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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 55/01; Cases 11.286, 11.407, 11.406, 11.416, 11.413, 11.417, 11.412, 11.415
Title/Style of Cause: Aluisio Cavalcanti, Claudio Aparecido de Moraes, Clarival Xavier Coutrim, Celso Bonfim De Lima, Marcos Almeida Ferreira, Delton Gomes da Mota, Marcos de Assis Ruben, Wanderlei Galati and Carlos Eduardo Gomes Ribeiro v. Brazil
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Decided by: Chairman: Claudio Grossman;
First Vice-Chairman: Juan Méndez;
Second Vice-Chair: Marta Altolaguirre,
Commissioners: Robert K.Goldman, Peter Laurie, and Julio Prado Vallejo.

As prescribed in Article 19(2)(a) of the Commission’s Regulations, Member of the Commission Helio Bicudo, of Brazilian nationality, did not participate in the discussions or the voting on this case.

Dated: 16 April 2001
Citation: Cavalcanti v. Brazil, Case 11.286, Inter-Am. C.H.R., Report No. 55/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by: APPLICANT: “Santos Dias” Center for Human Rights of the Archdiocese of Sao Paulo

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I. SUMMARY

A. Background

1. From February to September 1994, the Inter-American Commission on Human Rights (the “Commission”) received from the “Santos Dias” Center for Human Rights of the Archdiocese of São Paulo nine complaints against the Federative Republic of Brazil (“Brazil,” the “Brazilian State,” or the “Government of Brazil”) for violations perpetrated by state agents of the Military Police of São Paulo state. It is alleged in the complaints that the crimes committed constitute violations of Articles I (right to life, liberty, security and integrity of the person), XVIII (right to justice), and XXIV (right to petition) of the American Declaration on the Rights and Duties of Man (the “Declaration”), and of Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention on Human Rights (the “Convention”), in conjunction with Article 1(1) of the same (obligation to ensure and respect the rights established in the Convention). As appears in the Admissibility Report (Report 17/98), these cases were initially processed independently; the Commission then decided to join them in order to draw up a single

admissibility report. The same will be done in relation to this report on the merits, which joins cases 11.286, 11.407, 11.406, 11.416, 11.413, 11.417, 11.412, and 11.415. In that joint admissibility report, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, and on not receiving an affirmative response in the period set, it considered that such a solution was not viable at that stage of the procedure.[FN1]

[FN1] Case 11.414, which was admitted together with the cases analyzed here, will be examined in a separate merits report; it is not addressed by this report.

B. Joint admissibility report 17/98, and reasons for combining the cases

2. In its joint admissibility report on these cases[FN2] the Commission considered that it was competent to analyze possible violations of human rights protected by the Declaration and the Convention, in keeping with Articles 1(2)(b) and 20 of its Statute. It also indicated, in the same report, that the fact that Brazil had ratified the Convention on September 25, 1992, does not exempt it from responsibility for violations of rights that occurred prior to that ratification that are guaranteed by the Declaration, which is binding. It recalled in this regard recognition of the binding nature of the Declaration by the Inter-American Court of Human Rights.

[FN2] IACHR Report 17/98 of February 21, 1998. Annual Report 1997. Pp. 72 ff.

3. That same admissibility report set forth the legal bases for joining the cases. It states that Article 40 of the Commission's Regulations sets forth criteria for separating and combining cases: (1) Any petition that states different facts that concern more than one person, and that could constitute various violations that are unrelated in time and place shall be separated and processed as separate cases, provided the requirements set forth in Article 32 are met. (2) When two petitions deal with the same facts and persons, they shall be combined and processed in a single file. In this respect, the Commission has interpreted Article 40 quite broadly. The Commission has not interpreted Article 40(1) of the Regulations as requiring that the facts, victims, and violations presented in a petition must coincide strictly in time and place, for them to be processed as a single case.

4. The Commission then clarified that it had previously processed individual cases related to numerous victims who have alleged human rights violations that occurred at different times and places, so long as they argued that the violations originated in the same treatment. From this it is inferred that the Commission may process, as a single case, the claims of several victims who allege violations resulting from the application of legal standards or of a scheme or practice in which they have been subjected to similar treatment. The Commission has not only refused to separate the processing of those cases; it has also combined separate cases that meet those characteristics, so as to process them in a single case.

5. The Commission explained in that admissibility report that the cases presented were processed independently. The Commission considers that the accusations contained in the complaints have similar characteristics and refer to a single context. The alleged violations were perpetrated by military police from the same São Paulo state, allegedly acting illegally, against defenseless and unarmed civilians (except for one case) and, the perpetrators have enjoyed impunity because of the sluggishness and partiality displayed by the military justice system in the processing and judging of these cases. The Commission decided, for reasons of procedural economy, to combine the cases for the purpose of preparing a single report.

6. Finally, in that same admissibility report the Commission considered that it had jurisdiction to hear these cases; and that they were admissible, pursuant to the requirements established in Articles 46 and 47 of the American Convention. It then decided to declare the admissibility of the cases presented; to send that admissibility report to the Government of the Federative Republic of Brazil and the petitioners; to place itself at the disposal of the parties for the purpose of pursuing a settlement based on respect for the rights protected in the American Convention, and to invite the parties to state within 30 days their position as to the possibility of a friendly settlement; to continue to examine the merits issues; and to publish that report in its Annual Report to the OAS.

C. Conclusions of this report

7. The Commission reaches the conclusion in this report that police agents of the State summarily executed Aluísio Cavalcanti, Clarival Xavier Coutrim, Delton Gomes da Mota, Marcos de Assis Ruben, and Wanderlei Galati; and that state agents also gravely injured Cláudio Aparecido de Moraes, Celso Bonfim de Lima, Marcos Almeida Ferreira, and Carlos Eduardo Gomes Ribeiro, and that the State did not comply with its commitments under Articles I and XVIII of the Declaration and Articles 8 and 25 of the Convention, nor did it offer the proper guarantees for preventing, investigating, and prosecuting those grave violations. The Commission recommends that the persons responsible for the various violations be prosecuted and punished, and that reparation be made to the victims or their families.

II. ANALYSIS ON THE MERITS OF EACH CASE

Case 11.286 (Aluísio Cavalcanti and one other person)

A. Summary

8. In February 1994, the Commission received a complaint according to which Aluísio Cavalcanti Júnior had been killed and Cláudio Aparecido de Moraes had been the victim of attempted homicide, both of which crimes having occurred March 4, 1987, in the neighborhood of Jardim Camargo Velho, in the city of São Paulo, and allegedly committed by members of the Military Police of São Paulo state José Carvalho, Robson Bianchi, Luis Fernando Gonçalves, Francisco Carlos Gomes Inocencio, Rubens Antonio Baldasso, and Dirceu Bartolo.

9. Aluísio Cavalcanti Júnior had been accused verbally by one of the assailant police officers of having murdered his son. The youths were interrogated and threatened until one of

them confirmed that the other was the murderer, which is why the police decided to kill them. Both were shot in the head and their bodies taken to a thicket, where they were left. Thwarting the will of the police, Cláudio Aparecido de Moraes survived the gunshot wounds.

10. On November 9, 1987, the military justice prosecutor indicted José Carvalho, Robson Bianchi, Luis Fernando Gonçalves, Francisco Carlos Gomes Inocencio, Rubens Antonio Baldasso, and Dirceu Bartolo before the Third Military Court of the state of Sao Paulo, for the homicide of Aluísio and for the attempted homicide of Cláudio. Sergeant João Simplício Filho and soldier Roberto Carlos de Assis, who witnessed the events but did not participate directly and effectively in the crimes, were denounced for omissive conduct.

11. Since there has been no conviction of the accused to date, it is not possible to begin a civil action for compensation.

B. Processing before the Commission

12. This complaint was received by the Commission in February 1994. From that date to April 1996, several statements were collected from both parties verifying the status of the judicial proceedings instituted in relation to the facts alleged. During its 98th session, the Commission adopted admissibility report 17/98 in relation to this case, which was included in its 1997 annual report.

C. Positions of the parties

13. In the complaint it is affirmed that the domestic remedies, apart from excessive delays, have proven ineffective, as none of the accused was imprisoned or convicted as of seven years after the date of the events in question. Later, the petitioner affirmed that the proceedings has already taken eight years, and demonstrated that certain procedural matters would lead to the exclusion of the evidence and the need to reconstruct it, which would result in an even greater delay in bringing to justice the persons responsible for the attacks on Aluísio and Cláudio. The petitioner requested not only reparation for the unjustified death of Aluísio and for the attempted homicide of Cláudio, but also a condemnation of the Brazilian State for not having investigated, prosecuted, and punished the persons responsible for those crimes. It also requested that it be declared that the Brazilian Government had not abided by its international obligations, in breach of Articles I, XXV, and XXVI of the American Declaration and Articles 8(1) and 25(1) of the American Convention.

14. The Brazilian Government argued that all the disciplinary measures had been adopted and that the corresponding judicial proceeding was under way. It reported that agents Francisco Carlos Gomes Inocencio and Dirceu Bartolo had been expelled from the police force by administrative decision of the General Commander of the Military Police of São Paulo state, and on several occasions it provided information on the status of the respective criminal actions. The Brazilian State, however, did not respond to the Commission's repeated requests for its position on the merits issues, answering the facts set forth in the complaint.

