



# INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

## E. Reports on the merits

Article 51 of the American Convention on Human Rights provides that: 1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration. 2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined. 3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

### **REPORT Nº 59/99\***

CASE 11.405

NEWTON COUTINHO MENDES

BRAZIL

April 13, 1999

1. On November 18, 1994, the Inter-American Commission on Human Rights received a complaint against the Federal Republic of Brazil (hereinafter "Brazil" or "the State") presented by the Parochial Commission of the Earth, the Center for Justice and International Law (CEJIL) and Human Rights Watch/Americas, concerning the murders of Newton Coutinho Mendes, Moacir Roasa de Andrade, Jose Martins dos Santos, Gilvan Martin dos Santos, and Matías de Souza Cavalcante, the attempted murders of Juscelino Rosa e Silva and Ana Beatriz de Silva, death threats against Ricardo Rezende, Benedito Rodríguez Costa, and Henri Burin des Roziers, and the kidnapping and mistreatment of Valdemir Soares Pereira. The complaint also charges failure of judicial guarantees on account of acts committed in Xinguara and Rio María, in the State of Pará, Federal Republic of Brazil, as part of a premeditated campaign on the part of landowners against rural workers and their advocates, with the connivance of agents of the federal State of Pará.

2. These acts, the complaint charges, make the Federal Republic of Brazil responsible for violations of rights guaranteed by the American Convention on Human Rights, in particular Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection), in concordance with Article 1(1) (the obligation to respect the rights established in the Convention).

3. The State alleges that, while there are indeed in the Río María district situations involving violations of human rights, the remedies of domestic jurisdiction are in operation, and have not been exhausted.

## I. POSITION AND REQUEST OF PETITIONER

### **A. Complaint of murders, assaults and threats**

4. According to the complaint, since April 1994 an assassination group established by large landowners in the southern part of Pará has been engaging, with the connivance of some local authorities, police officers and judicial agents, in the murder of persons linked or suspected of links to the occupation of lands in the region and with advocacy of the rights of rural workers.

5. It is further informed that the victims are on a "list of persons under sentence of death," known as the "Xinguara list," which contains dozens of names and has been compiled by those big landowners. At least five of the persons on this list are reported to have been killed, two wounded, one kidnapped, and at least four families not identified in the complaint have been driven out of the district by death threats. It is charged that this assassination group is responsible for the murder of the following persons:

a) NEWTON COUTINHO MENDES, a small merchant, in April 1994, as he was standing in front of his house.

b) MOACIR ROSA DE ANDRADE, a small holder, on June 5, 1994, at the door of a bar.

c) JOSÉ MARTINS DOS SANTOS, butcher, and his son, GILVAM MARTINS DOS SANTOS, on June 27, 1994. The mother of Mr. dos Santos died instantly on learning of her son's murder.

d) MATÍAS DE SOUSA CAVALCANTE, on June 20, 1995, in vengeance for having filed with the Secretary of Public Safety of Pará a complaint against the local police chief for arbitrary acts in the performance of his duties, which resulted in the withdrawal of that officer from the police force.<sup>1</sup>

6. The assassination group is also said to have attempted to murder JUSCELINO ROSA E SILVA, a smallholder, and his wife ANA BEATRIZ, on April 6, 1994, as they rode by motorcycle from Xinguara to Río María. Mr. Rosa da Silva was seriously wounded, but the two were able to escape. The car used by the gunmen was a white gold with license plate QBD 3179. This car was seen several times in front of the office of Jose Luiz de Freitas, President of the rural landowners association.

7. It is also alleged that death threats were made against Father RICARDO REZENDE, parish priest of Río Mará, who has been denouncing the deaths and publicly supports the efforts of the rural workers to defend their rights.

8. The assassination group is also said to have threatened and intimidated several persons, among them Father Ricardo Rezende, Father BENEDITO RODRÍGUEZ COSTA, parish priest of Xinguara, and Brother HENRI BURIN DES ROZIERES, the latter a legal representative of the victims and the rural workers. These are all active members of the Pastoral Committee of the Earth, the body that advocates the human rights of the rural workers.

9. In addition, on June 12, 1994, the group is reported to have kidnapped and beaten VALDEMIR SOARES PEREIRA, mechanic and driver, after Father Benedito left him in front of the Xinguara parish church. The driver was whipped and questioned by the gunmen about his relations with Father Benedito and the Pastoral Committee of the Earth.

10. The complaint charges that these crimes are not isolated occurrences, but part of a strategy of a group of landowners and their hired gunmen, with the connivance of state officers who keep them out of trouble, to preserve the power of those landowners in the region by attacking peasants and rural workers who try to assert their rights in any way. One of those named as responsible for these violations are the landowner Jerónimo Alves de Amorim, owner of the Nazaré estate, who is said to have ordered several crimes. For the commission of those crimes Jerónimo Alves de Amorim is said to have used two of the foremen on his estate, Wanderley Borges de Mendonça and "Velho Luiz" (Old Luiz), and hired gunmen, including Ademir Rodríguez da Fonseca and Geraldo Mendes. Also named, as an instigator of crimes is landowner Jose Luiz de Freitas, President of the Xinguara Rural Association, who was abetted by hired gunman Getúlio Batista.

11. These people are described in the complaint as having been abetted by military and civilian police officers, whom they bribed to protect them from punishment.

12. Complainants state that they lodged successive complaints and appeals to the judicial authorities, which did nothing effective either out of negligence, connivance or ineffectualness.

13. Petitioners also charge that when the judges issued warrants for arrests, their orders were leaked to the culprits to help them flee; that in many cases the warrants for arrest remained unexecuted; that in the cases in which culprits were apprehended they were able to make their escape with the collaboration of the police and prison personnel; and almost every one of these acts of organized crime went unpunished.

#### **B. Complaint of petitioner of difficulties in activating and exhausting domestic resources**

14. Petitioner alleges that Brazilian justice was unable to act effectively in these cases, and that the reason for this was that the local authorities (military police, civilian police, the Office of the Public Prosecutor, the judge) are directly implicated in organized crime, to which they are accessory by act or omission. According to the complaint, this complicity of the authorities in organized crime intimidates the victims and their families, who refuse to report the crimes to the state and federal authorities. Even so several complaints have been lodged with the state and federal authorities, which have attempted, with little success, to take measures, as will be described in what follows.

15. On June 30, 1994, Valdemir Soares, a mechanic who had been kidnapped and beaten, made a statement to Public Prosecutor Álvaro Augusto Ribeiro da Costa in the Office of the Attorney General of the Republic.

16. On September 13, 1994, in Belém, the Governor of the State was handed a letter signed by 3,800 persons denouncing the violence and the negligence of the authorities in southern Pará State and the existence of the "Xinguara list," and requesting that action be taken.

17. On September 13, 1994, the International Pax Christi Commission delivered the same letter to the Attorney General of the Republic and the Ministry of Justice in Brasilia.

