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**REPORT No. 90/18**  
**PETITION 1104-07**  
REPORT ON ADMISSIBILITY

ANA AMÉLIA ALENCAR BEZERRA DE MENEZES AND LUIS  
HELENO DE MENEZES E SOUZA  
PARAGUAY

Approved by the Commission electronically on August 12, 2018.

**Cite as:** IACHR, Report No. 90/18, Petition 1104-07. Admissibility. Ana Amélia Bezerra de Menezes and family. Paraguay. August 12, 2018.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Luis Heleno de Menezes e Souza
<b>Alleged victims:</b>	Ana Amélia Alencar Bezerra de Menezes and Luis Heleno de Menezes e Souza
<b>Respondent State:</b>	Paraguay
<b>Rights invoked:</b>	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), 11 (Privacy) and 25 (Judicial Protection) of the American Convention on Human Rights <sup>1</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	August 22, 2007
<b>Additional information received at the stage of initial review:</b>	December 27, 2013
<b>Notification of the petition to the State:</b>	May 7, 2014
<b>State's first response:</b>	April 7, 2015
<b>Additional observations from the petitioner:</b>	February 17, 2017
<b>Additional observations from the State:</b>	April 19, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes; American Convention (deposit of ratification instrument on March 24, 1989)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Article 1.1 thereof
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, exception set forth in Article 46.2.c of the Convention applies
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

<sup>1</sup> Hereinafter "Convention" or "American Convention."

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. The petitioner alleges that on August 18, 2002 his wife, Ana Amélia Alencar Bezerra de Menezes e Souza (hereinafter “the alleged victim” or “Mrs. Bezerra”), a Brazilian national, went on a business trip to Paraguay and arrived in the city of Asunción at midnight. He indicates that the vehicle transporting her to the hotel was blocked by a group of armed individuals two hundred meters from the hotel, on one of the city’s main avenues. He indicates that when the driver tried to escape, the offenders shot the vehicle, killing the alleged victim.

2. The petitioner basically alleges negligence on the part of the State in relation to the investigation and the punishment of the persons responsible of these events that occurred on one of the main avenues of the country’s capital city and at a very close distance from one of its most important hotels—which got the attention from the international media. He claims that the investigation was archived on July 28, 2003 because the persons responsible had not been identified as a result of the unwarranted delay on the part of the authorities. He also affirms that he had restricted access to information on the proceeding so much so that he requested assistance from the Brazilian Consulate in Paraguay in order to obtain information on the progress of the investigation procedures, but was unsuccessful. The petitioner asserts that despite all his efforts, he was unable to obtain information on the progress of the investigations or the time when they would finish.

3. In regard to the admissibility of the instant petition, he alleges the applicability of the exceptions concerning the prior exhaustion of domestic remedies set forth in Article 46.2 paragraphs b and c of the American Convention. Firstly, in view of the unwarranted delay in the investigation procedures, particularly in the police investigation; and secondly, in view of the impossibility to appeal the prosecutor’s decision to archive the investigation, because of his lack of information on the proceeding.

4. Finally, the petitioner claims that his wife’s death at 27 years of age possibly expecting their first child has caused him grave psychological damage and loss of asset, the latter given that he had to step down from business in order to seek psychological assistance and lead a quieter lifestyle along with his sister in the United States, where he lived from 2003 to 2006.

5. For its part, the State indicates that the criminal proceeding regarding the alleged events was conducted by the No. 11 Criminal Unit of Asunción and named as case No. 11743/2002 (*“Persona Innominada S/ Homicidio Doloso”*) (unidentified person, first-degree murder). It alleges that based on the case file, there appears that the investigation procedures were undertaken in accordance with judicial safeguards, protecting the victims’ rights and applying the means necessary to clarify the events. It indicates that to date the alleged victim’s heirs have not exhausted the appropriate legal remedies to obtain access to the prosecution proceedings. In addition, the State affirms that the Brazilian Consulate was actively involved in the case from the beginning of the prosecution proceedings through a consular official whose name is registered at the prosecutor’s office.