D. Analysis by the Commission

1. Right to life and physical integrity

15. In relation to the alleged violation of the right to life and physical integrity of Aluísio Cavalcanti Júnior and Cláudio Aparecido de Moraes, the Commission reached the conclusion that there were sufficient indicia to lead to the conclusion that the two youths had been arbitrarily wounded by state agents.

16. The first and most important evidence supporting this conclusion is the statement by Cláudio Aparecido de Moraes himself. According to his testimony, after his arbitrary detention the agents threatened him and Aluísio on several occasions, such that they had been subject to physical and psychological torture before being impacted by the bullets. Cláudio even stated that one of the police agents had left only one bullet in the revolver and pulled the trigger twice with the gun on his head, in the style of “Russian roulette.” Finally, the victim confirmed that one of the police agents had ordered him to lie down on the floor, put his hands between his legs, close his eyes, and when he did so, “he heard two shots and felt a blow in the chest and his head burning,” as he was grievously injured.

17. In their statements, all the police agents involved confirmed that the youths had been detained and taken to an uninhabited locale. They also confirmed that Lt. Carvalho clearly expressed the desire to kill Aluísio, as he was convinced that he had killed his son. Although none of the agents who made statements confirmed that they had witnessed the execution, several said they had seen Carvalho move away from the others, and return only after some shots were heard, whereupon he was heard to have said that the youths had been “judged and convicted.”

18. Also important is the conclusion of the police-military inquiry and the administrative procedures undertaken against the police agents. In these cases, after an analysis of the evidence collected, the veracity of the facts was confirmed and it was concluded that the prisoners were guilty.

19. Accordingly, although the respective criminal proceeding has yet to conclude, there is ample evidence that points to the materiality of the facts (the death of Aluísio and the grave lesions to Cláudio) and these having been the work of agents of the Military Police for São Paulo state. Consequently, the Brazilian State is responsible for the violations these two youths suffered, in violation of Article I of the American Declaration.

2. Judicial guarantees and due process of law

20. It is found in the documents and in the information presented by the Government and the petitioners that the judicial proceedings related to the crimes committed against Aluísio and Cláudio were extremely slow.

21. Information drawn from the proceedings indicates that on several occasions hearings failed to take place, and were rescheduled, since defense counsel was not present. The evidence obtained was voided on formalistic grounds, undercutting the effectiveness of the process. These

facts indicate that a dilatory strategy was adopted by defense counsel, indeed accepted by the prosecutor and the military justice system, which ended up prejudicing the normal course of the proceedings, causing a great delay, to the detriment of justice and of the victim's rights.

22. Furthermore, the petitioners showed that the requests by the prosecutor that the proceedings be converted into an investigative procedure were justified and requested in the interest of the proceedings, as it was intended to produce additional evidence to present at trial.

23. Given all this information, the Commission understands that although there are judicial remedies to which the victims of human rights violations have access in the case analyzed here, those remedies were neither prompt nor effective. There was excessive delay on the part of the State in prosecuting the accused for the violations, and more than eight years after the fact, the persons responsible had yet to be convicted. Accordingly, the Brazilian State violated Articles 8 and 25 of the American Convention.

Case 11.407 (Clarival Xavier Coutrim)

A. Summary

24. On September 6, 1994, the Commission received a complaint according to which Clarival Xavier Coutrim, 22 years old, had been killed on April 20, 1982, in eastern zone of the city of São Paulo by bullet wounds allegedly fired by military police agents Júlio César Passos da Silva, Nelson de Freitas Nascimento Filho, Rodolfo Cosin Filho, Hermes Simplício da Silva, Celso de Castilho, and Miguel Portos Neto.

25. The victim was alleged to have been detained by the agents and then taken to an uninhabited locale, where he was executed.

26. A military police inquiry was opened. There, it was concluded that although there was an indication that the agents had committed the offense, there was also evidence that ruled out illegal conduct, based on the consideration that they were performing their duty and acting in legitimate self-defense. The inquiry was archived and later re-opened upon the presentation of new evidence, whereupon it was decided that the accused should be held in preventive detention. A criminal suit was brought before the 3rd Military Court of the state of Sao Paulo.

27. The respective action for compensation was not allowed to go forward by the Sixth Court (6a. Vara da Fazenda Pública) of the state of São Paulo.

B. Processing before the Commission

28. The complaint was received by the Commission in September 1994; the pertinent parts were forwarded to the Government on November 28, 1994. On May 25, 1995, the Government answered the Commission's request for information. On August 10, 1995, the Commission received information from the petitioner on the prosecution of the accused. The last statement by the Brazilian government is dated November 15, 1995. The case was considered admissible by

the Commission, which approved publication of Admissibility Report 17/98 during its 98th session, and its inclusion in the Annual Report for 1997.

C. Position of the parties

29. The complaint alleges that the victim was detained for no apparent reason, there being testimony by police agents who were present who state that they have discussed with the agents who took Clarival that he was not the suspect they were looking for. Nonetheless, Clarival was taken and later executed. His body was transported to the hospital, where the agents declared that the victim had been shot during an exchange of fire with “bandits.”

30. Petitioners also allege in the complaint that the proceedings had been prolonged, and that more than 12 years after the events in question the matter had not been the subject of a judicial decision. The petitioner reports that the proceedings were subject to excessive delay and that on June 20, 1995, the accused were placed on trial. On that date, four of the agents denounced were convicted to 12 years in prison, and the other two were acquitted for insufficient evidence. Of the ones convicted, three were given the benefit of release pending appeal, while the fourth was a fugitive.

31. According to the petitioners, the judgment handed down in the criminal proceedings recognizes that the military police agents accused shot the victim, who had not committed nor was about to commit any unlawful act, was unarmed and defenseless, and put up no resistance to the police authorities. Nonetheless, more than 13 years after the fact, the case was still pending a final decision, and the police agents were free. Similarly, the action for compensation sought by the victim’s mother was not subject to a judicial decision, on the basis that the police had not been proven guilty.

32. In terms of the answer to the complaint submitted in September 1994, the Brazilian Government merely reported on the status of the judicial proceedings related to Clarival’s death. The State later presented new information on the proceedings. Nonetheless, at no time did it contest the facts set forth in the complaint, and did not state its position on the merits.

D. The Commission’s analysis

1. The right to life

33. Based on the analysis of the documents and the information provided by the parties, the Commission concluded that Clarival Xavier Coutrim was summarily executed by agents of the Military Police of São Paulo state.

34. The agents involved took Clarival’s corpse to the hospital and said he had died in an exchange of gunfire. In effect, the first version they gave of the facts indicates that they had sighted suspicious-looking persons who were in a lot in the São Paulo neighborhood of São Mateus. On attempting to verify who they were, the agents were shot at, sparking a confrontation in which Clarival was killed. But this version found no support in the statements by witnesses who were heard during the proceedings. One of them, who knew Clarival, said that

she had seen them taking him in a vehicle, though she hadn't witnessed his detention. Another witness observed Clarival conversing with police agents and entering a vehicle; it was later found out that he had been killed that day. These facts were witnessed by the victim's brother. All these witnesses state that Clarival was shirtless, talking with police agents, which would have made it impossible for him to conceal a weapon.

35. Furthermore, one must also consider that the description of the facts by the accused is plagued by contradictions.

36. Finally, the Commission understands that the conclusions of the medical examiner's opinion are important; they reveal that the six bullets that impacted Clarival, given where they were lodged in his body, could not have been shot at the victim in flight, in the midst of an exchange of gunfire. It was verified that none of the bullets penetrated him from the side; they all entered the victim from the front. The wounds indicate that the victim was killed without defending himself at all, i.e. summarily executed. Therefore, the Government of Brazil violated Article I of the American Declaration.

2. Judicial guarantees and due process of law

37. Several hearings were suspended and rescheduled for dates far into the future, which resulted in excessive delay in the conclusion of the criminal proceedings. Because of this delay, the judgment of the accused came many years after the facts, and even after the guilty verdict in the trial court, the accused are still free.

38. More than 13 years after the murder of Clarival, there had yet to be a final judgment, conviction, and sentencing of the persons responsible for his death. That temporary lapse is an assault on the validity of the judicial remedy begun, and the Commission considers that the domestic remedies were not effective in the case in question.

39. Apart from that, the proceedings against the treasury of São Paulo state brought by the victim's parents, seeking to hold the state liable for the conduct of its agents, and compensation for Clarival's death, were not allowed to go forward. That was due to the fact that the judge understood there to be a lack of evidence of liability on the part of the police agents.

40. The Commission understands that the failure of the criminal proceedings to draw to a conclusion within a reasonable time had a notable effect on the compensation action. And although it is possible to pursue a new action for compensation after the criminal conviction, the effectiveness of this judicial remedy will also be gravely affected by the enormous time that has lapsed between Clarival's death and reparations therefore by the state of São Paulo.

41. In view of the foregoing, the Commission concluded that the Brazilian State violated Articles 8 and 25 of the American Convention.

Case 11.406 (Celso Bonfim de Lima)

A. Summary

42. In September 1994, the Commission received a complaint reporting that Celso Bonfim de Lima, 18 years old, restaurant employee, had been hit by a bullet shot by military police agent Aurino Tavares da Silva, and that the wound suffered left him paralyzed.

43. According to the complaint, on February 26, 1983, Celso had worked in the restaurant until 11:00 p.m. and then, in view of the late hour, had been authorized to spend the night in the restaurant. The military police agents received information that there were strange movements in the locale, and they decided to check what was happening. Once they reached the place, they saw Celso sleeping, shouted at him to get up and open the door, and, when he obeyed their request, was shot by the above-named agent.