18. The complaint goes on to say that on September 21, 1994, gunman Getúlio Batista da Silva confessed in a statement to the civilian police in Paraúna, State of Goiás, that he had been hired by Jose Luiz de Freitas, President of the Xinguara Rural Association, to murder Zacharias Pereira Diniz and Father Ricardo Rezende. Having done this, Getúlio Batista was placed in preventive detention in the Paraúna police station.

19. On September 29, 1994, a committee of labor unionists, a layman and Father Ricardo

Rezende presented fresh complaints to Alfredo Santalice, Secretary for Public Safety of Belém.

20. On October 20, 1994, victim Juscelino Rosa da Silva made a sworn statement to the special commissioner of the Belém police in the Xinguara parish house. In this statement he told of the gunmen, the instigators of the crimes, and the circumstances of the attempt made on his life. Nevertheless, the commissioner did not order an investigation into the facts of the crime.

21. On October 22, 1994, following an attempt on his life in which he was struck by four bullets, Cícero Coelho da Silva, who had been hired as a driver on the Nazaré estate, was transferred to Marabá for an examination of his wounds.

22. The complaint goes on to state that on October 25, 1994, Cícero Coelho da Silva appeared before the Office of the Attorney General of the Republic in Brasília, where he made a statement in the presence of Prosecutor Álvaro Ribeiro da Costa. In this statement he confirmed the existence of an assassination band of gunmen on the estate of Jerónimo Alves de Amorim, and gave the names of several gunmen and of their victims. He confirmed the complicity of the military and civilian police in crimes committed in the district inasmuch as the latter was said to have given the gunmen photos of the persons on the Xinguara list.

23. In his judicially sworn statement Cicero Coelho da Silva said that he had been present on an occasion when the aforementioned landowner was on the phone with his foreman, and the landowner expressed concern at having given money to the colonel and lieutenant of the Xinguara Military Police to expel the squatters who had invaded his estate, but that those military people had done nothing. In the same conversation comments were made on the possibility of ordering the police to kill the squatters, and the landowner replied that he had not asked them to do that.

### **C. Allegations of petitioner on the measures taken by the authorities**

24. Petitioner asserts that in September 1994 the Secretariat for Public Safety of the State of Pará ordered an investigative mission consisting of officers of the Pará Military Police to the Xinguara and Río María district. From that time forward Father Ricardo Rezende was under the protection of the Military Police of Pará and of the Federal Police. In addition, the investigation into the attempt on his life was reopened.

25. The complaint states that on September 21, 1994, a judge in Paraúna, State of Goiás, sentenced Jose Luiz de Freitas to prison. The commissioner in Paraúna asked the one in Xinguara to carry out the incarceration order, the latter did nothing and the suspect fled.

26. On October 10, 1994, agents of the Federal Police and the Belém Civilian Police started arriving in the district to conduct investigations.

27. On October 24, 1994, Judge João Batista do Nascimento, of Xinguara ordered the preventive detention of landowner Jerónimo Alves do Amorim, foremen Wanderley Borges de Mendonça and "Velho Luiz," and of the gunmen Ademir Rodríguez da Fonseca and Geraldo Mendes. But these arrest warrants were published in the press, which allowed the accused to flee. Nothing was done to take them into custody.

28. On December 5, 1994, the Office of the Public Prosecutor of Xinguara issued a complaint against Jerónimo Alves do Amorim, Wanderley Borges de Mendonça, Ademir Rodríguez da Fonseca and Geraldo Mendes for the death of José Martins dos Santos and his son Gilvam dos Santos.

29. In September 1995 Father Henri des Roziers was given police protection for the safety of his life and person.<sup>2</sup>

30. In November 1995 Wanderley Borges de Mendonçawas taken into preventive custody for the murders of João Martins dos Santos and his son, Gilvan dos Santos. Nevertheless, on April 1, 1996, he escaped together with 10 other convicts. The judicial data indicate that civilian police officer Lucival Haroldo Sampaio Cruz abetted the escape and that he was charged with taking a bribe of 25,000 reals and a new car for opening their cells so that they could escape. Wanderley Borges de Mendonça, left in the company of another dangerous criminal through the front door of the jail, and was driven away by Lucival Haroldo in a police car.

31. On May 25, 1996, the Xinguara judge ordered police officer Lucival Haroldo Sampaio Cruz placed in preventive custody, but the general commissioner of civilian police, Brivaldo Soares, did not execute this order. This officer was a member of the Belém civilian police force, and when the order for his incarceration was issued he fled.

32. On July 10, 1996, Dr. Elder Lisboa Ferreira da Costa, the judge of Xinguara, ordered suspension of the proceeding<sup>3</sup> to determine the responsibility of investigator Lucival Haroldo Sampaio Cruz in the flight of Wanderley Mendonça and more than 10 convicts, and decided to submit it to the President of the State Court of Justice with the request that it be entrusted to another judge. Since then the proceeding has been at a standstill.

**D. Complaint of petitioner against the state of defenselessness and impunity for violations of the right to life**

33. Petitioner states that between 1980 and the date of the complaint 190 rural workers were murdered in southern Pará and that there are firm signs that these crimes were organized by big landowners in the district.

34. Examples of this setting of unchecked violence in which the acts cited in the complaint took place are these other attempts on the right to life, which the complaint is not concerned with:

1) The murders of João Canuto de Oliveira,<sup>4</sup> President of the Rural Workers' Union of Río María (STR), on December 18, 1985, and of two of his sons, Jose and Paulo Canuto de Oliveira, on April 22, 1990.

2) The attempted murder of another son of João Canuto de Oliveira, Orlando Canuto de Oliveira, also on April 22, 1990.

3) The kidnapping and murder of Braz Antonio de Oliveira, ex-Director of the STR, and of Ronan Rafael Ventura, on April 3, 1990.

4) The murder of Expedito Ribeiro de Souza, President of the STR, on February 2, 1992.<sup>5</sup>

5) The attempted murder of Carlos Cabral, also President of the STR, on March 4, 1991.<sup>6</sup>

35. Petitioner alleges further that in most of the 190 cases no police investigation was made,

and that in the cases in which it was, few were completed, and only after the passage of much time. One example would be the case of João Canuto de Oliveira, in which the investigation was begun in December 1985 but completed in July 1993, almost eight years later, without the Office of the Public Prosecutor having brought charges down to the date of the present complaint.<sup>7</sup> Petitioner asserts that 9 years after the crime was committed the possibility of bringing the culprits to book is much reduced.

36. He alleges that only in two cases was sentence passed, in spite of which neither of the two convicted persons is serving time. None of the instigators has been sentenced despite the repeated complaints brought of their participation in the crimes and the evidence of their responsibility.

