original testimony during the preliminary investigation hearing before the lower-court judge, stating that the crime had indeed been committed, but that those actually responsible were not the three individuals accused by Office of the Public Prosecutor, but rather other individuals who had forced her to bear witness to the incidents.⁶ According to the information in the case file before the IACHR, in light of this substantial change in the witness's testimony, the Office of the Public Prosecutor requested in its closing arguments the reinitiation of the investigation in order to strengthen the body of evidence not only with regard to the three individuals being put on trial but also with regard to the other individuals under investigation.⁷ Despite the request by the Office of the Public Prosecutor, the lower court judge convicted two of the three defendants, concluding that the original testimony of the witness was in fact the truth.⁸ The convicted prisoners appealed the judgment, and it was overturned by the higher court, which found that there was not enough evidence to find the individuals under investigation guilty.⁹

31. In its final pleadings in the lower court proceeding, the Office of the Public Prosecutor stated that, "we are convinced that a new investigation (incorporating all the individuals preliminarily accused) could successfully discover the whereabouts of the journalist 'Ivan Rocha,'"¹⁰ and reported to the judge that it had sent a formal communication to the State's Attorney with the "purpose of immediately reopening the 'Case of Ivan Rocha.'"¹¹ The case file also indicates that the investigations did in fact remain open with regard to the three individuals who were preliminarily accused and not brought to trial.¹² In this sense, the IACHR observes that, notwithstanding the ruling to acquit the three individuals brought to trial, domestic remedies continued to operate following that court ruling with the purpose of resolving the fate of Ivan Rocha and identifying and punishing those responsible for his disappearance.

32. According to the petitioners, a prosecutor reviewed the case in 1996 and verified that there were flaws in the investigation from the start, declaring also that reopening the case would require greater evidentiary support.¹³ In addition, given the serious complaints of impunity in this and other similar cases, in 2003 the Brazilian National Congress established the *Comissão Parlamentar de Inquérito do Extermínio no Nordeste*, which, in its 2005 final report, found that in the cases of the murder of journalists in Bahia, the judicial branch has the authority to require new investigations. It recommended establishing connections with local press associations that could contribute new elements to the investigations.¹⁴

⁶ Juízo de Direito da Comarca de Teixeira de Freitas – Bahia. Termo de audiência. Testimony of Sirlene Alves Neto dos Santos, pp. 34-39. Communication from the State dated October 16, 2006. Annex 2.

⁷ Promotoria Pública da Comarca de Teixeira de Freitas – Bahia. December 17, 1991. Final Arguments in Criminal Proceeding No. 881/91, pp. 48-50. Communication from the State dated October 16, 2006. Annex 3.

⁸ Juízo de Direito da Comarca de Teixeira de Freitas – Bahia. February 17, 1992. Judgment in proceeding No. 881/91, pp. 8-11. Communication from the State dated October 16, 2006. Annex 4.

⁹ Tribunal de Justiça do Estado da Bahia. March 3, 1994. Apelação Criminal No. 9.531-6 – Teixeira de Freitas, pp. 64-66. Communication from the State dated October 16, 2006. Annex 5; Tribunal de Justiça do Estado da Bahia. Embargos de Declaração No. 9531-6, p. 68.

¹⁰ Promotoria Pública da Comarca de Teixeira de Freitas – Bahia. December 17, 1991. Final Arguments in Criminal Proceeding No. 881/91, p. 49. Communication from the State dated October 16, 2006. Annex 3. Original quote: "Estamos convictos de que uma nova investigação (envolvendo inclusive todos os indiciados preliminarmente) poderá lograr êxito sobre o paradeiro do jornalista 'Ivan Rocha'".

¹¹ Promotoria Pública da Comarca de Teixeira de Freitas – Bahia. December 17, 1991. Final Arguments in Criminal Proceeding No. 881/91, p. 50. Communication from the State dated October 16, 2006. Annex 3. Original quote: "objetivando a imediata reabertura do 'Caso Ivan Rocha'".

¹² Juízo de Direito da Comarca de Teixeira de Freitas – Bahia. February 17, 1992. Judgment in proceeding No. 881/91, p. 2. Communication from the State dated October 16, 2006. Annex 4.

¹³ Initial Petition of the petitioners of May 23, 2003, p. 3.

¹⁴ Câmara dos Deputados. Comissão Parlamentar de Inquérito do Extermínio no Nordeste. Relatório Final. November 2005, p. 381. Available at: http://congressoemfoco.uol.com.br/UserFiles/Image/relatorio%20final_cpi_grupos_exterminio.pdf.