44. On March 13, 1984, military police agent Aurino Tavares da Silva was charged with attempt of aggravated homicide before the Third Military Court of the state of São Paulo. He was tried 10 years after the fact, whereupon he was convicted of grievous bodily injury and sentenced to two years imprisonment, with the right to seek a suspended sentence. The victim filed an action for compensation before the Seventh Court (7a. Vara da Fazenda Pública) of the state of São Paulo, which was ruled admissible in the first instance, and affirmed by the appellate court.

B. Processing before the Commission

45. The complaint was received in September 1994 and forwarded to the Government of Brazil on May 30, 1995. On February 20, 1996, the petitioner was sent the Government's final arguments, and that same day was informed that the procedure provided for in the regulations had concluded. On April 19, 1996, final information was received from the petitioner.

46. In June 1996, the Commission sent a note to the Government of Brazil and to the petitioner placing itself at the parties' disposal to pursue a friendly settlement. Nonetheless, no answer was received within the pre-established time frame. In the 98th session, the Commission approved publication of Admissibility Report 17/98 and its inclusion in the Annual Report for 1997.

C. Position of the parties

47. The petitioners alleged that the criminal action instituted by the military courts was slow, that the penalty imposed was too light in relation to the crime committed, and that the agent was not detained for even one day, which led them to demand that the Brazilian State be found responsible for violations of Articles 4, 5, and 8 of the American Convention and Articles XVII and XXIV of the Declaration. The petitioner also reported that the appeal that questioned the insufficiency of the penalty imposed on the accused was dismissed, as the Tribunal immediately declared that the punishability of the agent was extinguished. Finally, the petitioner clarifies that the agent continued to be a member of the police force of the state of São Paulo.

48. In its answer, the Brazilian State reported that the police agent had been convicted and that the State proposed to pay compensation to the victim, and the respective judgment on compensation is now in the execution stage. The Brazilian State did not challenge the facts

described in the complaint, alleging only that the judicial proceeding follow the parameters and procedures established in the Military Criminal Code. It clarified that the penalty was reduced because it was considered that agent Aurino fit under the consideration of voluntary abstention, pursuant to Article 31 of the Military Criminal Code, as he himself shot Celso Bonfim de Lima, though the revolver was loaded with several bullets. At no time did the Brazilian Government allege that it had not violated the victim's right to physical integrity and to the guarantees of due process.

D. The Commission's analysis

1. Right to physical integrity (Article I of the Declaration)

49. A first point that appears to indicate the arbitrariness of the police action that resulted in the victim's invalidity in this case is the effort by the agents accused to create a situation of confrontation. Apart from alleging that the victim was not alone in the interior of the establishment and that his accomplices had fled, they stated falsely that Celso was armed and had shot them.

50. It was found in the investigations, however, that it had not been possible for someone else to be in the interior of the locale and to flee, since the examination of the locale showed that the doors were locked from inside and that only one had been violently opened from outside, for the agents to enter the locale. Apart from this, it was found that the victim was unarmed and that the revolver that the agents alleged had been used against them was, in reality, his employer's property.

51. Based on the victim's statements, he was sleeping in the establishment when the agents awoke him and told him to open the door. While he was obeying, he was hit by a bullet.

52. The circumstances at the crime scene support this description of the facts, as they show that there was no exchange of gunfire or assault by Celso, who was there merely because he was an employee and had worked late, which was confirmed by the owners.

53. In the proceedings before the military criminal court, it was concluded that the identity of the perpetrator of the crime was "unquestionable." The evidence indicates that Celso was defenseless and did nothing that could have motivated the police conduct.

54. Having established the foregoing, the Commission observes that the grave harm that Celso suffered was the result of the unsuitability and disdain for human life of the police agents involved, who approached Celso violently, did not give him a chance to explain why he was at that commercial establishment, and immediately shot him without having to do so. It should be added that given the location of the wound, the fact that the victim survived had nothing to do with the police.

55. Accordingly, the right to physical integrity of Celso Bonfim de Lima was not respected by agents of the São Paulo state police; accordingly, the Government of Brazil is responsible for violating Article I of the American Declaration.

2. Judicial guarantees and due process of law

56. The Commission understands that the criminal proceedings in which the accused was judged came no less than ten years after the facts and were too slow. In addition, the remedy sought by the accusing party to question the light sentence imposed was dismissed. That delay ended up giving way to the statute of limitations on the State's criminal claim.

57. The Commission concludes that the State failed to uphold its obligation to ensure Celso's right to judicial protection and due process of law. The police agent responsible for the violent crime against an innocent person who was paralyzed as a result did not serve even one day in prison, and the punishability of the crime was extinguished. Moreover, the criminal police agent continued to perform his normal activities as a member of the military police. The judicial remedy offered by the State was not effective, and so it is responsible for breaching Articles 8 and 25 of the American Convention.

Case 11.416 (Marcos Almeida Ferreira)

A. Summary

58. In September 1994, the Commission received a complaint that Marcos de Almeida Ferreira, 18 years of age, suffered a gunshot wound, leaving him paralyzed, and it was fired by military police agent Elcio Vitoriano on August 31, 1989, as the victim was going to a bakery in the eastern zone of São Paulo.

59. Marcos had been mistaken for a suspect who was being pursued by the military police agent, and, not having reacted, suffered a gunshot wound in the lumbar region.

60. The police agent was accused of committing the crime of grievous bodily injury, with treachery, by the Fourth Military Court of the state of São Paulo. The prosecution of the accused was initially set for March 1995, but due to several dilatory procedures, it did not happen. An action for compensation was brought before the Ninth Court (9a. Vara da Fazenda Pública) of the State of São Paulo which was declared partially admissible in the first instance.

B. Processing before the Commission

61. The report was received in September 1994, and forwarded to the Government of Brazil in December that same year. The Government presented its answer in July 1995. As of February 1996, the Government stopped answering the Commission's requests for information. Admissibility Report 17/98 was approved and published in the Commission's Annual Report for 1997.

C. Position of the parties

62. The complaint stated that police agent Elcio Vitoriano had been informed of an attempted robbery, which is why he undertook the pursuit of a person he mistook for the culprit.

Nonetheless, at no time did he attempt to find out the facts and the responsibilities. After the pursuit, Marcos was shot in the lumbar region. Later, the agent attempted falsely to establish that the victim had put up resistance, for which the victim Marcos Almeida Ferreira was tried for those acts before the regular courts. At trial, Marcos was acquitted; the judgment was clear that he had been the victim of the stubborn determination of an agent “without preparation to use the uniform,” with a “homicidal” and “truly criminal” state of mind.

63. The petitioner also alleged that six years elapsed from the time of the underlying facts until the police agent accused was convicted, and that one year after conviction at trial, a final decision had yet to be reached in the case, and the police agent continued at liberty, thus the petitioners feared that the case would remain in impunity, for at the time of the complaint it was likely that the statute of limitations on the State’s punitive claim would run.

64. The Government of Brazil presented its answer on June 15, 1995, when it reported that the accused had been judged on March 27, 1995, and sentenced to three years imprisonment; the proceeding was then referred to the instance in charge of executing the judgment. The Brazilian State merely reported on the conclusion of the proceeding and at no time denied the facts presented by the petitioners, nor did it address the merits of the case.

D. The Commission’s analysis

1. Right to physical integrity

65. The version of events described by the victim is fully supported by all the evidence collected in the first two judicial proceedings related to the facts. The situation of resistance, affirmed by police agent Elcio, was not supported, not even by the prosecution witnesses heard in the first judicial proceeding against Marcos. Indeed in this proceeding, the Public Ministry itself called for the acquittal of the accused, Marcos, because the evidence collected during the judicial inquiry had made it clear that what happened in fact was an “aggressive and abusive action on the part of military police agent Elcio Vitorino”; and it even called for the agent to be held liable for the very grave consequences of his acts. It was proven that Marcos was unarmed, that he committed no crime, and that he put up no opposition to the police action.

66. In effect, Marcos was acquitted of the crime of resistance, and a copy of the proceedings was sent back to the Public Ministry, which, also convinced of Elcio Vitorino’s guilt, charged him with grave bodily assault.

67. In the face of all this evidence, the Commission understands that the petitioners proved that an agent of the São Paulo state security force had violated the right to physical integrity of Marcos Almeida Ferreira; accordingly the Brazilian State has violated Article I of the American Declaration.

2. Procedural guarantees and due process of law

68. The abusive and violent attitude of military police agent Elcio Vitorino had very grave and permanent consequences for the victim, who has lost his mobility forever.

69. Such consequences should be attenuated in the best possible manner to make reparation, albeit partial, for the harm suffered by the victim. In this regard, the Public Treasury of São Paulo state ruled that the compensation act brought by Marcos was partially admissible, ruling that he has the right to a lifetime pension and compensation for the moral damages suffered.

70. Nonetheless, part of the reparation to which the victim has a right in these cases is the prosecution and punishment of the persons responsible for the criminal act committed against him. The Commission understands that on this point the Brazilian State did not guarantee Marcos his rights to due process of law and judicial guarantees. Although a criminal action was begun in the prosecution of Elcio Vitorino, that proceeding ended in conviction of the accused only six years after the crime was committed, and afforded him the benefit of release pending appeal. In this way, the verdict was not effectively enforced, and, due to the short penalty imposed and the delay in processing the appeals, there is a risk that the statute of limitations on the State's criminal action will run in relation to this crime.