**E. Petitioner's complaint of conspiracy among landowners and the "death list" or "Xinguara list"**

37. According to petitioner, this list was drawn up by big landowners in southern Pará State to be used by an assassination team organized and hired by them to kill persons opposed to their interests. In support of this allegation he presents the legally sworn testimony of Cicero Coelho da Silva, former employee of the Nazaré estate (owned by one of the principal persons accused in the petition). Cicero stated under oath before the Xinguara judge as follows:

In April Jerónimo Alves de Amorim, the owner of this estate, sent for eight gunmen from the state of Goiás to work on the estate. (Folio 108 of file. Is annex 2-b of petitioner's presentation, a photostat of sworn testimony in presence of the Judicial Police of the Secretariat of State for Public Safety of the state of Pará on October 19, 1994). That in April Jerónimo Alves de Amorim sent for eight gunmen from the state of Goiás to work on the estate.

38. In the same testimony Cícero explained that there was a situation of internal violence on the farm, squatters (posseiros) having ambushed and killed farm workers; that for fear of becoming a victim he stopped working there; several of the hired gunmen tried to convince him to return, and on refusing he was shot by several of them, though he managed to survive.

39. Cícero states in his sworn testimony that, while he was still pursued by the gunmen, friends took him to a local public hospital, where the doctors refused him treatment, apparently under pressure of the gunmen and their employers, and merely gave him an antitetanus shot and a painkiller. That only when his friends took him to the hospital at Araguaina was he given proper treatment.

40. In this testimony Cicero said that he later had to stay on the Nazaré estate, where he overheard several conversations that referred to and ordered the murder of several persons, some of whom later turned up dead. That he also heard the manager urge the killing of "the little padre of Río María," by which Father Rezende was meant. He also overheard conversations, in which landowner Jerónimo mentioned that the police were already removing the squatters, but that he had not told (the police) to kill anyone.

41. The witness also states under oath that to his knowledge the landowners had received shipments of weapons and had gotten the Goiás Police to release assassins so that they could be hired to come to southern Pará and fight the squatters and rural workers confronting the landowners.

42. Petitioners allege that the General Director of the Civilian Police of the State of Goiás had written a letter on Police stamped paper to his colleague in Pará asking him to provide protection for landowner Jerónimo Alves de Amorim, one of the leading suspects in the crimes denounced, supposedly as himself a victim of persecution. This fact is said to indicate

implication of the Civilian Police in the crimes committed and failure to prosecute them in the region, and also to attest to how difficult it is to enforce the law, for Jerónimo Alves de Amorim ought to be under preventive arrest.

43. On November 3, 1995, petitioners sent the Commission documents expanding the evidence of this conspiracy and the "Xinguara list." The new documents tend to prove the existence of an assassination team hired and organized by big landowners in southern Pará State. It is well known that in that region gunmen are employed to eliminate persons who in one way or another defy the interests of the big landowners. The testimony to this effect is clear: according to former Nazaré estate employee Cícero Coelho da Silva, the previous April the owner of the estate, Jerónimo Alves de Amorim sent to the State of Goiás for eight gunmen to work on his estate. Cicero also says that eight days later Wanderley (the manager of the estate) came back from the State of Goiás with five gunmen (who brought arms with them, though on arrival at the estate they were issued others). Wanderley was replaced by another manager called "Velho Luiz" (Old Luiz), who brought a handful of men, all gunmen, to the estate. (verbatim quotes from annexes 1,3 of the file).

44. Valdemir Soares Ferreira is an auto mechanic who did work for Father Benedito Rodríguez Costa, one of the recipients of threats. In sworn testimony he affirms that 35 gunmen live on the Nazaré estate, and that it is easy to tell who they are in the town of Xinguara because they strongly browbeat the townspeople. Also according to his testimony, a gunman from the Quagliato estate, lent by its owner to the Nazaré estate, admitted publicly to being a gunman on an occasion when he was in the workshop in which the witness was employed. (verbatim quotes from Annex 5 of the file).

45. The documents are alleged to witness to the existence of an informal list of persons who are marked for death. Valdemir Soares Ferreira was threatened with death by gunmen as an example of what could happen to the persons on the list, whom they had already killed, were killing, and would go on killing. Ana Beatriz Pereira de Souza, a resident of Xinguara whose husband was shot down by gunmen of the region, mentions in her deposition a list of 100 persons to be killed. (Annex 4) The judge of Xinguara refers to a real list of persons marked for death, which strikes at public safety. (Annex 1) This list includes small businessmen, councilmen and priests.

46. According to the complaint, the most prominent name on the list is Father Ricardo Rezende, who has been threatened with death, and the person referred to by gunman Adão, of the Nazaré estate, according to Cícero Coelho da Silva's testimony, when he asked his chief when they were going to do the "padreco," the vulgar term for priests in general, referring in the present case to Father Ricardo of Río María. Every indication is that the list is being held on the Nazaré estate. All attempts to obtain it have been fruitless, according to the depositions, owing to strong complicity between the police and the gunmen. Not even the police of Belém have been able to gain access to it, but they spent very little time at the Nazaré estate. Hence it is impossible to know just which names are on the list.

47. According to the same complaint, on the basis of the evidence obtained and in the understanding that the signs of guilt are strong, vehement and connected, in October 1994 the Xinguara judge ordered the preventive arrest of Ademir Rodríguez da Fonseca, Geraldo Mendes, Wanderlei Borges de Mendonça, Adão de Tal, Velho Luiz, and Jerónimo Alves de Amorim, as shown in annexes 1 and 2 of the file. At the time of presentation of the complaint by petitioner in November 1995 none of these warrants for arrest had been carried out.

#### **F. Complaint by petitioner of negligence and connivance of state agents in the crimes**

48. In addition, the complaint alleges that many warrants for the preventive arrest of suspects

are not carried out, such as, for example, the judicial warrant issued against the landowners Jose Luiz de Freitas and Jerónimo Alves de Amorim, the foremen Wanderley Borges de Mendonça and "Velho Luiz," the gunmen Ademir Rodríguez da Fonseca and Geraldo Mendes. Regarding the last 5 suspects, petitioner advises that the warrants for their preventive arrest were reported prematurely to the local press, which published them and so enabled them to flee.

49. It states that, when warrants are carried out, the suspects are easily able to escape from jail. This is what is said to have happened in the cases of police officer Edson Matos dos Santos, charged with a crime against the Canuto brothers, who fled on January 11, 1992; of Marivaldo Ribeiro da Silva, a witness to that same crime, who escaped on August 26, 1991, from the Curianópolis police station. Jose Ubiratan Matos Ubirajara, one of the perpetrators of the crime, for which he was sentenced to 50 years imprisonment on April 28, 1994, managed to escape less than six months later, on October 24 of the same year.

50. Lastly, the complaint also charges complicity on the part of the police authorities, who are bribed by the big landowners to prevent the crimes from being punished and even to help commit them, and also that the police should be fully informed about the "Xinguara list" and have full access to the names on it.

51. On November 3, 1995, petitioner supplied additional evidence on this point. The annexed depositions bring out the irregularity of both the civilian and the military police either by omission or by irregular action. Witness Ana Beatriz Pereira de Souza, in describing the attempted murder of her husband, describes the behavior of the police in the following terms: "I complained that Juscelino had been threatened by an armed gunman. Juscelino also complained of the threat. The police didn't do anything!"

