Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 17/98; Cases 11.407, 11.406, 11.416, 11.413, 11.417, 11.412, 11.414, 11.415, 11.286
Session:	Ninty-Eighth Regular Session (17 February – 6 March 1998)
Title/Style of Cause:	Clarival Xavier Coutrim, Celso Bonfim de Lima, Marcos Almedida Ferreira, Delton Gomes Da Mota, Marcos De Assis Ruben, Wanderley Galati, Ozeas Antonio Dos Santos, Carlos Eduardo Gomes Ribeiro, Aluisio Cavalcanti Junior and Claudio Aparecido De Moraes v. Brazil
Doc. Type:	Decision
Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume. Commissioner Helio Bicudo, a Brazilian national, did not participate in the consideration and vote on this report, pursuant of Article 19(2)(a) of the Commission's Regulations.
Dated:	21 February 1998
Citation:	Xavier Coutrim v. Brazil, Case 11.286, Inter-Am. C.H.R., Report No. 17/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)

Between February and September of 1994, the Inter-American Commission on Human Rights, the "Commission," received nine petitions against the Federal Republic of Brazil, "Brazil" or the "State of Brazil", alleging violations committed by military police in the state of São Paulo. The petitions allege violations of rights guaranteed in Article I (right to life, liberty and personal security), XVIII (right to a fair trial) and XXIV (right of petition), of the American Declaration of the Rights and Duties of Man, the "Declaration", and in articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, the "Convention", and of Article 1(1) thereof (obligation to respect and ensure the rights recognized in the Convention). After processing these cases individually, the Commission decided to combine the cases with a view to preparing a single report. After due analysis, the Commission decided to declare both cases admissible.

CASE 11.407 (Clarival Xavier Coutrim)

I. BACKGROUND

2. In September 6, 1994, the Commission received a petition according to which, on April 20, 1982, Clarival Xavier Coutrim, a construction worker, aged 22, was shot to death in the eastern sector of Sao Paulo by state military police oficers Julio Cesar Passos da Silva, Nelson de

Freitas Nascimento Filho, Rodolfo Cosin Filho, Hermes Simplício da Silva, Celso de Castilho, and Miguel Portos Neto, .

3. A military police inquiry was instituted on August 24, 1982, which concluded that "there is evidence of the commission of a crime" by police officers, but also that "there is evidence that would suggest that their conduct was lawful on the grounds that they acted in the line of duty and in self-defense." On February 28, 1983, the military prosecutor argued that the case should be filed on the grounds of insufficient evidence to indict, an argument that was accepted by the judge hearing the case. On May 9, 1983, however, the military prosecutor requested that the case be reopened for review, and immediately proposed that new evidence be heard and that the suspects be taken into preventive custody.

4. Following protracted proceedings involving successive schedulings and postponements of hearings, the third military court set the policemen's trial for May 2, 1991. The trial date was rescheduled several times, to February 25, 1992, September 3, 1992, September 30, 1993 and September 11, 1994. As of the date of the petition, and more than twelve years after the events occurred, no verdict has been handed down in this case.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The Commission received the petition in September 1994 and forwarded it to the Government of Brazil, which presented its reply on May 30, 1995, where it reported that: as a result of the inquiry opened to investigate the death of Clarival Xavier Coutrim, Case No. 19,930/82 was underway in the third military court of the state of São Paulo; military police officers Julio Cesar Passos da Silva, Nelson de Freitas Nascimento Filho, Rodolfo Cosin Filho, Hermes Simplício da Silva, Celso de Castilho and Miguel Portes Neto were the defendants.

6. The Government added that the military prosecutor had asked that the case be filed and then asked that it be reopened when new evidence surfaced; the trial had been repeatedly postponed for various reasons, but was scheduled for June 6; finally, the remedies of domestic law had not been exhausted. On June 26, 1995, the Commission received additional information from the Government of Brazil to the effect that the trial hearing had been rescheduled for that same day.

7. On August 16, 1995, the Commission received the petitioner's observations regarding the Government's reply. They stated that the trial hearing scheduled for June 6 had been rescheduled to June 20, which was when it was finally held and resulted in the conviction of four of the indicted military police officers: Rodolfo Cosin Filho, Celso de Castilho, Miguel Portas Neto and Hermes Simplício da Silva, who were sentenced to 12 years in prison. The first three were allowed to remain free pending the appeal (the last was a fugitive from justice). The other two police officers indicted -Julio Cesar Passos da Silva and Nelson de Freitas Nascimento Filho- were unanimously acquitted for lack of evidence.