However, the information available to the IACHR does not indicate the existence of State actions aimed at carrying out these new investigations.

33. According to the information submitted and without prejudging the merits of the case, Ivan Rocha has been missing for 20 years. The investigation has not been able to resolve the circumstances of the disappearance, nor convincingly and materially disprove that the incident took place. Consequently, 20 years after the alleged crime, the remedies have been fruitless, and family members continue to have the right to turn to existing mechanisms to satisfy their rights.

34. From its first judgment, the Inter-American Court has established that the crime of forced disappearance of persons is an ongoing crime that must be diligently and officiously investigated by the State. In these types of crimes, the obligation to investigate does not disappear as long as the circumstances of the incident have not been resolved and those responsible punished.¹⁵ In principle, this duty of the State does not expire with a judgment to acquit that applies to some of the individuals under investigation or indicted, as the ruling does not exhaust the State's obligation to resolve the crime, nor does it allow the family members of an alleged victim of forced disappearance to learn of the victim's whereabouts and establish criminal responsibility for the perpetrators and/or masterminds of the facts. In these circumstances, the family members of the disappeared individual clearly have the right to expect the State to take other actions intended to clarify what happened. The State, for its part, has the obligation to continue to carry out all official investigations that may be necessary to satisfy the demand for justice. In other words, as forced disappearance is an ongoing crime, the individuals affected must be provided with sufficient remedies for the State to comply with its duty to ensure.

35. This is clear in the case in question, given that the judgment only applies to some of the individuals accused and the authorities themselves have indicated the need to continue the investigations. However, according to the information available, these investigations did not lead to concrete measures for satisfying the rights of the victims and their relatives.

36. The Commission also considers it relevant to recall that the facts denounced in this case took place in the context of serious violations of the life and safety of journalists investigating corruption and violations of human rights by death squads in Bahia State. In effect, and as the IACHR has indicated previously, from 1991 to 1998 - a period which includes the date of Ivan Rocha's disappearance - 10 journalists were murdered in the state of Bahia, and the majority of these crimes showed serious signs of being related to the dissemination of news on corruption, drug trafficking and criminal conspiracy, among other crimes in which politicians and police officers were implicated.¹⁶ The Commission also concluded that in cases of threats, attacks and murders of journalists in Bahia, investigations that are unsatisfactory and visibly incomplete or manipulated are prevalent, leading them to be shelved and demonstrating the lack of determination to solve these crimes.¹⁷ Also, in its 1997 report on the Human Rights Situation in Brazil, the IACHR exposed the cover-ups and obstruction of justice that took place when the accused were civilian or military police officers and highlighted that the obstruction of justice was aggravated by the fear of retaliation of those who witnessed crimes in which police officers and other public authorities figured as suspects.¹⁸ The *Comissão Parlamentar de Inquérito do Extermínio no Nordeste* also issued findings with

¹⁵ Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 155; Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153. paras. 81 to 85; and Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 12, 2008. Series C No. 186, para 106.

¹⁶ IACHR. Report Nº 37/10, Admissibility and Merits, Case 12.308, Manoel Leal de Oliveira (Brazil), March 17, 2010, párr. 46 (Citing different sources - for example, Reporters Without Borders, Bahia: A culture of impunity? Investigation into the murder of Manuel Leal de Oliveira, available at: <http://en.rsf.org/brazil-bahia-a-culture-of-impunity-04-10-2002,03987.html>; Press Observatory, journalist murdered - RSF denounces culture of impunity, available at: <http://observatorio.ultimosegundo.ig.com.br/cadernos/cid091020021.htm>).

¹⁷ IACHR. Report Nº 37/10, Admissibility and Merits, Case 12.308, Manoel Leal de Oliveira (Brazil), March 17, 2010, para. 47 and 49.

¹⁸ IACHR, Report on the Situation of Human Rights in Brazil, September 29, 1997, Chapter III, para. 25.

regard to this issue.¹⁹ The commission received information on several problems with the criminal investigations into crimes committed against journalists in Bahia (including the disappearance of Ivan Rocha), as well as the manipulation of preliminary investigations, the disappearance of evidence, and the shelving of investigations and omissions by prosecutors and judges. In its final report, the *Comissão Parlamentar* highlighted the fragility of the testimonial evidence in this context due to harassment of witnesses, causing substantial changes between statements given before police authorities and testimony delivered at trial.²⁰

37. The IACHR considers that, upon receiving information regarding the disappearance of an individual, especially in the context of grave human rights violations and notorious impunity with regard to these violations, the State's ongoing obligation to continue investigating such crimes—particularly its non-lapsable obligation to investigate complaints of forced disappearances presumably committed during the time period—is rendered particularly clear.