52. Simple, essential investigative steps are often ignored: according to the deposition of Cicero Coelho da Silva on the murder of Volnei (Wanderley's son, murdered by gunman Mato Grosso on the estate), neither deponent, nor the Bahian (an estate employee present when this crime was committed), nor Wanderley (manager of the estate, the victim's father and witness to the crime) was ever summoned to testify on the matter. The three soldiers did not stay long on the estate, just long enough to take Volnei's wallet with the documents, but took no photograph, did not mark off the spot or invited any person to make a statement.

53. The complaint also cites indications of connivance and even of collaboration by the authorities in crime: according to the deposition of mechanic Waldemir Soares Ferreira, the gunmen wear military police uniforms. Deponent himself, on passing once in front of the entrance to the Nazaré estate, saw several armed men among the police officers who were stopping everybody who passed; gunmen and military police travel together. Cicero Coelho da Silva also reports that it is a practice of the bosses on the Nazaré estate to secure the release of convicts in the State of Goiás and bring them to serve as gunmen on the estate.

54. Petitioner maintains that the prestige of landowner Jerónimo Alves de Amorim is evidenced by a letter written on stamped paper of the Judicial Police by the General Director of the Civilian Police of the State of Goiás and addressed to his counterpart in the state of Pará, asking for protection for Amorim, who is described in the letter as a victim of persecution. Moreover, when a warrant was issued for Amorim's preventive arrest, this routine operation became very difficult for the police authorities, which were required to carry it out. So it is that the exercise of an official duty is hindered, a hindrance raised by the State itself in the form of an official document, which denotes audacity and certainty of impunity.

#### **G. Complaint by petitioner of the continuousness of the threatening situation**

55. On November 3, 1995, petitioner supplied additional evidence that, one year after the request for preventive measures, the situation of the rural workers, their union leaders and priests remains serious owing to the ongoing climate of threats in the region. Ricardo Rezende, parish priest of Río María, whose name is also on the death list, made a deposition in the presence of human rights agencies on the tension in the area. Father Rezende stated that on August 30 of this year, when two buses carrying laborers, union men and relatives of the victims were preparing to set off for a trip to Belém to attend the trial of the murderers of Expedito Ribeiro de Souza, Lampaio (a known local gunman) was present at the place of departure and the passengers felt endangered and threatened.

56. Father Rezende described in detail how the leaders of the Río María and Xinguara rural movement are being threatened. On June 11, 1995, he had just gone out of the parish room in which there was a party promoted by the church, when Lampaio appeared accompanied by another man. The two were armed and tried to address some of the persons who worked with Father Rezende. A military police officer who was off duty tried to stop them, and went to the police station for reinforcements, but he found no officer available.

57. On April 10, 1996, petitioner sent in new information on the case, which the Commission forwarded to the Government, concerning implementation of the requested preventive measures, in particular that since the escape of Wanderley Borges de Mendonça, Mrs. María Conceição Carneiro (widow of one of the victims) was being followed by suspicious individuals. Mrs. María had testified to the authorities, and in the presence of the accused Wanderlei, that she had witnessed the murders of her husband (João Martins) and her son (Gilvan dos Santos), which she believed had been ordered killed by Wanderley.

58. On April 10, 1996, petitioner advised further that Wanderley Borges de Mendonça had at last been placed under preventive arrest in November 1995 for the murders of João Martins dos Santos and his son, Gilvan dos Santos. But also that he had escaped from jail on April 1, 1996 together with two other convicts. He reported that the civilian police had abetted these escapes, for they had all fled through the front door of the Xinguara police station jail at a time when the police officer on guard at the jail happened to be away from his post.

59. Petitioner rebuts the Government's argument concerning exhaustion of the domestic remedies, quoting Article 46(2)(b) of the American Convention, and requests that the proceeding be carried out. He argues that of the 190 murders of rural workers committed since May 1980, not one instigator has been sentenced and, as far as the perpetrators are concerned, only two have been finally sentenced, and yet they remain at liberty.

60. He argues further that other culprits who have been tried or arrested escape from prison allegedly with police cooperation. He notes that the culprits remain unpunished and the persons named on the death list remain defenseless. He further charges the murder of Mr. Matías Cavalcante, who is also held to be on the list.

61. On February 12, 1997, the Commission received from petitioner information on the suspension of the criminal proceeding to determine the culpability of police officer Lucival Haroldo Sampaio Cruz in the escape of Wanderley Borges de Mendonça and another 10 prisoners in the Xinguara police station jail between March 30 and April 1, 1996.

### **Request of petitioner**

62. Petitioner alleges that all these distortions obstruct or deny justice, render domestic remedies ineffective, absolutely block application of the law, and perpetuate impunity. He therefore asks the Commission to consider the resources of domestic remedy as exhausted, and that the exception from this requirement provided in Article 46(2)(b)(c) of the American

Convention are applied.

63. Petitioner alleges that, in view of all these serious facts, the Brazilian State has violated Articles 4 (right to life), 5 (right to humane treatment), 8 (right to fair trial), and 25 (right to judicial protection), in conjunction with Article 1(1) (obligation to respect rights), of the American Convention, and on this basis requests that a case be opened against it.

## **II. POSITION OF THE STATE**

64. In its reply the Government advised that in September 1994 the Secretariat for Public Safety of the state of Pará had decided to send an investigative mission of Pará Military Police officers to the Xinguara and Río María district, and that Father Ricardo Rezende has been under police protection since that time.

65. The State alleges that the federal authorities are investigating the threats against Father Rezende and that the Office of the Attorney General of the Republic is conducting a proceeding in Río María on the attempt on his life. The State also maintains that the Office of the State Public Prosecutor had filed charges against landowner Jerónimo Alves de Amorim and Wanderley Borges de Mendonça, Ademir Rodríguez da Fonseca and Geraldo Mendes for the murder of Jose Martins dos Santos and his son Gilvan dos Santos.

66. According to the State, these measures show that the domestic remedies had not been exhausted.

67. The Government did not say whether the Office of the Public Prosecutor or the police authorities had taken any action in regard to the murders of Newton Coutinho Mendes, Moacir Rosa de Andrade, Jose Martins dos Santos and his son Gilvan Martins dos Santos, or to the attempted murder of Juscelino Rosa e Silva and his wife Ana Beatriz. Nor did it say anything about the kidnapping and beating of Valdemir Soares Pereira, or about the threats made against Fathers Ricardo Rezende and Benedito Rodríguez Costa, and Brother Henri Burin des Roziers.

68. On September 8, 1995, the State added that contacts had been established toward the opening of a direct channel of communication between the Ministry of Justice and the Pará State authorities for the control of rural violence in southern Pará.

69. In a note of April 4, 1996, the Government confirmed that warrants had been issued for the preventive arrest of Jerónimo Alves de Amorim (owner of the Nazaré estate) and his foremen Wanderley Borges de Mendonça and Velho Luiz, but not of Adão de Tal, one of the gunmen. It further confirms that landowner Jerónimo Alves de Amorim remains at large and that he was also responsible for the murder of labor unionist Expedito Ribeiro de Souza.<sup>8</sup> It advises that Francisco Ferreira and Jose Serafim have been sentenced to 21 and 25 years in prison, respectively, for this latter crime.