71. Accordingly, the Commission understands that the domestic remedies were not effective because of the delay, and so Marcos Almeida Ferreira was not guaranteed his right to due process of law or his right to the guarantee of seeing the person responsible for the grave violations of which he was the victim brought to trial, prosecuted, and punished. In this regard, the Brazilian State has violated Articles 8 and 25 of the American Convention.

Case 11.413 (Delton Gomes da Mota)

A. Summary

72. The Commission received a complaint in September 1994 according to which Delton Gomes da Mota, 20 years old, had been killed by military police agents Gilson Lopes da Silva and Maurício Correa da Silva on March 14, 1985.

73. It appears in the complaint that the victim was with some friends on a street in northern São Paulo when they were approached by police agents who were looking for a drug trafficker believed to be in the region. The agents began to shoot at the group, which dispersed. Fleeing, Delton had thrown himself into a stream and then went to a thicket, where he was hit by four bullets from a firearm.

74. In October 1985, military police agents were accused before the Third Military Court of the state of São Paulo for the aggravated homicide of Delton Gomes da Mota. His parents filed an action aimed at declaring state responsibility for the death of their son; in 1997 the action had been at a standstill for more than three years, awaiting the conclusion of the criminal proceedings.

B. Processing before the Commission

75. The Commission received the complaint on September 15, 1994, and forwarded the pertinent parts to the Government of Brazil on December 13, 1994. On June 15, 1995, the

Government of Brazil presented its answer, reporting on the status of the proceedings. Later, and on several occasions, the parties informed the Commission as to the development of the criminal proceedings related to the crime in question. Nonetheless, as of April 25, 1996, the Brazilian State ceased responding to the requests for information from the Commission. During its 98th session, the Commission approved Report 17/98, in which it considered this complaint admissible; that report was published in the Annual Report of the Commission for 1997.

C. Position of the parties

76. In the complaint submitted in September 1994, the petitioner alleges that Delton Gomes da Mota had been arbitrarily attacked by police agents who were looking for a drug trafficker from the region, while talking with friends. Immediately thereafter, the agent had summarily executed the victim, with no apparent motive.

77. The petitioners also state that nine years have elapsed since the facts, without the accused having been judged responsible for Delton's death. In a later statement, the petitioner reported that the date of the judgment was postponed nine times, and that ten years had gone by with no final decision in the case.

78. In its answer, the Government of Brazil alleged that the process of investigation in the death of Delton Gomes da Mota was still before the Third Military Court of the state of São Paulo. It asserted that the accused, Maurício Correa do Nascimento, had been sentenced to 24 years of penitentiary, but that information was refuted by the petitioners, who alleged that the sentence referred to another crime committed by the same agent. The Brazilian State did not contest the truthfulness or accuracy of the facts and circumstances of the crime, as described by petitioners, nor did it make any statement as to the merits.

D. The Commission's analysis

1. Right to life

79. It is clear from the statements taken from persons who witnessed the facts and the victim's family that the approach to and execution of the victim was arbitrary.

80. The file shows the lack of suitability and disdain for human life of the agents involved, who approached the youths in a totally irregular fashion. They assumed that they were drug traffickers, without any prior verification of their identity.

81. In addition, the wounds suffered by the victim indicate extreme violence in the arrest. If the agents' objective had really been to keep the youth from fleeing, or hold him for questioning, it would have sufficed to immobilize him. Nonetheless, the shots entered Delton in vital regions (the chest and head), which indicates the crime of homicide. For these reasons, the Commission understands that the Brazilian State, through the action of police agents Gilson Lopes da Silva and Maurício Correa da Silva, violated the right to life of Delton Gomes da Mota, provided for in Article I of the American Declaration.

2. Procedural guarantees and due legal process

82. The judicial proceeding for inquiring into the responsibilities for the death of Delton was extremely slow and at times appeared to reflect a lack of interest on the part of the military judicial authorities in promptly and effectively concluding the case.

83. This is the Commission's understanding considering, for example, that the trial of the accused failed to start on the dates set eight times. In addition, the time between the rescheduled hearings was sometimes excessive, reaching the extreme of 14 months in one case.

84. This delay, in addition to setting back the judicial action to which Delton's family members have a right, in order to see the assassins of their son put on trial, also kept them from receiving timely compensation for the tragic incident, as the action for declaring the state's responsibility for Delton's death was at a standstill, awaiting a decision in the criminal proceedings.

85. In view of the foregoing, the Brazilian State violated Articles 8 and 25 of the American Convention, as due process of law and the procedural guarantees to which the victim's family members have a right were not observed in the procedures cited.

Case 11.417 (Marcos de Assis Ruben)

A. Summary

86. According to the complaint received by the Commission in September 1994, military police agents Orlando Aparecido Garcia, Edison Donizati, and Waldemar José de Oliveira Tenório assassinated student Marcos de Assis Ruben, 23, in March 1988, in the city of São Paulo.

87. The petitioners report that the above-noted agents had answered a call to check into the case of a young man who was assaulting a young woman, intending to rape her. On arriving in the vicinity of the locale indicated, the agents found Marcos with a young woman, and, presuming he was the rapist, detained him. The victim was taken to a park on the outskirts of São Paulo, and killed with five gunshot wounds to the head.

88. In May 1988, the above-mentioned agents were accused of the aggravated homicide of Marcos de Assis Ruben and seven other persons, victims of crimes that occurred in similar circumstances. At the time the complaint was lodged, the trial was pending a final decision from the Third Instance of Military Justice of São Paulo.

89. The victim's parents initiated an action for compensation against the state, which was declared inadmissible by the Eighth Court (8a. Vara da Fazenda Pública) of the state of São Paulo, and affirmed on appeal.

B. Processing before the Commission

90. The complaint in this case was received by the Commission in September 1994. The Brazilian Government was informed of the same on December 20, 1994, and submitted its answer on June 15, 1995. After this first response from the Brazilian State, the petitioner again submitted information to which the Government of Brazil, despite repeated requests, failed to respond. In 1998, at its 98th session, the Commission approved the admissibility report for case 11.417, which was published in the Annual Report for 1997.

C. Position of the parties

91. On submitting the complaint in September 1994, the petitioner alleged that Marcos had been murdered in cold blood and arbitrarily by military police agents. The same agents had been accused of the death of Marcos and seven other persons assassinated in very similar circumstances. Nonetheless, despite the grave acts alleged against the accused, and despite the fact that seven years had elapsed since the date of the offense, the criminal inquiry has yet to conclude. In this regard, the petitioner asserts violations of Articles XVII and XXIV of the American Declaration and Articles 8 and 25 of the American Convention. Later, the petitioner alleged that eight years after the facts, the date for putting the accused on trial had not yet been set.

92. The Government, for its part, in June 1995 answered that it admitted the criminal inquiry phase had not been carried out, reporting that the date of June 5, 1995, had been set for hearing defense testimony. At no time, however, did the Government of Brazil deny the facts alleged by the petitioners, nor did it comment on the merits of the case.

D. The Commission's analysis

1. Right to life

93. Of the evidence collected, the Commission reaches the conclusion that the military police agents accused extrajudicially executed Marcos de Assis Ruben. The Court of Justice of São Paulo state so indicated, in ruling on the respective action for compensation, when it concluded that the military police agents involved in the death of Marcos had abused their authority.

94. In the large number of inquiries initiated against police agents Orlando Aparecido Garcia, Edison Donizeti, and Waldemar José de Oliveira Tenório—in each case concluding that they were guilty in relation to the death of eight persons--various items of evidence were introduced of the excessive violence of their action. The officials who participated in the investigation and the Public Ministry were fully convinced of the liability of the accused, indeed their abusive acts were even recognized by the Appeals Court of the state of São Paulo, as appears from the ruling in the action for compensation.

95. The wounds--five gunshot wounds to the victim's head--also attest to his execution, with no possibility whatsoever of defending himself. The witness statements also contribute to this conclusion.

96. Of all the evidence presented, the Commission reaches the conclusion that the Brazilian State denied the right to life of Marcos de Assis Ruben, enshrined at Article I of the American Declaration.

2. Procedural guarantees and due process of law

97. Eight years after the complaint was filed, the criminal proceeding was still awaiting a trial date. In 1995, the Brazilian Government admitted that it had not even concluded the criminal inquiry stage, seven years after the facts.

98. The excessive delay in the procedures is contrary to the standards required for effective process. The time elapsed was unreasonable, failing to respect the procedural guarantees and the principle of due process of law guaranteed in the American Convention. The Commission considers that the time elapsed without reaching a final decision on the case is excessive. Therefore, it understands that the Brazilian State is responsible for violating Articles 8 and 25 of the American Convention.

Case 11.412 (Wanderlei Galati)

A. Summary

99. According to the complaint presented to the Commission in September 1994, Wanderlei Galati, a mechanic 28 years of age, was killed after being beaten repeatedly with the butt of a revolver by military police agent Ademar Cavalcante Dourado, on August 26, 1983, in the city of São Paulo.

100. Mr. Galati was allegedly killed after his car collided with the vehicle of the above-named police agent. According to the complaint, even though Mr. Galati accepted liability for the accident and agreed to pay compensation for the damages caused, he was assaulted and killed by Ademar Cavalcante Dourado.

101. On December 2, 1983, the military police agent was accused before the Military Justice of São Paulo state. The verdict was handed down on October 15, 1991; Ademar Cavalcante Dourado was acquitted for insufficient evidence. Later, despite his crime, he was promoted in his police career.