38. Consequently, given that Ivan Rocha disappeared on April 22, 1991; that the judgments acquitting some of the individuals initially investigated did not exhaust domestic remedies because they did not clarify the circumstances of his disappearance; that the competent authorities confirmed the need to take additional measures to clarify the events and identify the perpetrators; and that as of the date of the approval of this report, the IACHR does not have information on any new investigations that would meet the alleged victims' demands for justice, in the opinion of the IACHR, an unjustified delay of domestic remedies has taken place in resolving the demand for justice with regard to the crime allegedly committed. This results in the petition being declared admissible in keeping with the exception provided for in Article 46(2)(c) of the American Convention.

C. Deadline for submitting the petition

39. The Inter-American Commission has established the applicability of the exception to the rule of exhaustion of domestic remedies provided for in Article 46(2)(c) of the Convention. Article 31(2) of the Rules of Procedure of the Commission establishes 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.

40. The IACHR has repeatedly taken into consideration the character of forced disappearance as an ongoing violation in order to determine the concept of reasonable time period in cases involving this crime.²¹ In this regard, the IACHR has indicated that "The [six month] rule does not

¹⁹ The Parliamentary Commission was established by the Chamber of Deputies of the Brazilian National Congress with the purpose of "investigating the criminal actions of the private militias and death squads in the northeast part [of Brazil]." Original quote: "investigar a ação criminosa das milícias privadas e dos grupos de extermínio em toda a região nordeste". Câmara dos Deputados. Comissão Parlamentar de Inquérito do Extermínio no Nordeste. Relatório Final. November 2005, p. 7. Available at: http://congressoemfoco.uol.com.br/UserFiles/Image/relatorio%20final_cpi_grupos_extermínio.pdf.

²⁰ Câmara dos Deputados. Comissão Parlamentar de Inquérito do Extermínio no Nordeste. Relatório Final, November 2005, pp. 376, 377 and 590. Available at: http://congressoemfoco.uol.com.br/UserFiles/Image/relatorio%20final_cpi_grupos_extermínio.pdf.

²¹ IACHR, Report No. 45/05, Petition 712-04, Admissibility, Renato Ticona Estrada et al. (Bolivia), October 15, 2005, para. 39; IACHR, Report No. 46/05, Petition 786-03, Admissibility, Rainer Ibsen Cárdenas and José Luis Ibsen Peña (Bolivia), October 12, 2005, para. 44; IACHR, Report No. 65/05, Admissibility, Rosendo Radilla Pacheco (Mexico), October 12, 2005, para. 25; IACHR, Report No. 7/07, Admissibility, Florencio Chitay Nech et al. (Guatemala), February 27, 2007, para. 59. Thus for example, based on these considerations, in its Report on Admissibility No. 45/05 (*Ticona Estrada et al.*), the IACHR found that the initial petition had been submitted within a reasonable time period even though the presumed forced disappearance had taken place in 1980, the corresponding criminal proceeding was shelved in 1986 and the initial petition was submitted in 2004. See IACHR, Report No. 45/05, Petition 712-04, Admissibility, Renato Ticona Estrada et al. (Bolivia), October 15, 2005, paras. 1, 36 and 39. Also, in Reports No. 7/07 (*Florencio Chitay Nech et al.*) and No. 72/02 (*Heliodoro Portugal*), the Commission found that the petitions were presented within a reasonable time period despite periods of domestic procedural inactivity of 23 years and 8 years, respectively. Continúa...

apply when it has been impossible to exhaust internal remedies due to a lack of due process, denial of access to remedies, or unwarranted delay in issuing a final decision. [...] Nor does this rule apply where the allegations concern a continuing situation--where the rights of the victim are allegedly affected on an ongoing basis".²²

41. In this case, the presumed forced disappearance of Ivan Rocha would have taken place on April 22, 1991, and as of the date of the preparation of this report, the State has not completed the investigations necessary domestically to clarify the circumstances of his disappearance and punish those responsible. In effect, the domestic proceedings have only resulted in the 1994 acquittal of some of the individuals under investigation, which, according to the abovementioned information, did not conclude the domestic investigations. Also, the investigations were carried out in a context in which, as the IACHR has documented, "investigations that are unsatisfactory, incomplete or manipulated" prevailed in these types of crimes, as did a "lack of effort on the part of the authorities toward solving the crimes."²³ Finally, as has been mentioned, both the petitioners and the Brazilian National Congress itself have taken action since then to push judicial authorities to comply with their pending obligation to solve the murders of those who denounced death squads during the period in question.