## **III. PROCESSING IN THE COMMISSION**

70. The complaint was presented on November 18, 1994, and the Commission began processing it on November 21, 1994, by sending a copy to the Government and giving it 90 days in which to reply.

71. On February 17, 1995, upon a reasoned request of petitioners, the Commission required the Brazilian State to take precautionary measures in favor of Father Ricardo Rezende, who had received fresh death threats (see IV Processing of Precautionary Measures, below).

72. After several requests for extension of the deadline,<sup>9</sup> which the Commission granted, the Government replied on the facts stated in the petition on May 22, 1995.

73. On May 22, 1995, the Commission sent a copy of the State's reply to petitioner, whose rejoinder was received on August 15, 1995. This rejoinder was in turn sent to the State for comments on October 5, 1995.

74. On September 8, 1995, a hearing was held in the 90th session, and the Commission made itself available to the parties for a friendly settlement, but the parties did not reach an agreement.

75. On October 23, 1995, the Commission again asked the State to advise within 45 days whether it wished to attempt a friendly settlement in light of the Commission's offer in its hearing on September 8 to serve as mediator for the purpose. The Government did not reply either within the deadline or thereafter, so that this stage was foreclosed without the parties reaching any settlement.

76. During its visit to Brazil in November-December 1995 the Commission's delegation, accompanied by official representatives of the Ministry of Justice and Ministry of Foreign Affairs of the Federal Republic, heard and recorded, in their presence, testimony from municipal authorities, judges and promoters of justice in the Xinguara region, from local leaders and defenders of human rights, and from inhabitants of Río María and Xinguara on these situations. The names of the latter persons are being withheld to avert reprisals against them. Also present at these interviews was the Director of the Human Rights Department of the Ministry of Justice, Dr. Aparecida Pontes, and Dr. Ana María Bierrenbach, Councillor in the Ministry of Foreign Affairs.<sup>10</sup>

77. The testimony and reports received agreed on the existence of organized groups that act against the peasant occupying the land and against rural workers and their union leaders. They also agree on the connivance of police officers with these irregular armed groups organized by the landowners. They agree further in asserting that this situation produces widespread terror in the population, which also contributes to judicial delay and inefficiency owing to the slowness and formalism of proceedings.

78. The delegation of the Inter-American Commission also took direct testimony from two witnesses to the death of Mr. Jose Martins dos Santos and his son Gilvan dos Santos, who corroborated the testimony of the witnesses in the aforementioned proceedings on those deaths.

79. On April 17, 1996, the Commission reiterated to the Government of Brazil the request that it presents its final observations on the case within 30 days.

80. On October 7, 1996, in its 95th regular session, the Commission held a hearing in which it again made itself available to the parties to arrive at a friendly settlement. This stage was completed without the parties reaching any agreement.

81. The Commission adopted Report N° 79/98, pertaining to this case, pursuant to Article 50 of the American Convention, on September 29, 1998, and forwarded it to the Brazilian State with the pertinent recommendations on October 30, 1998. In those recommendations the State was requested to inform the Commission within three months of measures adopted in compliance with them, so that the Commission would have the necessary information to decide whether to publish the report. The deadline has passed and the Commission has received no reply from the State on the matter.

#### IV. PROCESSING OF PRECAUTIONARY MEASURES

82. In their complaint presented on November 18, 1994, petitioners asked the Commission to request that the Government of Brazil take precautionary measures in view of the danger to which the persons named on the Xinguara list were exposed.

83. On February 15, 1995, petitioner advised further that Father Ricardo Rezende, who had quitted the district because of the threats being made against him, would return to Río María, and once again requested that precautionary measures be taken.

84. On February 17, 1995, the Commission asked the Brazilian State to take precautionary measures to protect the life and personal integrity of Father Ricardo Rezende. The Commission also asked to be informed of the measures taken.

85. In its reply of May 22, 1995, the Government advised that in September 1994 the Secretariat for Public Safety of the State of Pará had decided to send an investigatory mission of Pará Military Police officers to the region of Xinguara and Río María. That, in view of the attempt made on the life of Father Ricardo Rezende in Río María, the Officer of the Attorney General of the Republic had filed a complaint that gave rise to a judicial proceeding. It advised that since then Father Ricardo Rezende had been under the protection of the State's Military Police, and also of the Federal Police and that the federal authorities were following closely the matter of the threats against him.

86. On August 15, 1995, petitioner advised that Matías de Souza Cavalcante and one of the persons on the Xinguara list had been murdered on June 20, 1995. He argued that this death confirmed once again the danger to the lives of the persons on the list, and therefore reiterated the request for precautionary measures to protect all the persons on it and not only Father Rezende.

87. On October 6, 1995, petitioner advised further that "Lampião," a gunman of the Nazaré estate, owned by Jerónimo Alves de Amorim, had gone to Río María on August 30 of that year, on which day the persons charged with the death of Expedito Ribeira da Silva would be tried, for the purpose of intimidating the local inhabitants. Petitioner reiterated yet again the need to request precautionary measures to protect all threatened persons.

88. On October 24, 1995, the Government advised that the Governor of the State of Pará had decided that the military police and civilian police would protect the life and personal integrity of Father Ricardo Rezende, the former in Río María and the latter in Xinguara.

89. On November 3, 1995, the Commission asked petitioner to supply the names of all the persons on the Xinguara list so that it could request extension of the precautionary measures to all threatened persons and not to Father Ricardo Rezende alone.

90. On November 3, 1995, petitioner provided additional information and reaffirmed the existence of an assassination group hired and organized by big landowners in southern Pará, and that Jerónimo Alves de Amorim had hired more gunmen, who would be arriving from the State of Goiás to operate on his estate in southern Pará. Petitioner appended documents to prove the veracity of the alleged facts and the danger to the threatened persons. Regarding the Xinguara list, he said it was on the Nazaré estate and that the local police knew who were on it. However, he had not gained access to the names of most of the threatened persons because those police officers were in cahoots with the criminals.

91. Petitioner reasserted that the persons for whose preventive arrest the Xinguara judge had issued warrants were free as birds and that this was because of irregularities in the actions of

the civilian and military police. Lastly, he once more requested that the Commission ask the State to take precautionary measures to protect the persons on the Xinguara lists.

92. On March 20, 1996, the Commission asked the State to take precautionary measures, and added Brother Henri des Roziers to the number of the persons in danger. He requested more specifically a) that the officers assigned to protect the persons on the Xinguara death list, including Father Ricardo Rezende, be persons trained in the use of weapons and that they be properly armed to be able to protect those persons effectively; b) that the persons for whose preventive arrest warrants had been issued be taken into custody; c) that the culprits be tried and punished, and d) that he be informed on the action taken in these matters.