8. On September 20, 1995, the Commission sent the pertinent parts of the petitioner's observations to the Government, giving it 30 days to present its final observations.

9. On October 23, the Commission received additional information from the petitioner to the effect that the defense and the prosecution had both filed appeals and that the Military High Court was to rule on them within an unspecified time period. The petitioner attached copies of the trial proceedings.

10. On November 20, 1995, the Commission again requested the Government's final observations and asked that it make specific reference to the following: the reasons why the police officers sentenced to 12 years in prison were still free and the legal grounds for allowing them to remain at liberty; the reasons why the trial hearing was not held until 13 years after the crime was committed and the legal grounds for this; if the internal remedies had not been exhausted, evidence of where the proceedings stood as of that date, both with reference to the convicted military police and those who were acquitted, and any other relevant documentary evidence, including the legal provisions that apply to Brazilian military criminal proceedings and to the remedies under domestic law.

11. On November 15, 1995, the Commission received the Brazilian Government's reply, reporting that, since two of the six accused had been acquitted, the military judicial authorities had appealed the sentences of the other four to 12 years in prison for aggravated homicide.

12. In February 1996, the petitioner reported that no date had as yet been set for the ruling on the appeals filed by the defense on behalf of the four convicted police officers, and by the prosecution challenging the acquittal of the other two policemen.

13. On April 22, 1996, the Commission reiterated the request it had made of the Government on November 20. In September 1996, another note was sent to the Government of Brazil with the same request. On November 6, 1996, the Commission informed the Government that if no reply was forthcoming within 30 days, it would consider the observations made by the Government on November 15, 1995 to be its final observations.

III. CONSIDERATIONS REGARDING ADMISSIBILITY

14. Given that the verdict acknowledged that the police shot the victim, that the latter had not committed and was not about to commit any unlawful act, and that he was unarmed and defenseless and had not resisted police authority, the fact that the individuals responsible for the crime, despite their conviction, were still not in prison 13 years after the crime was committed, may constitute human rights violations, which will be analyzed in due course. The Commission will now examine the formal requirements for admitting the petition.

15. Article 46 of the Convention spells our the requirements for a petition to be admitted:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;
c. that the subject of the petition or communication is not pending in another international proceeding for settlement; and

d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.

16. With regard to exhaustion of domestic remedies, on February 11, 1996, the petitioner reported that the appeals filed by the defense and by the prosecution had still not been decided by the Military High Court and that no date had been set for the ruling, thus allowing the convicted police officers to remain at liberty. For its part, in May 1995 the Government alleged a failure to exhaust the remedies under domestic law, "since the additional phases of the proceedings required by law to convict and sentence those eventually found guilty, had not yet concluded."

17. Article 46(2)(c) of the Convention stipulates that the provisions of paragraphs (1)(a) (exhaustion of the remedies under domestic law) and (1)(b) (deadline for presenting petitions) do not apply when there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies.The same is set forth in Article 37(2)(c), of the Regulations of the Commission.[FN1]

[FN1] Inter-American Court of Human Rights, Cases: Velasquez Rodriguez, Judgement of July 29, 1988, para. 62-66 and 72, Series C, No. 14; FairEn Garbi and Solis Corrales, Preliminary Exceptions of March 15, 1989, para. 89-90 and 97; Godinez Cruz, Judgement of January 20, 1989, para. 65-69 and 75, and Preliminary Exceptions of June 26, 1987, Para. 95.

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18. The petitioner alleged that the trial was held 13 years after the crime was committed and that as of October 1995, the convicted parties were still free, since the appeals filed by the defense and by the prosecution had not been decided. In its last note to the Commission, dated November 1995, the Government confirmed this information and did not reply to the requests made in November 1995 and again in April and September 1996. The Commission believes that a final judgment is long overdue and grants the exception to the rule requiring exhaustion of the remedies under domestic law, according to Articles 46(2)(c) of the Convention and 37(2)(c) of its Regulations.