42. Based on these considerations, the IACHR concludes that the petition was submitted within a reasonable time period and has complied with the requirement of Article 32(2) of its Rules of Procedure, taking into account the context in which the events took place, the fact that Ivan Rocha may have been the victim of a forced disappearance (a crime that is ongoing and not subject to statutes of limitations), that those responsible for his disappearance have not been effectively investigated, tried and punished, and that the petitioner alleges an ongoing denial of justice given the failure to clarify these events.²⁴

D. Duplication of proceedings and international *res judicata*

43. The case file does not indicate that the issue addressed in the petition is pending before any other international proceeding, nor that it reproduces a petition that has already been heard by this or any other international body. Accordingly, the requirements established in article 46(1)(c) and 47(d) of the American Convention have been met.

E. Characterization of the facts alleged

44. It is the responsibility of the Inter-American Commission to determine if the facts described in the petition comprise a violation of the rights enshrined in the American Convention in keeping with the requirements of Article 47(b), or if the petition, in keeping with Article 47(c), must be rejected for being "manifestly groundless" or "obviously out of order." At this procedural stage, it is the IACHR's responsibility to do a *prima facie* evaluation, not with the purpose of establishing alleged violations of the American Convention, but rather to examine whether the petition denounces facts that could potentially comprise violations of rights guaranteed in the American Convention. This examination does not imply a prejudgment or an anticipation of the ruling on the merits in this matter.²⁵

...continuación

See IACHR, Report No. 72/02, Petition 357/01, Admissibility, Heliodoro Portugal (Panama), October 24, 2002, paras. 8, 9 and 26; IACHR, Report No. 7/07, Admissibility, Florencio Chitay Nech et al. (Guatemala), February 27, 2007, paras. 11, 13, 49-59.

²² IACHR, Report No. 67/01, Case 11.859, Admissibility, Tomás E. Carvallo Quintana (Argentina), June 14, 2001, para. 77;

²³ IACHR. Report N° 37/10, Admissibility and Merits, Case 12.308, Manoel Leal de Oliveira (Brazil), March 17, 2010, para. 47 and 49.

²⁴ See IACHR, Report No. 7/07, Admissibility, Florencio Chitay Nech et al. (Guatemala), February 27, 2007, para. 59.

²⁵ IACHR, Report No. 21/04, Admissibility, José Luís Tapia González et al. (Chile), February 24, 2004, para. 33.

45. The case law of the Inter-American System in cases of forced disappearance of persons has indicated consistently that this phenomenon constitutes an illicit act that gives rise to multiple and ongoing violations of various rights protected by the American Convention. It also places the victim in a state of complete defenselessness, leading to other related crimes. In this sense, the Inter-American Commission observes that in the event that the petitioner's accusations with regard to the supposed forced disappearance of the alleged victim due to his journalism activities are proven, along with the accusations of denial of justice and lack of clarification of the events, these could characterize violations of articles 4, 8, 25 and 13 of the American Convention. Also, by virtue of the principle of *iura novit curia*, the IACHR also declares this petition admissible with regard to possible violations of articles 3, 5 and 7 of the American Convention, as well as for the possible failure to comply with the general obligations provided for in articles 1(1) and 2 of the American Convention.

46. Finally, concerning the events that took place prior to Brazil's ratification of the American Convention, the IACHR declares, *iura novit curia*, that this petition is admissible with regard to possible violations of articles I, IV, XVII, XVIII, XXV and XXV of the American Declaration.

V. CONCLUSION

47. The Inter-American Commission concludes that it has jurisdiction to hear the merits of this case and that the petition is admissible under articles 46 and 47 of the American Convention. Based on the arguments of fact and law herein set forth, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

1. To declare this petition admissible with regard to the rights protected in articles 4, 8, 25 and 13 of the American Convention.
2. To declare this petition admissible by virtue of the principle of *iura novit curia* with regard to articles 1(1), 2, 3, 5 and 7 of the American Convention.
3. To declare this petition admissible by virtue of the principle of *iura novit curia* with regard to articles I, IV, XVII, XVIII, and XXV of the American Declaration;
4. To notify the parties of this ruling, and to continue with the analysis of the merits of the matter; and
5. To publish this ruling and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on March 22, 2011. (Assinado): Dinah Shelton, Presidenta; José de Jesús Orozco Henríquez, Primer Vice-Presidente; Rodrigo Escobar Gil, Segundo Vice-Presidente; Felipe González, Luz Patricia Mejía Guerrero e María Silvia Guillén, Miembros de la Comisión.