93. On April 8, 1996, the State advised, on the subject of the requested precautionary measures, that Brother Henri des Roziers was receiving police protection. It advised further that landowner Jerónimo Alves de Amorim continued at large, and was also the reported instigator of the murder of labor unionist Expedito Ribeiro de Souza. In this regard it said that Francisco Ferreira and José Serafim had been sentenced to prison for 21 and 25 years, respectively, as the perpetrators of this crime. However, the State did not advise if these two persons were actually serving their sentences or still at liberty, or that the proceeding against Jerónimo Alves de Amorim had taken place.

94. On April 23 the Commission repeated to the Brazilian State its request for the preventive arrest of the persons who had been sentenced to preventive imprisonment, and specified the names of Jerónimo Alves de Amorim, "Velho Luiz," "Adão de Tal," Ademir Rodríguez da Fonseca, Geraldo Mendes and Wanderley Borges de Mendonça; that it try and punish those responsible for the crimes, and that it take measures to protect the lives and personal integrity of Mrs. Carneiro and her family. And further, if it were proved that the civilian police had had a hand in the escape of Wanderley Borges de Mendonça that the protection of Mrs. Carneiro is entrusted to police other than the civilian.

95. On August 1, 1996, the Commission advised the State of its receipt of a letter asserting the participation of civilian police officer Lucival Haroldo in the escapes of Wanderley Borges de Mendonça and other prisoners and hence that the Brazilian Government should act urgently to arrest, try and punish that officer and to advise what measures it had taken in response to the request for urgent measures sent on April 23, 1996. The Commission received no reply to this request.

## **V. DECISION ON ADMISSIBILITY**

96. In its 98th Regular Session the Commission decided that this case was admissible because the petition met the formal requirements for that status. Regarding exhaustion of the domestic remedies, which the Government had argued had not yet occurred, the Commission considered that the criminal proceedings had been unduly delayed, which made applicable the exception provided in Article 46(2)(c) of the Convention, and that there were links between public authorities of the State of Pará and those responsible for the crimes here considered, which links foreclosed the possibility of real access to effective domestic remedies, thereby also making applicable the exception provided in Article 46(2)(b).[11](#)

## **VI. THE MERITS**

### Facts not in dispute

97. Neither the facts charged nor the documents in evidence of them are contested by the State and, in the judgment of the Commission, which views them as supported by the evidence received:

### Crimes committed

- a. That the following persons have been murdered: Newton Coutinho Mendes, Moacir Rosa de Andrade, Jose Martins dos Santos, Gilvan Martins dos Santos, and Matías de Souza Cavalcante.
- b. That the following persons have received death threats or have been attacked: Juscelino Rosa e Silva and his wife Ana Beatriz, Father Ricardo Rezende, Father Benedito Rodríguez Costa, and Brother Henri Burin des Roziers.

### Judicial and police measures

- c. That landowner Jerónimo Alves de Amorim and his foremen Wanderley Borges de Mendonça and the man known as "Velho Luiz" (Old Luiz), and other persons, have been tried for instigating or committing the murders of dos Santos father and son.
- d. That more than ten years later no final sentences have been handed down in those cases, neither in those with which the complaint is concerned nor in the 190 similar cases, except that of the murder of Expedito Ribeiro de Souza, President of the Union of Rural Workers (with which this complaint is not concerned and in which the two perpetrators, Francisco Pereira and Jose Serafim, have been sentenced).
- e. That in the other cases subject of this complaint the investigations have not been completed and therefore no proceedings have been opened, and that four years have gone by since the events referred to in the complaint.
- f. That defendants Jerónimo Alves de Amorim, Wanderley de Mendonça,<sup>12</sup> "Velho Luiz," Adhemar Rodríguez da Fonseca, Geraldo Mendes and Jose Luiz de Freitas are still fugitives from justice, and four years have elapsed since the warrant for their arrest of October 24, 1994.
- g. That the warrant for the arrest of the first four named persons was leaked to the press, thus enabling them to decamp.
- h. That in the case of Freitas the Xinguara Commissioner did not comply with the request of the Paraúna Commissioner to carry out the arrest warrant issued by the Paraúna judge on September 21, 1994, and the criminal escaped.
- i. That Wanderley Borges de Mendonça was placed in preventive detention for the death of João Martins dos Santos and his son, but escaped together with ten other prisoners four months later in April 1995, leaving through the front door of the jail, whence he was taken by police car to an unknown destination.
- j. That police officer Lucildo Haroldo Sampaio Cruz was tried as an accomplice in this escape and for bribery, and a warrant was issued for his arrest. That this warrant was not carried out even though he was transferred to the city of Belém where he continued to serve as a police officer for nine months and, when it was desired to carry out his arrest, the officer found out and fled. That the trial of this police officer has been at a standstill in the Presidency of the Tribunal of Justice of the State of Pará since July 1996.

### Regarding the evidence

k. That there is testimony that the local police gave the gunmen photographs of the persons named on the death list.

l. That there is evidence and testimony of different persons (including confessions) as to the identity of the perpetrators of the murders and the existence of the "death list."

Regarding the setting of violence

m. That threats and attempts at intimidation have been made continually and frequently against the witnesses and defenders of the victims of the acts charged.

n. That in the years in which these events have been happening there has prevailed a situation of confrontation between some landowners in the region and occupiers of land. That this confrontation has led to judicial and police actions to eject them.

o. That there have been 190 murders of peasants in the Xinguara district since 1980.

p. That between 1985 and 1992 three presidents of the Union of Rural Workers and two members of the immediate family of one of them were murdered, and an attempt was made to murder a fourth president of that union.

Regarding the complaints and intervention of the public authorities

q. That formal complaints have been made continually against these acts and the general situation to the judicial, executive and legislative authorities at the local, state and federal level. Those members of the victims' families, defenders of human rights, religious committees, and broad segments of the population lodged these complaints.

r. That different judicial and legislative investigative committees have gone to the district and taken cognizance of the situation.

s. That to date no one has gone to prison for the acts charged, and that among all the facts cited as part of the setting of impunity, there has been only one final prison sentence of the perpetrators of a murder.

**VII. CONCLUSIONS REGARDING THE FACTS**

98. The Commission considers that evidence has been presented (see, among others, paragraphs 16, 17, 18, 19, 21, 24, 33, 34, 37, 39, 40, 43, 45, 55, 56 and 58) for the existence in the region of Xinguará and Río María, in southern Pará State, of a campaign of violent and illegal action to silence or murder those who support the occupiers of lands and those who assert the legal rights of the rural workers.

99. The Commission also considers that this campaign has been abetted directly by police officers, who by act and omission fail to take the action required to impose order and the rule of law (see, among others, paragraphs 22, 23, 30, 37, 40, 41, 42, 44, 51, 53, 54, 56 and 58). The preceding analyses bring out consistent evidence of unwarranted delay in the police investigations despite the enormity of the charges and the evidence supplied by complainants and representatives of the victims (see, among others, paragraphs 20, 46, 51 and 52); and of connivance of the police by action or inaction in nonexecution of warrants for arrest (see,

among others, paragraphs 25, 27, 31, 47, 48 and 93) and in unpunished abetting of the escapes from prison of the instigators and perpetrators of that campaign of unpunished violence (see, among others, paragraphs 30, 49 and 58).