102. The victim's mother filed an action for compensation for moral and material damages against the state of São Paulo; it was the subject of a judgment by the Second Court (2a Vara da Fazenda Pública) of the state of São Paulo, and affirmed by the Court of Appeals.

B. Processing before the Commission

103. The complaint was received by the Commission in September 1994 and on December 13, 1994, it was forwarded to the Government of Brazil, which answered in June 1995. Later, the petitioner and the Government submitted information. On April 25, 1996, the Commission reiterated its request for final observations to the Government.

104. On July 30, 1996, the Commission informed the petitioner that with the final statement by the Government, the procedure as per the Regulations was concluded. In 1998, during its 98th session, the Commission approved the admissibility report in case 11.417, which was published in the Annual Report for 1997.

C. Position of the parties

105. The petitioner alleged that Wanderlei Galati had been summarily executed by a military police sergeant who was a traffic supervisor, simply for having caused slight damage to his vehicle. The victim mistakenly entered an avenue heading the wrong way, and scraped the police car that had blocked the road to stop him. The police agent reacted violently. The policeman identified himself as such, had Wanderlei get out of his car, and attacked him, beating him in the head repeatedly with the butt of his police-issue weapon, while Wanderlei and those who were with him begged “for the love of God” that he not hit him any more. Meanwhile, he threatened the persons with him not to get out of the vehicle to assist him. An ambulance passing by picked up the victim, but the policeman who beat him did not allow the driver to take him to the hospital until police reinforcements arrived. Finally, upon arrival at the hospital, he was pronounced dead. The complaint presented to the Commission in 1994 argues that five years after the incident, testimony had yet to be taken from the witnesses for the accusing party, as the hearing had been postponed several times and for various reasons, including the promotion of the accused into the officer corps of the police during the period when there were hearings for taking witness testimony.

106. According to the petitioner, when a verdict was finally handed down on October 15, 1991, the accused was acquitted for insufficiency of evidence, despite the many eyewitness statements. The acquittal, in turn, was signed and published only three years after it was handed down, which made it impossible for the Public Ministry to file appeals, with the clear intent of evading punishment. So it took eight years to conclude the first part of the proceeding, and 12 years after the death of Wanderlei Galati, there had been no final decision regarding the circumstances of the case.

107. The petitioner argued that the unjustified partiality and sluggishness of justice in the case violated Articles XVIII and XXIV of the American Declaration and Articles 8(1) and 25 of the American Convention.

108. In October 1996, the petitioner reported that he could not get information from the military justice.

109. In its response, the Brazilian Government reported that proceedings had been opened before the military courts to investigate the death of Wanderlei Galati, in which the accused was military police agent Ademar Cavalcante Dourado. Later, he reported that the accused in that proceeding had been acquitted unanimously, and that the case is now in the hands of the Public Ministry, to present reasons for an appeal, and that the action for compensation had been the subject of a final judgment, as a monthly pension was awarded Wanderlei’s mother until he

would have turned 65 years of age. Nonetheless, the facts narrated in the complaint were not denied nor were the merits of the case contested at any time.

D. The Commission's analysis

1. The right to life

110. The various witnesses who gave testimony in the proceedings confirm that after the collision Wanderlei offered to pay for the damage caused promptly, without in any way acting aggressively towards the agent accused. Ademar Cavalcante Dourado, in contrast, beat Wanderlei many times, to the point of causing his death.

111. The declarations by the police agent, who was heard during the inquiry and later at trial, suggest how shaky his assertion is. First, he said that the victim injured himself, in an accidental fall upon getting out of his car; then, that the injuries had been the result of the collision.

112. The other persons who were in the car are unanimous and offer consistent testimony that the assault on Wanderlei was gratuitous and totally disproportionate.

113. In addition is the incontestable fact that Wanderlei's death was due to contusions on the head made by the police-issue weapon, as shown by the medical examiner's report. The detailed description of the lesions is totally incompatible with the injuries that normally occur in traffic accidents, and this was stated by the Court of Justice of the state in a civil action for compensation, considering state responsibility to arise from the authority vested in the accused and the nature of the crime.

114. In the face of such evidence, the Commission must conclude that Wanderlei Galati was the victim of an intentional homicide, the result of disproportionate acts with no motivation by military police agent Ademar Cavalcante Dourado involving state responsibility, both because of the authority vested in the criminal, his identification as a police agent vis-a-vis the victim and the persons accompanying him at the time of the act, and the orders he gave them and the ambulance driver, using the authority of his status as a police agent, and his police-issue weapon, to beat the victim to death by successive blows to the head. Accordingly, the Brazilian State has violated the right provided for in Article I of the American Declaration.

2. Procedural guarantees and due process of law

115. All of the evidence collected during the investigations and in the course of the judicial proceeding sufficed to convince the marshal and the prosecutor who participated in the criminal action, as well as the judge and the court that decided the compensation action. The Commission also understands that the indicia presented are grounds that show the materiality and perpetrator of the offense committed by Ademar Cavalcante Dourado.

116. Yet despite the clear evidence presented at trial, the military courts of the state of São Paulo acquitted Ademar Cavalcante Dourado for insufficient evidence. Not only that, they also clearly and blatantly delayed the proceeding to the point that it failed to publish the acquittal at

trial to prevent it from being appealed, and with the risk that the statute of limitations would run. And throughout, the criminal was not only free, but was given a promotion by the military police.

117. The Commission understands that the statements and expert evidence presented sufficed for a decision on the merits, a decision to which Wanderlei's family members had a right. In this regard, the Brazilian State did not guarantee the victims access to an effective judicial remedy or to a proceeding with respect for the internationally recognized standards. Having denied them that right, the Government of Brazil violated Articles 8 and 25 of the American Convention.

Case 11.415 (Carlos Eduardo Gomes Ribeiro)

A. Summary

118. According to the complaint presented in September 1994, on May 3, 1989, Carlos Eduardo Gomes Ribeiro, 19, was alleged to have been assaulted and wounded by military police agents Donizetti Aparecido Bezerra da Silva, Dorival Bernardo de Senna, Marcos Aparecido Correa Cesar, and Mauro Garofo.

119. According to the complaint, Cláudio was with two other friends when they were approached by military police agents who, under the pretext of searching them, assaulted them physically and psychologically. It appears in the record that the three youths were forced into a vehicle in which they suffered new acts of brutality and taken to the police station, where they were warned that they should say nothing of what happened. Carlos Eduardo was the only one who came forth to report what had happened, which he did immediately.

120. On July 6, 1990, the police agents were accused by the office of the prosecutor. The hearings were put off time and again, and set for very long afterwards, such that on July 29, 1994, without having resolved the case, the second instance of Military Justice decreed that the statute of limitations had run out on the criminal action by the State, thereby extinguishing all possibility of punishing the accused.

121. On April 13, 1994, the victim filed a compensation action against the State, which was referred to the Seventh Court (7a Vara da Fazenda Pública) of the state of São Paulo. As of the date of the complaint, the Seventh Court had not even been summoned in that action, and a decision was being awaited as to whether the victim would be afforded free legal assistance.

B. Processing before the Commission

122. The complaint was received in September 1994. The pertinent parts of the complaint were forwarded to the Brazilian State in December 1994, and it answered in June 1995. In September and November 1995, and in April and September 1996, the Commission requested additional information from the Government, but received no reply. The case was later admitted in 1998, as appears in admissibility report 17/98.

C. Position of the parties

123. The petitioner alleged in the complaint that Carlos Eduardo was arbitrarily attacked and detained by military police agents, and that the statute of limitations had run on the respective criminal proceeding due to the inattention of the authorities acting in the case. Petitioner asserted that the running of the statute of limitations on criminal proceedings in the military courts is common in similar cases of bodily injury, due to the negligent sluggishness with which they are processed. Finally, the petitioner declared that the extinction of the criminal action in the case was the responsibility of the military courts, which did not perform their function, thereby guaranteeing impunity for the persons responsible for violating the victim's fundamental rights.

124. The Government, in its reply, reaffirmed the information on the proceeding presented by the petitioner, and merely confirmed that the criminal action had extinguished with respect to the accused. Nonetheless, the State at no time addressed the issue of whether a violation of the victims' physical integrity and the judicial guarantees had been committed, as alleged by petitioners.

D. The Commission's analysis

1. Right to physical integrity

125. The examination of the corpus delicto confirmed the injuries suffered by the victim. All the witnesses heard in the proceedings who had witnessed the events allege that indeed the accused police agent made excessive and unnecessary use of physical force against the victim, who had not committed nor was about to commit any crime. The defense did not present a single witness to support the agents' version as to the motive for approaching them; therefore, detaining the youths was unjustified.

126. This information led the Commission to the conclusion that the military police agents of São Paulo state violated the physical and psychological integrity of Carlos Eduardo Gomes Ribeiro, triggering state responsibility for violating Article I of the American Declaration.

2. Procedural guarantees and due process of law

127. The information presented shows that the judicial process was slow and that this was due to the inefficiency of the Brazilian judiciary. Contributing to the delay was the repeated postponement of hearings, and the leniency of police witnesses in coming forth to give testimony. The questioning of the accused did not happen until two years after the facts, and the witnesses were heard four years after the crime.

128. These attitudes resulted in the running of the statute of limitations on the criminal action of the State, and the consequent extinction of the possibility of punishing the accused. This being the case, the victim was denied the right to the trial, judgment, and sentencing of those who offended him. Carlos Eduardo was not guaranteed a prompt and effective process for determining his rights. In this regard, the Brazilian State violated Articles 8 and 25 of the American Convention.

