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REPORT No. 186/18
PETITION 683-08
REPORT ON ADMISSIBILITY

SIDNEY DA SILVA ET AL
BRAZIL

Approved electronically by the Commission on December 27, 2018

Cite as: IACHR, Report No. 186/18. Petition 683-08. Admissibility. Sidney da Silva, Elias Valério da Silva and David da Silva. Brazil. December 27, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Global Rights and Instituto da Mulher Negra – GELEDÉS
Alleged victims:	Sidney da Silva et al ¹
State denounced:	Brazil ²
Rights invoked:	Article 5 (humane treatment), 11 (privacy), 24 (equal protection) and 25 (judicial protection), all in connection with Articles 1.1 and 2 of the American Convention on Human Rights; ³ Article 3 (obligation of non-discrimination) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; ⁴ and another treaty. ⁵

II. PROCEEDINGS BEFORE THE IACHAR⁶

Filing of the petition:	June 11, 2008
Notification of the petition to the State:	May 6, 2016
State's first response:	August 18, 2016

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument deposited on September 25, 1992) and Protocol of San Salvador (instrument deposited on August 21, 1996)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible:	Articles 5 (humane treatment), 8 (fair trial), 11 (privacy), 24 (equal protection) and 25 (judicial protection), all in connection with Articles 1.1 and 2 of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, according to section IV
Timeliness of the petition:	Yes, according to section IV

¹ The other alleged victims are Elias Valério da Silva and David da Silva.

² Pursuant to Article 17.2.a of the Commission's Rules of Procedure, Commission member Flávia Piovesan, a Brazilian national, did not take part in the discussion or the decision-making process on the instant matter.

³ Hereinafter, "American Convention."

⁴ Hereinafter "Protocol of San Salvador."

⁵ The petitioning organizations also alleged violation of the International Convention on the Elimination of All Forms of Racial Discrimination.

⁶ The observations of each party were duly forwarded to the opposing party.

V. ALLEGED FACTS

1. The instant petition alleges unwarranted delay by the Brazilian State in providing reparation to Messrs. Sidney da Silva, Elias Valério da Silva and David da Silva (hereinafter “the alleged victims”), young Afro-descendant men, who on May 8, 1999, were targets of excessive use of force by federal highway police, when they were driving on President Dutra highway between the States of Rio de Janeiro and São Paulo.

2. The petitioning organizations claim that, on the above-referenced date, the alleged victims were targeted by police officers Cláudio Vieira Pereira and José Oswaldo de Carvalho, members of the Federal Highway Police (hereinafter “PRF” per its initials in Portuguese), based on a report that the alleged victims had committed a robbery. After 10 to 12 gunshots were fired at them, they lost control of their vehicle and crashed into the highway dividing wall. They contend that the alleged victims then got out of the car and, after sustaining bullet wounds, were kicked in the head and legs and forced to get down on the ground, in a clear display of abuse of authority.⁷

3. A police investigation was opened near the 90th Police District of Rio de Janeiro, in the city of Barra Mansa, which was eventually closed. In response to the State’s failure to act, on January 26, 2000, the alleged victims set into motion an administrative investigation proceeding to elucidate the facts and liability, which culminated in a 10-day suspension of the two police officers, according to a decision issued on August 7, 2001.

4. Based on that decision, on December 10, 2001, the alleged victims filed a lawsuit for damages and pain and suffering against the federal government, with the 12th Federal Court of Sao Paulo. The federal government replied on February 20, 2002, and brought a third-party complaint against the two police agents, who had been found administratively liable for the acts; however, the complaint was dismissed by the court on the grounds that both of them were members of the federal public service. Consequently, the federal government filed an appeal on February 6, 2003, with the Federal Regional Appellate Court (from now on “TRF3”, per its initials in Portuguese), which was also denied on March 27, 2003. The alleged victims, in turn, filed an appeal on May 5, 2003, calling into question the number of witnesses submitted by the federal government in the trial proceeding, but it was denied by the TRF3 on March 27, 2008, on the basis that there were irregularities in the challenged procedural act.