100. Moreover, while recognizing the difficulty of the task and situation of the local justice promoters and judges, of which it saw convincing proof on its visit to the region, the Commission considers that judicial inaction and delay joined to a formalistic and labyrinthine trial system have contributed to impunity and personal insecurity. In addition to scant police collaboration in the investigation of cases, the Commission finds dilatoriness on the part of the office of the State public prosecutor in opening and pursuing proceedings and ineffectiveness on the part of judges in securing final sentences and taking the measures needed so that the culprits may be arrested and made to serve their sentences (see, among others, paragraphs 32, 35, 36, 47, 48, 52, 59 and 61).

### **VIII. CONSIDERATIONS ON THE LAW**

#### Right to life

101. In this case it is not alleged that police officers or other agents of the State committed the murders and assaults. What is alleged is that the impunity that prevails in the Xinguara region, and in southern Pará State in general, in face of the existence of groups organized for violent action, including the murder, against those who are regarded as contrary to their interests, implicates the responsibility of the State through either the inaction, connivance or active complicity of its agents in that impunity. The right to life must be examined in its relationship to the commitment of the State, established in Article 1(1), to respect and guarantee the full exercise of every right recognized in the Convention.

102. In its earliest cases the Inter-American Court established that:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention.<sup>13</sup>

103. The evidence in the case indicates that the authorities and police officers of the State of Pará have been actively involved in at least the illegal freeing of persons on trial and for whose arrest warrants had been issued for the crimes against life cited in the complaint. It also emerges from the evidence that the inaction of the police in making the arrests ordered by the judges enabled the murderers to continue their activities in an atmosphere of impunity, which in turn kept the population, and the possible victims in particular, in a state of constant personal peril. Another contributing factor was the delays in the conduct of proceedings, both in the police investigations (many of which remain unconcluded) and in the action of the Office of the Public Prosecutor to open proceedings, and that of the judges to pursue the proceedings down to the passing of final sentences.

104. It is established doctrine in the inter-American system that the States parties to the Convention are obligated to take the action required for the exercise of the rights therein established and so that they will be respected not only by the agents of the State but by private agents. On this point the Court has said:

The second obligation of the States Parties is to "ensure" the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies 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 and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.<sup>14</sup>

105. As emerges from the facts examined above, none of these commitments under the Convention has been fulfilled in regard to the violations of the right to life involved in this case.

106. The Inter-American Court has defined that the State has the obligation to ensure the exercise of the recognized rights by structuring the apparatus of their governments so that those rights will be respected by government agents and by private actors.

The obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation –it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights.<sup>15</sup>

Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.<sup>16</sup>

107. The Commission holds that the Pará State authorities did not fulfill their obligation to enforce the right to life in this case, or the federal authorities their obligation to take suitable measures in accordance with their Constitution and laws to the end that the competent state authorities could adopt appropriate provisions for the fulfillment of the Convention. (Article 28 Federal Clause)

108. In spite of having full knowledge of the situation and even though both the state and federal executive and legislative branches sent out investigative commissions to evaluate the seriousness and illegality of the situation, no measures have been taken under the Constitution and laws to effectively interrupt the campaign of violence or to reform the structures and regulations of the police and judiciary, or to compensate the victims of the acts committed. Here violation of the right to life is intimately bound up with the right to a fair trial and to judicial protection recognized by Articles. 8 and 25 of the Convention.

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

109. Article 8, on the right to a fair trial, lays down the guidelines of due process or the right to defense in court, which consists in the right of every person to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial judge or tribunal previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal or any other nature.

110. To determine whether this Article 8 has been violated, using the methods of the Inter-American Court, it is first necessary to determine whether "in proceedings to determine the responsibilities of the possible perpetrators of murder and associated crimes charged, the procedural guarantees of the complainant have been respected." In Brazilian law the criminal acts referred to in the petition are subject to public action that must be brought by the Office of the Public Prosecutor by means of an indictment, for which indications of guilt and of the fact of the crime are sufficient. In turn, the public indictment may be unspecific, that is, must be brought by the prosecutor on the basis of the bare "notice of commission of a crime," but

based on the police investigation (as in homicides), or specific, which depends on the representation of the defendant or his legal representative for the investigation to be opened, and also to clear the way for action by the Public Prosecutor (that is, that the complaint alone compels).[17](#)

111. In the case considered the victims or their representatives proffered their complaints, pushed the proceeding forward when they had to, and indeed had to do so continually in face of the frequent delays and inaction both of the justice promoters of the Office of the Public Prosecutor and of the judges. Moreover, some family members, witnesses and legal defenders were subjected to persecution and personal threats for their efforts to secure the due judicial guarantees. On several occasions the Commission itself had to ask the State for precautionary measures, and the State took them, particularly to protect the lawyers and representatives of the victims and their families, Father R. Rezende, and Brother Burin des Roziers, but they were insufficient to avert the death of Mr. Matías Cavalcante.

112. The Commission holds that in generally violent situations the response of the State cannot be reduced to the important but insufficient task of judicially punishing the individual criminals for their crimes. In such situations the State must act in advance on its own initiative to guarantee rights and safety and to prevent, avert and punish acts committed collectively or in association which deprive the population of the full exercise of its rights.

113. Of particular importance in these cases is the legitimacy of the acts of the agents of government, so that the State must take administrative and disciplinary as well as judicial measures to ensure that its police officers and investigative and judicial agents act legally and effectively to eradicate private crime and violence and to provide the guarantees of security that the population needs.

114. The State has the obligation to keep order and maintain the conditions for ordinary life with the limits of the law. It cannot abdicate its sovereign obligation to provide guarantees, and the fact that a location is distant from the major urban centers is no excuse for shirking that responsibility.

115. The records of the case contain abundant evidence both of judicial delays and of instances in which the police and judicial authorities--in the language of the Inter-American Court--"blocked or did not collaborate properly" with investigations and with arrest warrants issued by judges (see, among others, paragraphs on judicial delay 32, 35, 36, 59, and 61, on police inaction 22, 23, 30, 37, 40, 41, 42, 44, 53, 54 and 55). In consequence, those in charge of the investigative and trial phases had to face problems generated by the authorities in gathering the elements of proof needed to resolve the case, which constitutes a violation of Article 8(1) of the Convention.[18](#)

116. The Commission holds further that the Convention not only requires the State to take measures against proved violations of human rights but also to react appropriately to complaints of violations without waiting for them to be formally declared to be such. In this the Commission follows the European doctrine: while Article 13 of the European Convention (like Article 25 of the American Convention) gives the individual the right to simple and prompt recourse against acts that violate his fundamental rights, and provides that "it is not necessary for the violation to have taken place, but that when an individual sees himself as prejudiced by a measure alleged to violate the Convention, he must be able to appeal to the State for the hearing of his complaint."[19](#) (Translation of the Commission).