3. Offer of friendly settlement

129. On several occasions, the Commission made itself available to the State and the petitioners in the various cases to initiate the friendly settlement process provided for in Articles 48 and 49 of the American Convention, without having received an affirmative response from the parties. That offer was reiterated in joint admissibility report 17/98, once again granting a period of 30 days, without receiving any response.

III. CONSIDERATIONS ON THE MERITS COMMON TO THE EIGHT CASES

130. In the cases described above, the petitioners allege violations of Articles I (right to life, liberty, security, and integrity of the person), XVIII (right to justice), and XXIV (right to petition) of the Declaration, and Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention, in conjunction with Article 1(1) of the same (obligation to ensure and respect the rights established in the Convention).

131. In all the complaints, persons who did not commit nor were involved in committing any crime were found to have been approached aggressively, without any motive, by military police agents. The information also indicates that those persons were killed or suffered grievous injuries as a result of the actions of those public agents, which were at least disproportionate.

132. In its statements, the Government of Brazil did not refute the facts presented by the petitioners. This being the case, the descriptions presented by the petitioners are considered by the Commission to be true and unchallenged, in addition to coinciding with the rest of the evidence before the Commission, including copies of domestic judicial proceedings.

133. All the cases occurred in the city of São Paulo, and involved acts by agents of the Military Police of São Paulo state. The facts, in addition to denoting the violence with which the agents of that police force act, demonstrate the impunity that stems from the delayed, partial, and ineffective action of the military justice system, which at the time was responsible for investigating, prosecuting, and imposing punishment for the crimes committed by police.

134. In the view of the Commission, based on the analysis of the information available on the issues analyzed, one can only reach the conclusions set out below. As the Commission already indicated in its admissibility reports on these cases,[FN3] it is competent to hear them because they address alleged violations of the rights recognized in the Declaration, pursuant to Articles 26 and 51 of its Regulations,[FN4] and with respect to those recognized in the Convention, for violations or the continuing refusal to recognize rights after its ratification by Brazil, in particular Articles 8 and 25 (right to due process of law and judicial guarantees) in relation to Article 1(1) of the Convention.

[FN3] IACHR, Report 17/98, published in its 1997 Annual Report.

[FN4] See Inter-American Court of Human Rights, Advisory Opinion 10, para. 45, July 14, 1989, "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.” See also IACHR, Report 24/98, on continuing violations and the applicability of the American Convention.

Responsibility of the State in relation to the acts or omissions of its organs, agents, and member states of the Federation

135. Article 1(1) of the Convention clearly establishes the obligation of the state to respect the rights and freedoms recognized in it and to ensure the full exercise thereof, such that any violation of the rights recognized in the Convention that may be attributed, according to the norms of international law, to the act or omission of a public authority, is an act giving rise to state responsibility.[FN5] The American Declaration sets forth at Article XVIII the right to judicial guarantees for protection against acts of the authority, and indicates in its preamble that the legal and political institutions of the States have as their main purpose the protection of human rights.

[FN5] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, par. 164.

136. According to Article 28 of the Convention, when a State party is constituted as a federal state, as is Brazil, the federal government shall answer, internationally, for the acts of the entities that make up the Federation. The cases considered here involve alleged human rights violations by agents of the military police of the state of São Paulo.

Right to life, liberty, security, and physical integrity (Article I of the Declaration)

137. Article I of the Declaration provides: “Every human being has the right to life, liberty and the security of his person.” Victims Aluísio Cavalcanti, Clarival Xavier Coutrim, Delton Gomes da Mota, Marcos de Assis Ruben, and Wanderlei Galati, all of them, under 30 years of age at the time of their death, were workers or students who were approached in the course of their routine activities and extrajudicially executed by military police agents. Cláudio Aparecido de Moraes, Carlos Eduardo Gomes Ribeiro, Celso Bonfim de Lima, and Marcos Almeida Ferreira suffered attacks on their lives causing injury to their personal integrity. Those violations occurred in various incidents from March 1982 to August 1989.

138. The Commission must consider whether the action of the public safety officers that cost the life or physical integrity of the victims was taken out of a need to prevent a greater harm, or involved legitimate self-defense. In so doing, consideration was given[FN6] to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the United Nations, which clearly define those cases in which the use of such force is legitimate.[FN7] Although the State has not invoked this argument in its defense, the Commission understands that it should make reference to it.

[FN6] Although such principles cannot be taken as a standard contemporaneous with the events, as they are dated 1990, and the violations examined in this report occurred in the late 1980s, they shall be considered in this case as general principles of international law at the time, as they were already generally accepted, and will be used in interpreting and analyzing the eight cases.

[FN7] United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990. The following clauses apply, among others:

Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

139. In none of the eight cases in consideration is there any evidence supporting the acceptability of force in the terms of the principles mentioned, nor any evidence that the youths shot at were armed or constituted a threat of death to the agents or other persons. To the contrary, in the cases in question there is testimony that the victims had not even committed nor were about to commit any illegal act. This indicates that the police action, more than disproportionate, was unjustified.

140. The data provided indicate that in all the cases in which the bodies were not hidden, the police agents simulated direct confrontations between the victims and the police force, even alleging that there had been exchanges of gunfire to cover up their own gratuitous acts of violence. One can observe that in eight cases examined here, five persons were killed and three were injured, a chilling balance even in confrontations, which in these cases did not occur, as has been proven in court. This number is in agreement with investigations done in Brazil, cited by the Commission in its general reports on Brazil, that indicate that in cases of confrontation between police agents and civilians, the number of deaths is always far greater than the number of wounded, an indication that in general the Brazilian police “shoot to kill,” and not just to subdue suspects.

141. The agents accused allege that they had mistaken the victims, in several instances, for persons accused or wanted for committing criminal acts, to justify their own action. Nonetheless, even were this the case, the evidence shows the most absolute disdain for the presumption of innocence, and that the victims were not even able to defend themselves in any way, nor were they taken to a police station for the appropriate processing; and the testimony and medical examiner’s opinions verify summary executions or summary violations to integrity.

142. The cases examined here are extremely grave, as it was shown that the investigations concluded, as indicated, that there were no confrontations between the youths and the police agents. The victims were not committing criminal acts, and their deaths occurred for no apparent reason (as in the cases of Clarival and Delton) or for absolutely futile motives (Wanderlei Galati), the victims beings defenseless, under the control and custody of the police. The evidence presented indicates the arbitrary nature of the approach by the police and of the assaults, whether fatal or non-fatal.

143. The circumstances in which the crimes committed by the police occurred indicate a general situation of unsuitable, out-of-control, and undisciplined action on the part of the persons entrusted with maintaining order and security in the state of São Paulo, and the conscious and spontaneous practice of acts of brutality.

144. The period covered by the eight cases analyzed here (1982-1989) demonstrates that situation of violence. It was found that in one of these cases--that of Marcos de Assis Ruben--the police agents accused were alleged at the same time to be responsible for the killings of seven other persons, in similar circumstances. These data confirm the conclusion that the arbitrary detention and execution by the military police agents was a common practice in the state of São Paulo during that period.

145. The Commission has spoken out in previous cases against such practices, which constitute one of the most abominable systematic violations of the right to life and personal integrity, and entails breach by the State of its obligation to ensure the rights of its citizens. On analyzing these cases, the Commission considered as key grounds for reaching a decision the statements and evidence that came out in the respective judicial proceedings. The Commission recalls the general situation to make it clear that these are not isolated cases or anomalies, but rather examples of a systematic attitude adopted at the time by certain police agents.[FN8]

[FN8] IACHR, Report on the Situation of Human Rights in Brazil. Chapter on Police Violence and Impunity, 1997.

146. On the basis of the statements and evidence that appear in the case files and which were described briefly, the Commission considers that there is clear and convincing evidence as a firm basis for concluding that police agents of São Paulo violated the right to life of Aluísio Cavalcanti, Clarival Xavier Coutrim, Delton Gomes da Mota, Marcos de Assis Ruben, Wanderlei Galati, and Cláudio Aparecido de Moraes, and the right to personal integrity of Carlos Eduardo Gomes Ribeiro, Celso Bonfim de Lima, and Marcos Almeida Ferreira, which constitute violations of Article I of the Declaration by the State.

Right to a fair trial and judicial protection (Articles 8 and 25)

147. Brazil deposited its instrument of accession to the American Convention on September 25, 1992. The judicial proceedings related to the cases analyzed here took place prior to that date, and make reference to crimes committed in the late 1980s. Nonetheless, the judicial

proceedings continued for several years after entry into force of the Convention for Brazil, and in some cases they still continue. A situation such as this, that starts out as a violation of Article XVIII of the Declaration, and then fits within the violations that are the subject of Articles 8 and 25 of the Convention, has repeatedly been interpreted by the Commission as a continuing violation. Based on this understanding, the Commission considers that the guarantees provided for therein apply to the proceedings pending in each member state as of the date of entry into force of the Convention for that member state. As clarified in its combined admissibility report on the eight cases analyzed here, the Commission is competent, in all of them, to decide on violations of Articles 8 and 25 of the American Convention.[FN9]

[FN9] IACHR, Report 60/99, Case 11.516 (Ovelário Tames).