5. The petitioners argue that the lawsuit for damages and pain and suffering was thrown out on April 16, 2010, on the grounds that the alleged victims had attempted to flee from the police officers when they were approached and, consequently, became the target of the gunshots. The petitioners contended that young Afro-descendants from the outskirts of cities make up the majority of all victims of massacres and violent killings in São Paulo and Rio de Janeiro and are also most often targeted by law enforcement agencies for stops and use of excessive force, suggesting that there is institutionalized racism in Brazil.

6. In response, the State’s first contention is that the Inter-American Commission on Human Rights (from now on “Commission”) is not competent *ratione materiae* to entertain cases of potential violations of the Protocol of San Salvador and the International Convention on the Elimination of All Forms of Racial Discrimination. It further argues that the alleged victims had not pursued and exhausted all domestic remedies at the time of the lodging of the petition with the Commission, despite their argument that there was unwarranted delay in prosecuting the case. The State also claims that there was no unjustified delay in ruling on the case, given the fact that one of the appeals was filed by the alleged victims themselves and the other one by the federal government, which raised an issue of great relevance to the case. Notwithstanding, at the time of the State’s submission of its response to the Commission, it argues, all appeals had previously been found groundless and the merits of the matter had been settled at the trial court level. As to these decisions, it contends that the petitioners are bringing their claim before the Inter-American Human Rights System in order to review the merits of the decision made by the State in the domestic arena, in other words, as a fourth instance over the decisions of national courts. The State thus claims that after the trial court issued

⁷ The petitioners do not report whether the alleged victims were criminally prosecuted.

its decision to dismiss the case on April 16, 2010, the alleged victims appealed in May and that the appeal is still pending a ruling, amounting to a failure to exhaust domestic remedies.

7. The State also contends that the petition was not lodged within a reasonable period of time, as of the date when the alleged human rights violation took place and that the alleged victims did not seek relief from the Commission until almost ten years had elapsed. Lastly, it claims that the petition does not meet the requirements outlined in Article 47.b of the American Convention, because the situation raised by the petitioners in their claim no longer exists, because the appeals filed by the parties had been settled. Therefore, the State argues that the alleged violation of Article 25 of the American Convention must be disregarded.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. In relation to the State's argument of subsequent exhaustion of the remedies of appeal pursued by the parties, the Commission reaffirms its consistent position that what should be taken into account in determining whether domestic remedies have been exhausted or not, is the situation at the time of the ruling on admissibility, because the time of the lodging of the complaint differs from the time of the decision on admissibility.⁸

9. Notwithstanding, based on the information brought to its attention and accessible to the public, the Commission has been able to ascertain that the case proceedings have remained before the appellate court judge writing for the panel since June 3, 2016, and are still pending the judgment on appeal. The appeals filed by the parties and previously ruled upon are part of the suit that is still pending, in other words, they remain unresolved 17 years after they were filed in 2001. Accordingly, the Commission finds that the exception outlined in Article 46.2.c of the American Convention is applicable, because of unwarranted delay in ruling on the case in domestic courts.

VII. ANALYSIS OF COLORABLE CLAIM TO ALLEGED FACTS

10. Concerning competence *ratione materiae*, the Commission notes that Article 19.6 of the Protocol of San Salvador provides for its competence to rule in the context of individual cases only for Articles 8 to 13. As for other articles and treaties, following Article 29 of the American Convention, the Commission may take them into account to interpret and apply the American Convention and other relevant instruments.

11. Therefore, based on the considerations of fact and law set forth by the parties and the nature of the matter before it, the Commission finds that, if proven, the circumstances described in the petition could tend to establish potential violations of Articles 5 (humane treatment), 8 (right to a fair trial), 11 (privacy), 24 (equal protection) and 25 (judicial protection), all in connection with Article 1.1 of the American Convention.

VIII. DECISION

1. To declare the instant petition admissible about Articles 5, 8, 11, 24 and 25, all in connection with Article 1.1 of the American Convention;

2. To declare the instant petition inadmissible concerning Article 3 of the Protocol of San Salvador;

3. To notify the parties about the instant decision; proceed to the examination of the merits of the matter; and publish this decision and include it in its Annual Report to the General Assembly of the Organization of the American States.

⁸ IACHR. Report 4/15. Admissibility. Petition 582-01. Raúl Rolando Romero Feris. Argentina. January 29, 2015, par. 40.

Approved by the Inter-American Commission on Human Rights on the 27th day of the month of December, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Joel Hernández García, and Antonia Urrejola, Commissioners.