117. Regarding the federal clause (Art. 28 of the American Convention) the Commission recalls the international responsibility that lies with the Federal Republic of Brazil for the exercise of the human rights recognized in the American Convention, which responsibility extends to the acts and omissions of agents of the state of Pará within its jurisdiction, or that

of any other state of the Union. In this regard the Inter-American Court of Human Rights has held:

Article 28 of the Convention makes provision for said federal state becoming a party to the Convention. However, from the time of its approval and ratification of the Convention, Argentina has conducted itself as if the federal State had jurisdiction over human rights matters. Hence, it can hardly argue the contrary now, as this would imply a breach of the principle of *estoppel*. As for the "difficulties" invoked by the State at the January 20, 1998, hearing, the Court should note that the case law, which has stood unchanged for more than a century, holds that the State cannot plead its federal structure to avoid complying with an international obligation (Cfr. arbitral award of July 26, VII., 1875, in the Montijo Case, LA PRADELLE-POLITIS, *Recueil des arbitrages internationaux*, Paris, 1954, vol. III, p. 675; decision of the France-Mexico Mixed Claims Commission of June 7, 1929, in the Hyacinthe Pellat case, UN., *Report of International Arbitral Awards*, vol. V, p. 536).[20](#)

## **IX. PROCEEDINGS SUBSEQUENT TO REPORT N° 79/98**

119. On September 29<sup>th</sup>, 1998 the IACHR, at its 100<sup>th</sup> Period of meetings, approved Report N° 79/98 about this case, on the basis of Article 50 of the Convention, and sent it to the State with its conclusions and recommendations on October 30<sup>th</sup>, 1998. In those recommendations it asked the State to report within three months, about measures taken on that regard, for the Commission to have all necessary information to decide on them, as stated by Article 51 of the Convention. That period having passed, the Commission has not received any answer from the Brazilian State, on this case.

## **X. FINAL CONCLUSIONS**

119. In consequence, the Commission reiterates its conclusions that the Brazilian State is liable in the terms of Article. 28 of the American Convention for the violations of the rights set down in the articles of that Convention that are cited as follows, all in conjunction with Article 1(1) thereof.

### **A. Right to life (Article 4)**

Newton Coutinho Mendes, Moacir Rosa de Andrade, Jose Martins dos Santos, Gilvan Martins dos Santos, Matías Cavalcante, Juscelino Rosa e Silva, and Ana Beatriz Silva.

### **B. Right to humane treatment [Article 5(2)]**

Ricardo Rezende, Henri des Roziers, Benedito Rodríguez Costa, and Valdemir Soares Pereira.

### **C. Rights to a fair trial and to judicial protection (Articles 8 and 25)**

Those named at A and B, preceding, and their families and successors.

## **XI. RECOMMENDATIONS**

120. The Inter-American Commission on Human Rights recommends to the Federal Republic of Brazil:

1. That it take measures to have the competent authorities set in motion the required mechanisms and guarantees for the conduct of an independent, complete, serious and impartial investigation of the events taking place in the southern region of the State of Pará to the prejudice of the victims named in this report in order to identify and punish all persons

identified as responsible for the violations of human rights referred to in the conclusions stated in section VIII, above.

2. That in compliance with its obligations under Articles. 2, 8 and 25 of the American Convention, it take, in accordance with its constitutional processes, the measures required to make fully effective hereafter the rights to life, to humane treatment, and to a fair trial and judicial protection for all the inhabitants of the southern region of the State of Pará, and in particular for the rural workers, their representatives and the defenders of human rights.

3. That it takes the most appropriate measures to make reparation to the victims or their families for the injuries suffered by the persons identified in this report as a result of the violations of the American Convention described above.

## **XII. PUBLICATION**

121. The Commission transmitted the report adopted pursuant to Article 51 of the American Convention to the State and to the petitioner on February 24, 1999, 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.

122. 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 conclusions and recommendations of paragraphs 119 and 120, 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.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 13 day of the month of April in the year 1999. (Signed): Robert K. Goldman, Chairman; Claudio Grossman, Second Vice Chairman; Commissioners Alvaro Tirado Mejía, Jean Joseph Exume and Henry Forde.

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

<sup>1</sup> This murder was reported to the Commission on August 16, 1995, as additional information on the same situation.

<sup>2</sup> The Pará State Government had offered him this protection on several previous occasions after the threats that were made against him, but he had always refused it.

<sup>3</sup> Criminal proceeding No. 100/96.

<sup>4</sup> The Commission in its 98th session decided this case, and the report on it was published in its Annual Report for 1997. (OEA/Ser.L/V/II.98 p. 384).

<sup>5</sup> The murderers, Francisco Ferreira and Jose Serafim, were sentenced in 1995 to 21 and 25 years imprisonment, respectively.

<sup>6</sup> The perpetrator, Paulo César Pereira, confessed and was sentenced to two years imprisonment, which sentence was suspended and he was put on probation. Petitioner complains that, though there were irregularities in the proceeding, the

Public Prosecutor did not appeal.

<sup>7</sup> See CIDH Report 24/98.

<sup>8</sup> With which the present case is not concerned.

<sup>9</sup> The requests were made on February 21, March 21 and April 27, 1995.

<sup>10</sup> See Report on the Human Rights Situation in Brazil, Chapter VII A and B, Inter-American Commission on Human Rights. OEA/Ser.L/V/II.97 Doc. 29 REV. 1. Washington, D.C., 1997.

<sup>11</sup> Report on Admissibility 33/97 CIDH. Annual Report 1997. OEA/Ser.L/V/II.98 Doc. 6 p. 57, Washington, D.C., 1998.

<sup>12</sup> Wanderley was placed in preventive detention in November 1995 and escaped from jail by bribing the guards, as is explained further on. Wanderley had also been sentenced in 1994 to 18 years in prison for the murder of a judge in Mara Rosa, state of Goiás.

<sup>13</sup> Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 164.

<sup>14</sup> IACourTHR, *idem*, par. 166.

<sup>15</sup> IACourTHR, *idem*, par. 167.

<sup>16</sup> IACourTHR, *idem*, par. 172.

<sup>17</sup> Nogueira, Paulo Lucio, *Curso Completo de Processo Penal*, p. 58. Ed. Saraiva. São Paulo. 1993.

<sup>18</sup> On this point see Inter-American Court of Human Rights, Case of Genie Lacayo, Sentence of January 29, 1997, par. 76.

<sup>19</sup> In the Silver case and concerning Art. 13 of the European Convention, the European Commission said: "...Art. 13 requires the High Contracting Parties to provide domestic remedies whenever an individual complains of a violation of a right or liberty guaranteed by the Convention, so that at least the substance of the complaint may be determined, and reparation made if it is found to be true." (Translation of the Commission). Report of October 11, 1980, par. 442. Quoted in Van Dijk, P., *Theory and Practice of the European Convention on Human Rights*, Antwerp, 1984, p. 381.

<sup>20</sup> Inter-American Court of Human Rights, Case of Garrido and Baigorria. Judgment on Reparations of August 27, 1998. San Jose, Costa Rica. Par. 46.