19. The petition was lodged in September 1994, twelve years after the victim was murdered; no trial had yet been held. That trial finally took place in July 1995. The most recent information from the petitioner, received in February 1996, alleged that the military police officers, although convicted, were at liberty, as the appeals filed had still not been decided. The Commission finds that the exception provided for in Article 46(2)(c) of the Convention applies, inasmuch as the petition was lodged within the reasonable time period provided for in Article 38(2) of the Commission's Regulations, which says:

In the cicumstances set forth in Article 37 (2) of these Regulations, the deadline for presentation of a petition to the Commission shall be within a reasonable period of time, in the Commission´s judgment, as from the date on which the alleged violation of rights occurred, considering the circumstances of each specific case.

20. The Commission knows of no other similar body that is presently examining this case nor does the Government claim such knowledge. The petition has also complied with the formal requirements set forth in Article 44.

CASE 11.406 (Celso Bonfim de Lima)

IV. BACKGROUND

21. The Commission received a petition lodged in September 1994 stating that Celso Bonfim de Lima, a sales clerk, aged 18, was shot by military police officer Aurino Tavares da Silva on February 26, 1983, in the city of São Paulo; he was left paralyzed.

22. The police officer was charged on March 13, 1984, for attempted aggravated homicide (Case No. 20,800/84). On June 29, 1994, ten years after the crime was committed, the police officer was tried after the charge was reduced from attempted murder to grievous bodily harm. The police officer was sentenced to two years in prison, but the sentence was suspended, with no special conditions. The victim filed and won a suit for damages against the state of São Paulo (case No. 432/87). That decision was upheld by the São Paulo Tribunal of Justice.

23. The petitioners allege that the military justice system was slow to act, that the penalty was light for the crime committed, and that the police officer did not spend a single day in prison. It asked that the Brazilian State be condemned for violating articles 4, 5 and 8 of the American Convention on Human Rights and articles XVIII and XXIV of the American Declaration.

V. PROCEEDINGS BEFORE THE COMMISSION

24. The Commission received the petition in September 1994 and the Government presented its reply on May 30, 1995. It argued that in 1994 the military police officer had been sentenced to two years in prison and that the State was going to indemnify the victim. The Government stated that the ruling ordering that damages be paid was being executed.

25. On August 16, 1995, the Commission received the petitioner's observations, which pointed out that the person convicted had not been punished in accordance with the judicial mandate; and that by the statute of limitations the State's punitive authority had elapsed in the period between the criminal act and actual conviction. The police officer never went to jail and is still a member of the state military police force. The lower-court decision regarding indemnization was upheld by the Military High Court.

26. On November 16, 1995, the Commission sent the petitioner's observations to the Government so that it might make its final observations within a period of 30 days. The Commission asked that it specifically address the following: the reasons why the conviction was handed down several years after the crime and the legal grounds for it; the reasons why the charge of attempted murder on which the police officer was indicted in Case No. 20,800/84 was dropped and the legal grounds for reducing the charge.

27. The Commission also requested the Government to explain how Brazilian military law operates as regards the period in which liability to punishment applies; the reasons why the military police officer who was indicted and supposedly convicted never served his sentence and the legal grounds for it; a copy of the verdict convicting the military police officer, and any other documentary proof that it considered pertinent or were related to the petitioner's allegations that articles 5 and 4 of the Convention were violated.

28. On January 31, 1996, the Commission received the Government's final observations, where it replied that: the proceedings followed the procedures and rules established in the Code of Military Penal Procedures; that the charge was downgraded to grievous bodily harm because the Military High Court reasoned that the situation described in Article 31 of the Military Penal Code obtained in this case because the defendant desisted from his initial conduct and had fired only one of several bullets in his weapon.

29. The Government added that the appeal filed by the military prosecutor seeking to maintain the conviction on the charge recorded in the indictment was denied. It explained that the statute of limitations was one ground for extinction of liability to punishment under military law and that it is referred to under Article 123.IV of the Military Penal Code; that the rules governing expiry of liability to punishment are set forth in articles 124 to 133 of that code, which covers both prescription of criminal proceedings and execution of sentence; that the rules for computing prescription are set forth in Article 125 of the Code. It also attached documents containing legal doctrine on the subject.