6. The State affirms that although the case had been archived by the Public Prosecutor’s Office Resolution No. 303 of July 28, 2003 due to the lack of evidence and the impossibility to identify the persons responsible, the Prosecutor decided to reopen it by Resolution No. 167/14 given that the current investigation and forensic procedures might produce data leading to clarify the events. The State moreover refers to some judicial procedures undertaken in 2002 and the months following the reopening of the investigation. In this regard, it asserts that three individuals likely connected with the murder were identified, that their criminal records and migration data were requested, and that search and arrest warrants were issued against them.

7. However, the State claims that the decision to prosecute has not been notified yet due to insufficient inculpatory evidence. Therefore, it asserts that it has not yet calculated the maximum time for the criminal trial under the Code of Criminal Procedure in force in Paraguay, since this is calculated from the moment the accusation is made. As a result, since the proceeding remains underway, the State requests the

IACHR to declare the instant petition inadmissible considering the petitioner's non-compliance with the requirement of prior exhaustion of domestic remedies foreseen in Article 46.1.a of the American Convention.

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

8. As for the exhaustion of domestic remedies, the petitioner claims he was prevented from exhausting domestic remedies in light of his lack of access to information on the proceeding and moreover alleges an unwarranted delay in the criminal proceeding, which to date is pending settlement. In turn, the State alleges the lack of exhaustion of domestic remedies on the grounds that the criminal investigation remains open.

9. In this regard and without prejudging the merits of the petition, the Commission observes that the parties do not controvert that: (a) the alleged victim died in 2002 as a result of criminal offenses liable to prosecution *ex officio* that were committed in a public area; (b) in mid-2003 the Public Prosecutor's Office archived the investigations; (c) in 2014 the Public Prosecutor's Office reopened the investigation; and (d) despite the proceedings undertaken following said resumption of investigation procedures, the investigation remains open to date.

10. The Commission notes that whenever a case involves criminal offenses against life, the domestic remedies to be considered for the purpose of admissibility are those concerned with the criminal investigation and punishment of those responsible. In this regard, the Commission observes that in the instant case the murder took place on August 18, 2002, the prosecution's investigation was resumed in 2014 and to date, 16 years after the murder, the case remains in a preliminary stage. Therefore, considering the circumstances of this case and without prejudging the merits of the case, the Commission believes that the exception regarding unwarranted delay established in Article 4.2.c of the American Convention applies to the instant petition.

11. Furthermore, the petition to the Commission was received on August 22, 2007, the events leading to it occurred on August 19, 2002 and their consequences, especially those regarding the alleged lack of identification and punishment of the persons responsible, persist to date. Consequently, in view of the foregoing, the IACHR finds that the instant petition was lodged within a reasonable time pursuant to Article 32.2 of the IACHR Rules, in connection with Article 46.1.b of the American Convention.

## **VII. ANALYSIS OF COLORABLE CLAIM**

12. In view of the elements of fact and law presented by the parties, and the nature of the matter brought to its attention, the Commission is of the opinion that, if proven, the allegations regarding the unwarranted delay in the investigation into the alleged victim's murder by private individuals could establish violations of the right protected through Articles 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Article 1.1 thereof, to the detriment of the alleged victims. In the merits stage, the Commission shall also analyze whether the alleged events establish a violation of Article 5 (Humane Treatment) of the Convention, in connection with *Luis Heleno de Menezes e Souza*.

13. In regard to the claim on the purported violation of Articles 4 (Life) and 11 (Privacy) of the American Convention, the Commission observes that the petitioners have not presented allegations or evidence sufficient for the Commission to *prima facie* consider the possible violation of these.

## **VIII. DECISION**

1. To declare the instant petition admissible in relation to Articles 5, 8 and 25 of the American Convention, in relation to Article 1.1 thereof; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and 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 12<sup>th</sup> day of the month of August, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.