148. Article XVIII of the Declaration states that:

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

Along the same lines, Articles 8 and 25 of the Convention give all persons the right to access to judicial remedies when their rights are violated, and to be heard by a competent authority or court. Article 25 of the Convention provides:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

The jurisdiction of the military justice system

149. In all of these cases the military justice system has been involved in the investigation, indictment, and prosecution. This happens because, as the Commission noted in its 1997 special report:

The state military justice system has the authority to try and judge members of the “military” police accused of committing crimes, defined as military crimes, against the civilian population. This jurisdiction is governed by military criminal law (Military Penal Code, CPM), exclusive to military personnel, which contains substantive penal standards and constitutes “a set of legal provisions to ensure the accomplishment of the main purposes of military institutions, whose primary objective is the defense of the nation.” In this jurisdiction, “rank and discipline prevail.”[FN10] It is also regulated by the Code of Military Penal Procedure (CPPM), which contains formal or procedural provisions. The new law 9299/96 places under ordinary penal jurisdiction cases of voluntary crimes against life, but maintains intact the rest of the jurisdiction of the military justice system with regard to the police. [FN11]

[FN10] See Vincenzo Manzini, *Diritto penale militare*, Padua (1932), year X, p. 1 and Idelfonso M. Martínez Muñoz, *Derecho Militar y Derecho Disciplinario Militar*, Buenos Aires (1977), N° 20 and 87, pp. 36 and 194, op. cit. by Jorge Alberto Romeiro, *Curso de Direito Penal Militar (Parte Geral)*, p. 1, Ed. Saraiva (1994).

[FN11] A bill already adopted by the Senate expands the jurisdiction of the regular courts, including other crimes committed by the military police. The bill is not limited to conspiracies or crimes of extortion crimes.

This is a special legal system, with its own principles and guidelines, in which most of the provisions apply only to military personnel and civilians who commit crimes against military institutions, unlike the ordinary penal system, which is applicable to all citizens.[FN12]

[FN12] Reinhart Maurach, *Deutsches Strafrecht, ein Lehrbuch, Allgemeiner Teil*, Karlsruhe (1971), § 8, IV, c, pp. 93-4, “O direito penal especial de maior importância prática é o direito penal militar” (Das praktisch wichtigste Sonderstrafrecht ist das Wehrstrafrecht) Manzini, *Diritto penale militare*, cit., p. 2; Guisepppe Ciardi, *Istituzioni di diritto penale militare*, Rome, n.d., v. 1, p. 12; Rodolfo Venditti, *Il diritto penale militare nel sistema penale italiano*, Milan (1978), pp. 23-5; and Heleno Cláudio Fragoso, *Lições de direito penal, General Part*, Rio de Janeiro, Forense (1980), p. 5; op. cit. *Curso de Direito Penal Militar, General Part*, Jorge Alberto Romeiro.

150. The same jurisdiction lies with respect to the power to bring a public criminal action and to further the investigation:

As a legacy of its creation under the military regime, the State Military Public Ministry has jurisdiction to file public criminal charges before the military courts, and also has, among others, the power to institute the military police investigation and to exercise external control over the “military” police activity. This represents, in the view of the Commission, a critical breakdown in the system of guarantees of police action, for it wrests from the civilian public ministry common police control activities (entrusted to the “military” police), which are precisely the ones to whom are attributed the largest number of human rights violations.

151. The Commission indicated in the same special report that this special jurisdiction for the police came about during the period of military rule in Brazil, in 1977, by a constitutional amendment (N° 7, of 1977), and in its wake the Federal Supreme Court changed its view and considered that the state-level military justice system had jurisdiction to judge the “military” police. The Commission then indicated that:

This fundamental change in the jurisprudence of the Federal Supreme Court resulted in an increase in the crimes committed by “military” police with impunity. [Chapter 3, par. 67.]

152. As indicated at that time:

Military court cases are often delayed for years,[FN13] due to the heavy workload,[FN14] the scarcity of judges and prosecutors, excessive red tape, delays, etc. The Commission has found that the courts tend to be indulgent with police accused of human rights abuses and other criminal offenses, thereby allowing the guilty to go unpunished.

[FN13] It is noted that at year-end 1992, there were 14,000 cases pending in four courts of São Paulo for which there was only one prosecutor. HUMAN RIGHTS WATCH/AMERICAS, *Final Justice*, supra note 18, p. 41 (1994).

[FN14] Embassy of Brazil, *Society, Citizenship and Human Rights in Contemporary Brazil*, p. 19 (1995).

In this climate of impunity,[FN15] which breeds violence by the “military” police corps,[FN16] the police officers involved in this type of activity are encouraged to participate in extrajudicial executions, to abuse detainees, and to engage in other types of criminal activity. The violence has even spread to the prosecutors who, when they insist on continuing investigations into the crimes committed by the “military” police, have been threatened and even subjected to death threats. It is also not uncommon for witnesses summoned to testify against police officers on trial to receive intimidating threats.[FN17]

[FN15] In March 1982, the Brazilian bar association, Ordem de Advogados do Brasil, São Paulo section, stated that the leading cause of the increase in deaths caused by the military police was the impunity created by the special system of justice used to try such cases. (Folha de São Paulo, March 7, 1982) Conselho Estadual de Defesa dos Direitos da Pessoa Humana, “Por Uma Nova Política de Segurança E Cidadania,” Comissão Permanente de Justiça, Segurança e Questão Carcerária, Documents Series 1, p. 14 (1994).

[FN16] See Country Reports on Human Rights Practices for 1990, Report Submitted to the Committee on Foreign Affairs, House of Representatives, and the Committee on Foreign Relations, U.S. Senate, by the Department of State, p. 332 (1994).

[FN17] See Human Rights Watch/Americas, *Final Justice, Police and Death Squad Homicides of Adolescents in Brazil*, supra note 18, pp. 41-42 (1994).

In a letter addressed to the Commission in 1996, the Santo Dias Center stated, in this regard:

In military investigations (inquiries), officially carried out by the organs of military justice, the bias in favor of incriminated police officers in most cases is so flagrant that it turns the victims into criminals. It is also very common to intimidate witnesses, whose court depositions are taken in the presence of the accused police officers. Under such conditions, it is not surprising that so many investigations are dismissed on grounds of insufficient evidence... If this stage is completed and charges actually filed or admitted, new difficulties arise in the proceedings, which are deliberately slow and plagued with delays: deferred establishment of the councils, repeated postponements for minor procedural problems, etc.

Thus, it is not surprising to find proceedings[FN18] dragging on for four or five years or indefinitely, allowing enough time for the events to be forgotten by the press and the public. After such a long time, the victims' families lose hope, witnesses move away, and the evidence disappears.[FN19]

[FN18] Criminal inquiry (instrução criminal) is understood to be the procedural stage for collecting evidence so that the Council of Justice can form its own view of the facts. It begins by depositing the accused (Article 404 of the Code of Military Criminal Procedure, CPPM) and continues until the final arguments (Article 428 of the same Code).

[FN19] Letter from the “Santo Dias Center” for Human Rights of the Archdiocese of São Paulo, to the Executive Secretary of the Inter-American Commission on Human Rights (June 29, 1994).

153. The Commission reiterates its position that trying common crimes as though they were service-related offenses merely because they were carried out by members of the military violates the guarantee of an independent and impartial court. In grounding its argument, it invoked a pronouncement by the United Nations Human Rights Committee,[FN20] the third and fifth Basic Principles on the Independence of the Judiciary of the United Nations; Article 16(4) of the Standard Minimum Rules on Human Rights in States of Emergency (Paris, 1984); and, finally, the doctrine of the Inter-American Commission.[FN21]

[FN20] The UN Human Rights Committee, while making its final observations about the periodic report submitted by the Brazilian government in 1996, has stated that: “The Committee expresses its concern with the Brazilian legal system that allows the military justice to trial military policemen accused of committing human rights violations and the fact that these cases have not yet been transferred to the civil jurisdiction”. The Report prepared by Mr. Joinet for the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, UN, by establishing a set of principles as regard with the administration of justice has stated on its principle 34: “In order to avoid military courts, in those countries where they have not yet been abolished, helping to perpetuate impunity by virtue of lack of independence resulting from the chain of command to which all or some of their members are subject, their jurisdiction must be limited solely to specifically military offenses committed by military personnel, excluding human rights violations constituting serious crimes under international law, which come under the jurisdiction of the ordinary domestic courts or, where necessary, an international court.” Report n. E/CN.4/Sub.2/1997/20, July 26th, 1997, principle n. 34)

[FN21] See ICHR, Annual Report 1999, Report n. 34/00, Case 11.291 – Carandiru (Brasil), par. 80; Report 7/00, case 10.337 (Colombia), par. 53 to 58; and Third Report on the situation of human rights in Colombia 1999, par. 175.

With respect to the investigation, trial, and punishment in the cases under study

154. As the Commission noted earlier, when, as in the cases of Aluísio Cavalcanti, Clarival Xavier Coutrim, Delton Gomes da Mota, Marcos de Assis Ruben, and Wanderlei Galati, the victim is not in a position to seek judicial reparation, the right to do so is necessarily transferred to his family. The Commission concluded that the victims and/or their families have the right to a judicial investigation, under the responsibility of a court of criminal justice, for the purpose of establishing liability and punishing the persons guilty of committing human rights violations. See, in general, Reports N° 28/92 (Argentina) and 29/92 (Uruguay), from the Annual Report of the IACHR 1992-93, OEA/Ser.L/V/II.83, doc. 14 corr. 1, of March 12, 1993, pp. 51-53 and 169-174. That right emanates from the State's obligation "to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation." Case of Velásquez Rodríguez (Merits), *supra*, par. 174.[FN22]

[FN22] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, par. 77.