30. The Government argued that the Permanent Council of Justice of the third military court granted the defendant a conditional suspended sentence because it found that he met the requirements established in Article 48 of the Military Penal Code. In June 1994, that ruling was upheld by the São Paulo State Military High Court, which found that liability to punishment had lapsed "because the prescription occurred with respect to a sanction that had materialized", in accordance with articles 123.IV and 125 of the Military Penal Code. The Government attached copies of the bill of indictment brought by the prosecutor with the 3rd military court of São Paulo, of the conviction, of the grounds the military prosecutor invoked to appeal the ruling, and the judgment by the judges on the São Paulo State Military High Court which refused to grant the appeal.

31. On February 20, 1996, the Government's final observations were sent to the petitioner. That same day the Commission sent the Government a note advising it that the statutory procedures in the instant case had concluded. On April 19, the Commission received the petitioner's final observations, in which he confirmed all the information theretofore reported and asked that the Commission issue a report on the case.

VI. FRIENDLY SETTLEMENT

32. In June 1996, the Commission sent a note to the Government and to the petitioner placing itself at their disposal with a view to reaching a friendly settlement in the instant case, pursuant to articles 48(1)(f) of the American Convention on Human Rights and 45(1) of its Regulations. The Commission has not received a reply.

VII. CONSIDERATIONS REGARDING ADMISSIBILITY

33. The fact the verdict acknowledged that the police officer shot the victim, that the latter had neither committed nor was about to commit any illegal act, that he was unarmed and had not resisted police authority, and the fact that the responsible party was given a light sentence, which was then considered to have prescribed so that the defendant served not one day in prison, may be characteristic of possible violations of human rights, which will be examined in due course. The Commission will now examine the formal requirements for admitting a petition.

34. Article 46 of the Convention, cited above, sets forth the requirements that must be met before a petition can be admitted. As regards exhaustion of remedies under domestic law, the petitioner reported that the appeal filed by the military public prosecutor seeking an amended sentence so that the military police officer would receive a harsher sentence was denied by the Military High Court, which on June 7, 1994, ruled that liability to punishment had lapsed by virtue of the statute of limitations. This left the defendant absolutely free and there was no other remedy to pursue. For its part, at no time did the Government claim that the remedies under domestic law had not been exhausted. The Commission finds that the remedies were exhausted.

35. The petition was presented on September 6, 1994, two months after the court of last instance handed down its decision. It was, therefore, received within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

36. The subject of the petition is not pending in another international proceeding for settlement. The Commission knows of no other similar body that is presently examining this case nor does the Government claim such knowledge. The petitioner has also satisfied the formal requirements of Article 44.

CASE 11.416 (Marcos Almeida Ferreira)

VIII. BACKGROUND

37. In September 1994, the Commission received a petition stating that on the morning of August 31, 1989, on the east side of São Paulo, Marcos Almeida Ferreira, aged 18, was shot on his way to a bakery by military police officer Elcio Vitoriano. The shooting left the victim paralyzed.

38. In October 1991, the 4th military prosecutor's office indicted the military police officer on charges of willful and malicious grievous bodily harm. On the date of the indictment, the police officer's trial was set for March 1995. However, according to the petition, given the delaying tactics that military courts used in similar cases, the petitioner feared that this crime would go unpunished since the liability to punishment of the State violating a fundamental human right could prescribe. In the petition, the petitioner reported that the victim sued the State for damages. The lower court ruled partially in the plaintiff's favor. The petitioner enclosed documents in support of his petition.

IX. PROCEEDINGS BEFORE THE COMMISSION

39. The Commission received the petition in September and forwarded it to the Government of Brazil in December 1994. The Government presented its reply, dated June 15, 1995, which was sent by fax on September 12, 1995. It reported that as a result of the investigation to ascertain responsibility for the attack on Marcos Almeida, Case No. 41,028/90 was being heard in the fourth military court of São Paulo; that on March 27, 1995, the defendant was convicted and sentenced to three years in prison, and in May 1995 the case had come up before the Court Judge for execution of sentence (CHECK).

4O. In October 1995 the petitioner informed the Commission of the trial and its outcome. In November 1995, the Commission forwarded the pertinent parts of the Government's reply to the petitioner, so that the latter might make observations. In January 1996, the Commission received the petitioner's observations, which stated that the trial took place on the first appointed date, that the military police officer was sentenced, even though there was ample evidence to justify a stiffer sentence, to only three years in prison and was free pending an appeal; that the case was with the Military High Court, where a ruling on the appeal was pending; and that these procedures and sentence illustrated the bias of the military courts.

41. In February, April and September 1996, and on two later occasions,the petitioner's observations were sent and reiterated to the Government, which failed to reply.

X. CONSIDERATIONS REGARDING ADMISSIBILITY

42. Inasmuch as the verdict acknowledged that the police officer shot the victim, who had not committed any unlawful act, was not about to and was unarmed, the fact that the guilty party was given such a light sentence and was not taken into custody may constitute possible human rights violations, which will be examined when the merits of the case are analyzed. The Commission will now examine the formal requirements for admitting a petition.[FN2]

[FN2] See endnote No. 1.

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43. Article 46 of the Convention, cited above, establishes the requirements that a petition must meet to be admitted. In January 1996, the petitioner reported that the military police officer had been convicted on March 27, 1995, six years after the fact. He was sentenced to only three years in prison and was free pending an appeal, despite ample evidence that would have justified a stiffer sentence. As of that time, the case was with the Military High Court for a ruling on the appeal.

44. In its reply and final communication, dated June 1995, the Government confirmed that the trial took place on March 27, 1995, and that on May 8 the case was still with the military judge advocate (CHECK), awaiting execution of sentence. It did not claim a failure to exhaust the remedies under domestic law. The Government did not reply to the Commission's requests of February 22, 1996, which were reiterated in April and September of that year.

45. Article 46 (2)(c) of the Convention, stipulates that the provisions of paragraphs (1)(a) (exhaustion of the remedies under domestic law) and (1)(b) (deadline for lodging a petition) shall not apply when there has been an unwarranted delay in rendering judgment under the aforementioned remedies. The same is stated by Article 37(2)(c) of the Regulations of the Commission.

46. The petitioner alleged that it took six years for a court ruling to come about, that the defendant was given a light sentence, was not taken into custody and was free pending the appellate court's ruling. The most recent information from the petitioner and corroborated by the Government is that almost one year after the lower-court ruling there had been no final decision in the case and that the convicted person was still at liberty. The Commission considers that there has been an unwarranted delay in the final verdict and grants the exception to the rule requiring exhaustion of domestic remedies, according to Articles 46(2)(c) of the Convencion and 37(2)(c) of its Regulations.

47. The most recent communication from the petitioner, dated January 1996, reported that the case was still with the Military High Court for a ruling on the appeal. Justice has been delayed. The Commission considers that the exception provided for in Article 46(2)(c) of the Convention also applies and that the petition was lodged within the reasonable time period stipulated in Article 38(2) of its Regulations.[FN3]

[FN3] "In the circumstances set forth in Article 37 (2) of these Regulations, the deadline for presentation of a petition to the Commission shall be within a reasonable period of time, in the Commission's judgement, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case."

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48. The Commission knows of no other similar body that is presently examining this case nor does the Government claim such knowledge. The petitioner satisfied the formal requirements of Article 44 of the Convention.

CASE 11.413 (Delton Gomes da Mota)

XI. BACKGROUND

49. The Commission received a petition filed in September 1994 alleging that Delton Gomes da Mota, aged 20, a student and office assistant, was killed by military police officers Gilson Lopes da Silva and Maurício Correa da Silva, on the north side of the city of São Paulo, on March 14, 1985.

50. In October 1985, the third military prosecutor's office indicted the two military police officers on charges of aggravated homicide (Case No. 25,122.85-3). Almost seven years after the indictment, trial was set for August 20, 1992, and then successively postponed for October 29, 1992, September 9, 1993, and November 24, 1994. The petitioners alleged that judging by other

cases of proceedings in the military courts, there was reason to believe that no trial would be held on the most recent date set, thereby delaying administration of justice.

51. The petitioner stressed that the victim's parents, Djalma Gomes Mota and Delba Francisca da Mota, had not suggested filing suit against the State for damages; instead, they were making a deposition with a view to obtaining a judicial verdict establishing that the State was liable under civil law for the events that culminated in their son's death and declaring the State's obligation to pay compensation for the injury caused. This suit was in the fourth District Treasury Court of the State of São Paulo as Case No. 225/88; all proceedings had been suspended for more than three years pending the outcome of the military criminal proceedings. The petitioner alleged the Government of Brazil, on account of that unwarranted delay, was in violation of articles XVIII and XXIV of the American Declaration of the Rights and Duties of Man and articles 8(1) and 25 of the American Convention on Human Rights. He enclosed documents supporting his petition.