155. The Inter-American Court of Human Rights ruled as follows in relation to the state's obligation to investigate incidents that violate human rights protected by the Convention:

The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.[FN23] [Case of Velásquez Rodríguez (Merits), *supra*, par. 177.]

[FN23] "The right to a trial 'within a reasonable period of time' provided for under the Inter-American Convention is grounded, *inter alia*, in the need to avoid undue delays constituting a denial of justice, prejudicial to persons invoking the violation of rights protected by the aforementioned Convention." (Report 43/96, Case 11.411, Mexico, para. 30, Annual Report 1996, IACHR).

156. The petitioners reported that the judicial authorities, for lack of diligence, did not take measures to follow through on the prosecution of the above-mentioned crimes, despite the clear evidence in the statements by victims and witnesses and the results of the forensic tests clearly indicated that grave offenses had been committed.

157. The proceedings were extremely slow; it was found that hearings were repeatedly suspended and put off, evidence was deemed inadmissible, and several procedural acts were annulled, which led to excessive sluggishness in the procedures. This meant that in several cases the trial took place several years after the crimes had been committed, and that some of the

witnesses testified to events they had witnessed more than five years earlier. The passage of so much time tends to render judicial protection ineffective.

158. Articles 8 and 25 of the American Convention establish that the rights to a fair trial and judicial protection, ensured by the State pursuant to this international instrument, must materialize in a reasonable time. To determine reasonability,[FN24] the Commission must proceed to analyze the police investigation in question in light of the totality of circumstances.

[FN24] See, for example, IACHR, Resolution N° 17/98, Report on Case N° 10.037 (Mario Eduardo Firmenech). In the Annual Report of the Inter-American Commission 1988-1989, p. 38; European Court of Human Rights: “Konig” Case, Judgment of June 28, 1978, Series A, N° 27, pp. 34-40, par. 99, 102-105, and 107-111; Guincho Case, Judgment of July 10, 1984, Series A, N° 81, p. 16, para. 38; Unión Alimentaria Sanders S.A., Judgment of July 7, 1989, Series A, N° 157, p. 15, par. 40; Buchholz Case, Judgment of May 6, 1981, Series A, N° 42, p. 16, par. 51, pp. 20-22, par. 61 and 63; Kemmache Case, Judgment of November 27, 1991, Series A, N° 218, p. 27, par. 60.

159. The European Commission on Human Rights and the European Court of Human Rights, like the Inter-American Commission, established a series of criteria or considerations that should be borne in mind when determining what constitutes unwarranted delay in the administration of justice, “which shall not hinder only one of them from having weight, if appropriate.”[FN25] These are the criteria established by the doctrine to determine reasonability of the time: 1. The complexity of the case. 2. The conduct of the injured party in terms of his or her cooperation in the development of the proceedings. 3. The manner in which the investigative phase of the proceedings was conducted. 4. The action of the judicial authorities.

[FN25] IACHR, Annual Report 1997, pp. 655 ff.

160. For the purposes of adequately analyzing the complexity of the cases, one must refer to what they are about: violations of the right to life and personal integrity. Accordingly, one must evaluate objectively the characteristics of the offenses committed and the personal conditions of their alleged perpetrators. In just one case there are two alleged offenses, homicide and attempted homicide. In all the other cases, the proceedings involved the occurrence of a single criminal act. In all the cases the offenses were carried out in well-defined and simple circumstances, with testimony from several witnesses and the expert reports from the office of the medical examiner in evidence. These characteristics indicate that there was no complexity in the cases under consideration.

161. According to information the Commission has received, some of the criminal proceedings are still pending a final judicial decision.

162. In Brazil, the criminal offenses in the eight cases analyzed here are prosecuted by public criminal actions that can be brought exclusively by the Military Public Ministry; the injured parties have no means of intervening to move the proceedings forward.

163. The sluggishness of the investigations and the fact that it is the military police themselves who are entrusted with them suggest irregularities in the pertinent police inquiries and in the investigative stage.

164. Finally, the already-mentioned annulment of procedural acts and the repeated suspension of hearings, the delay in publication of the judgments, among other factors, demonstrate the negligence and inefficiency on the development of the criminal procedures by the judicial authorities involved.

165. In view of all the foregoing, the Commission considers that the ineffectiveness, negligence, or omission in the development of the investigations and proceedings by the military justice system of São Paulo, which culminated in an unwarranted delay in the conclusion of the proceedings, not only exempts the petitioners from the obligation to exhaust domestic remedies, as appears in the part on admissibility, but is also a violation of Article XVIII of the Declaration and Articles 8 and 25 of the Convention, as it has deprived the victims' families the right to obtain justice within a reasonable time by means of a simple and prompt remedy. Article 1(1) of the Convention establishes that the States party undertake to respect the rights and liberties recognized in it, and to ensure their free and full exercise for all persons under their jurisdiction.[FN26]

[FN26] That obligation implies, as indicated by the Inter-American Court of Human Rights, "... the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention...." Case of Velásquez Rodríguez (Merits), supra, para. 166.

IV. PROCEEDINGS SUBSEQUENT TO REPORT 74/00

166. The Commission approved Report N° 74/00 pertaining to this case on October 3, 2000, at its 108th session. This report was transmitted to the State on November 1, 2000, and it was granted a period of two months to implement the recommendations made. The Commission informed the petitioners of the approval of a report in accordance with Article 50 of the Convention. Inasmuch as the period granted has expired and the Commission has not received a response from the State regarding these recommendations, the IACHR adopts the view that these recommendations have not been implemented.

V. CONCLUSIONS

167 The Inter-American Commission on Human Rights reiterates to the State the following conclusions:

1. The Commission reiterates its conclusion that it is competent to hear this case and that the complaint is admissible pursuant to Articles 46 and 47 of the American Convention.
2. Based on the foregoing data and analysis, the Commission reiterates its conclusion that the Federative Republic of Brazil is responsible for violating the right to life and personal security and integrity (Article I of the American Declaration), and the right to a fair trial and to judicial protection (Article XVIII of the Declaration and Articles 8 and 25 of the Convention), and is in breach of the State's obligation to ensure and respect the rights recognized in the American Convention on Human Rights (Article 1(1)) in relation to the homicide of Aluísio Cavalcanti, Clarival Xavier Coutrim, Delton Gomes da Mota, Marcos de Assis Ruben, and Wanderlei Galati, and in relation to the assaults and attempted homicides of Cláudio Aparecido de Moraes, Carlos Eduardo Gomes Ribeiro, Celso Bonfim de Lima, and Marcos Almeida Ferreira, all perpetrated by military police agents of the state of São Paulo, as well as the failure to effectively investigate and punish the persons responsible.

VI. RECOMMENDATIONS

168. The Inter-American Commission on Human Rights recommends to the Brazilian State:

1. That it carry out a serious, impartial, and effective investigation into the facts and circumstances of the deaths of Aluísio Cavalcanti, Clarival Xavier Coutrim, Delton Gomes da Mota, Marcos de Assis Ruben, and Wanderlei Galati, and of the assaults on and attempted homicides of Cláudio Aparecido de Moraes, Celso Bonfim de Lima, Marcos Almeida Ferreira, and Carlos Eduardo Gomes Ribeiro, and that it duly prosecute and punish the persons responsible.
2. That such investigation include the possible omissions, negligence, and obstructions of justice that may have resulted from the failure to convict the persons responsible in a final judgment, including the possible negligence and mistakes of the Public Ministry and of the members of the judiciary who may have decided to waive or reduce the corresponding sentences.
3. That the necessary measures be taken to conclude, as soon as possible and in the most absolute legality, the judicial and administrative proceedings regarding the persons involved in the above-noted violations.
4. That the Brazilian State makes reparation for the consequences of the violations of the rights of the victims and their families or those who hold the right for the harm suffered, described in this report.
5. That the necessary measures be taken to abolish the jurisdiction of the military justice system over criminal offenses committed by police against civilians, as proposed by the original bill, introduced in due course, to repeal Article 9(f) of the Military Criminal Code, and to approve, to take its place, the single paragraph proposed in that bill.[FN27]

[FN27] The text of the proposal before Congress reads: “Officers and rank and file of the military police of the States, in the exercise of their police functions, shall not be considered members of the military for criminal purposes, as jurisdiction shall lie with the regular courts for prosecuting and judging the crimes committed by or against them.”

6. That the Brazilian State take measures to establish a system of external and internal supervision of the military police of São Paulo that is independent, impartial, and effective.

7. That the Brazilian State present the Commission, within 60 days of transmittal of this report, a report on compliance with the recommendations, for the purpose of applying the provision at Article 51(1) of the American Convention.

VII. PUBLICATION

169. The Commission transmitted the report adopted pursuant to Article 51 of the American Convention to the State and to the petitioner on March 12th, 2001, and gave the State one month to submit information on the measures adopted to comply with the Commission’s recommendations. The State failed to present a response within the time limit.

170. Pursuant to the foregoing considerations, and in conformity with Article 51(3) of the American Convention and Article 48 of its Regulations, the Commission decides to reiterate the precedent conclusions and recommendations, to make this Report public, and to include it in its Annual Report to the General Assembly of the OAS. The Commission, pursuant to its mandate, shall continue evaluating the measures taken by the Brazilian State with respect to the recommendations at issue, until they have been fully fulfilled.

Approved on April 16, 2001. (Signed): Claudio Grossman, Chairman; Juan Méndez, First Vice-Chairman; Marta Altolaquirre, Second Vice-Chair; Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo Commissioners.