XII. PROCEEDINGS BEFORE THE COMMISSION

52. The Commission received the petition on September 15, 1994, and, on December 13 of that year, forwarded the pertinent parts thereof to the Government of Brazil. On June 15, 1995, the Government of Brazil reported that Case 25,122/85 was being heard in the third military court of São Paulo that was conducting the inquiry into the death of Delton Gomes da Mota. The defendants in the case were military police Lieutenant Colonel Gilson Lopes da Silva and former military police officer Maurício Correia do Nascimento.

53. The Government said that the trial hearing had been postponed several times for various reasons; the proceedings were now waiting for the defense to complete pre-trial formalities. The Government argued that the remedies under domestic law had not been exhausted because the additional phases of the proceedings required by law to convict and sentence those eventually found guilty of the crime had not been concluded.

54. On August 16, the Commission received the petitioner's observations, reporting that the trial hearing scheduled for May 22, 1995, had been postponed yet a fourth time, this time until August 25.

55. On September 20, 1995, the Commission forwarded the petitioner's observations to the Government. That same day, the Commission received additional observations from the petitioner concerning the Government's reply. The petitioner alleged that the Government referred to only three postponements, when in fact four hearings had been postponed and then rescheduled, making a total of seven postponed trial dates.

56. The petitioner again underscored the fact that the murder victim's parents were not seeking monetary compensation for the death of their son; instead, they had brought a declaratory action to obtain a court ruling declaring the State responsible for the victim's death and its obligation to indemnify his next-of-kin for the moral and material damages that the violation of their rights caused; that proceedings in their suit had been suspended pending the final verdict in the defendants' military court case; and that even though the civil and criminal

proceedings were being handled in separate jurisdictions, all efforts on the part of the attorneys for the victim's parents to get the civil judge's decision reversed had failed.

57. On November 16, 1995, the Commission received the Government's reply. Regarding the petitioner's assertion that the successive reschedulings of the trial date and the promotion of one of the defendants suggested that the authors of the crime would go unpunished, the Government stated that according to information that the Council for the Defense of Human Rights obtained from the São Paulo military court, former military police officer Maurício Correa do Nascimento had been convicted of the murder of Delton Gomes da Mota; the court's ruling had already been finalized and the defendant was then serving a 24-year prison sentence. The trial of the second defendant, military police Lieutenant Colonel Gilson Lopes da Silva, scheduled for August 25, 1995, was postponed when the defendant failed to appear.

58. On November 17, 1995, the Commission forwarded the petitioner's observations to the Government. On November 28, 1995, the Commission sent the Government's reply of November 16 to the petitioner. In February 1996, the petitioner sent its reply stating that the information furnished by the Government to the effect that former military police officer Maurício Correa do Nascimento was convicted of the victim's murder was not true; that the 24-year prison sentence mentioned in the Government-supplied information was handed down in another criminal trial involving a triple homicide of which the former police officer was convicted in 1986; that in this criminal case, no decision had been handed down; that the trial had been postponed eight times and was at the time scheduled for March 1996. The petitioner concluded, therefore, that neither of the two defendants had as yet been tried for the victim's murder, which had happened over ten years earlier.

59. On April 25, 1996, the Commission reiterated the request it had made of the Government on November 17, 1995, and forwarded the additional observations received from the petitioner. On September 23, 1996, the Commission repeated the request originally made in its note of April 25. In November 1996, the Commission sent a note to the Government reiterating the content of the notes sent on November 17, 1995, and September 23, 1996. It also advised the Government that if it had no further observations to add, the observations it sent on November 14, 1995, would be regarded as the Government's final observations.

XIII. CONSIDERATIONS REGARDING ADMISSIBILITY

60. The facts reported in the petitioner's reconstruction of the crime describe possible violations of human rights, which will be examined in due course when the merits of the petition are analyzed. The Commission will now examine the formal requirements for the petition to be admitted.

61. Article 46 of the Convention, cited above, establishes the requirements that a petition must meet to be admitted. In the petition, filed on September 6, 1994, the petitioner reported that nine years after the crime had been committed and despite the indictments brought, the defendants had not yet been tried, since the trial had been postponed three times (August 20, 1992, October 29, 1992 and September 9, 1993); the petitioner feared that the trial scheduled for November 24, 1994, would not be held, thereby delaying justice.

62. In its reply of June 1995, the Government acknowledged that three scheduled trial hearings had been postponed, with no date set for another hearing pending the notifications required by the defense. Finally, it argued that the remedies under domestic law had not been exhausted since the additional phases of the process required by law to convict and sentence those eventually found guilty had not been completed.

63. Article 46 (2)(c) of the Convention states that the provisions of subparagraphs (1)(a) (exhaustion of the remedies under domestic law) and (1)(b) (deadline for filing the petition) shall not apply when there has been an unwarranted delay in rendering judgment under the aforementioned remedies. The same is stated by Article 37(2)(c), of the Regulations of the Commission.[FN4]

[FN4] See endnote No.1.

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64. The petitioner argued that the trial date had been postponed and rescheduled nine times, constituting a delay in the rendering of justice. The Government acknowledged at least four occasions when the trial was postponed for one reason or another. The Commission considers that the trial is long overdue, and the dates for it have been repeatedly postponed. It therefore grants the exception to the rule requiring exhaustion of the remedies under domestic law, according to Articles 46(2)(c) of the Convencion and 37(2)(c) of its Regulations.

65. The latest information from the petitioner, from February 1996, alleged that even though more than ten years had passed since the crime, the indicted military police officers had still not been convicted, which constituted a delay in the rendering of justice. The Commission finds that the exception provided for in Article 46(2)(c) of the Convention applies and that the petition was filed within the reasonable time period stipulated in Article 38(2) of the Commission's Regulations.[FN5]

[FN5] See endnote No. 3.

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66. The Commission knows of no other similar body that is presently examining this case nor does the Government claim such knowledge. The petitioner has also satisfied the formal requirements of Article 44 of the Convention.

CASE 11.417 (Marcos de Assis Ruben)

XIV. BACKGROUND

67. The Commission received a petition filed in September 1994, to the effect that Marcos de Assis Ruben, aged 23, a student and machinery assistant, was killed by military police officers

Orlando Aparecido Garcia, Edison Donizetti and Waldemar José de Oliveira Tenorio, in São Paulo in March 1988.

68. The petition states that the police inquiry found that the military police officers were asked to look into an incident in which an individual had assaulted a girl "in an attempted rape". When they arrived on the scene, the police found Marcos de Assis Ruben with a girl and arrested him for that reason. The police officers then dismissed the alleged rape victim, who never filed any complaint. The police took Marcos de Assis Ruben to a secluded place (Tiete Ecological Park), where he was shot five times in the head, causing encephalic cranial trauma and death.

69. In May 1988, the third military prosecutor's office charged the police officers with aggravated homicide, the victims being Marcos de Assis Ruben and more than seven other people. All the murders were committed under similar circumstances in March of 1988. The petitioner alleged that the foregoing notwithstanding, more than six years after the crimes, not even the investigation phase of the proceedings had been concluded, which meant that these agents of the State who were guilty of repeated violations were still at liberty. The petitioner alleged that the delay constituted a violation of articles XVIII and XXIV of the American Declaration of the Rights and Duties of Man and articles 8 and 25 of the American Convention on Human Rights.

70. The petitioner reported that the victim's parents filed suit for damages against the State in the eighth District Treasury Court of the State of São Paulo: Case No. 491/92. The lower-court ruling was in the parents' favor and was upheld by the judges on the São Paulo Tribunal of Justice. The petition was accompanied by supporting documents.

XV. PROCEEDINGS BEFORE THE COMMISSION

71. The Commission received the petition in September 1994 and forwarded the pertinent parts thereof to the Government on December 20 of that year. The Government stated that the Case No. 32,750/88 was being heard in the 3rd military court of São Paulo and was an inquiry into the death of Marcos de Assis Ruben; the defendants were former military police sergeant Orlando Aparecido Garcia and former military police soldiers Edson da Silva and Waldemar J.O. Tenorio; defense witnesses were scheduled to be heard on June 5, 1995; and the Government would inform the Commission promptly of further developments.

72. The Commission received the petitioner's observations in January 1996, wherein the petitioner alleged that: eight years had passed since the indictment was brought against the military police officers and no date had as yet been set for the trial. The Government could not, the petitioner argued, claim that the domestic remedies had not been exhausted. The petitioner concluded that the exception allowed under Article 37(2)(c) of the Commission's Regulations applied.

73. In February, the petitioner's observations were forwarded to the Government, which was given 30 days in which to send its final observations. The Commission asked that the Government address the petitioner's allegations, including the exception to the rule requiring exhaustion of domestic remedies and the delay in the judicial proceedings in Case No.

32,750/88; it also asked the Government to send a copy of the case file and of the report on the police investigations, and to address the merits of the case concerning violation of the aforementioned articles. In April and again in September 1996, the Commission again asked the Government to send its final observations within 30 days. It received no reply.

XVI. CONSIDERATIONS REGARDING ADMISSIBILITY

74. The facts recounted in the petition describe possible violations of human rights, which will be examined when the merits of the petition are discussed in the corresponding phase of the proceedings. The Commission will now examine the formal requirements that the petition must meet to be admitted.

75. Article 46 of the Convention, cited above, establishes the requirements for the petition to be admitted. In the petition, lodged in September 1994, the petitioner reported that six years after the fact, not even the investigation phase of the proceedings had been completed, since the hearings to hear witnesses had been postponed several times.

76. For its part, in its reply of June 1995, the Government admitted that the criminal investigation phase had not yet concluded. It reported that the hearing to hear the defense witnesses was scheduled for June 5, 1995 and said that that the remedies under domestic law had not been exhausted since the additional phases of the proceedings required by law to convict and sentence those eventually found guilty had not yet concluded.

77. Article 46(2)(c) of the Convention stipulates that the provisions of paragraphs (1)(a) (exhaustion of domestic remedies) and (1)(b) (deadline for filing the petition) shall not apply when there has been an unwarranted delay in rendering judgment under the aforementioned remedies. The same is stated by Article 37(2)(c), of the Regulations of the Commission.[FN6]

[FN6] See endnote No. 1.

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78. The petitioner alleged that although six years had elapsed since criminal investigations had begun, that phase had not concluded due to postponements of hearings. This meant that the State agents who were the authors of repeated violations had gone unpunished. The Government acknowledged that seven years after the crime, the criminal investigative stage had still not concluded. The Commission considers that the conclusion of the pre-trial phase is long overdue as it has been delayed by repeated postponements, and therefore grants the exception to the rule requiring exhaustion of the remedies under domestic law, according to Articles 46(2)(c) of the Convention and 37(2)(c) of its Regulations.

79. The most recent information from the petitioner, dated January 1996, alleged that almost eight years after the crime, no trial date had as yet been set in the case against the military police officers. Justice had been delayed. The Commission considers that the exception provided for in Article 46(2)(c) of the Convention applies and that the petition was presented within the reasonable time period stipulated in Article 38(2) of its Regulations.[FN7]

[FN7] See endnote No. 3.

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80. The Commission knows of no other similar body that is presently examining this case nor does the Government claim such knowledge. The petitioner has also complied with the formal requirements of Article 44 of the Convention.

CASE 11.412 (WANDERLEI GALATI)

XVII. BACKGROUND

81. The Commission received a petition in September, 1994, to the effect that, wielding the butt of a revolver, military police officer Ademar Cavalcante Dourado bludgeoned to death Wanderley Galati, a 28-year-old mechanic, on August 26, 1983, on the north side of the city of São Paulo.

82. The petition states in response to a minor collision with a military policeman's car, for which Mr Galati admitted responsibility and offered to pay for, the military police officer attacked and killed Mr Galati. The petitioner accompanied the petition with supporting documents.

83. The military police officer was indicted on December 2, 1983, before the first military court of the state of São Paulo, and with that Case No. 21,519/83 was instituted. A series of hearings to hear the prosecution's witnesses were postponed for a wide variety of reasons. The first hearing to take testimony was on March 25, 1988, five years after the crime. The last hearing in the investigation phase of the proceedings was on May 7, 1991.

84. The trial was held on October 15, 1991. Even though there were a number of eye witnesses to the assault, the defendant was acquitted for lack of evidence. The verdict was drafted but, almost three years later, had still not been signed by the military officers who sat on the Permanent Council of Military Justice, which meant that no appeal could be filed seeking reversal of the unjust decision. The petitioner alleged that the negligence and slowness of the military justice system in pronouncing judgment in the cases placed before it frequently led to impunity. He added that, particularly in the case in question, the unjustified bias and delays on the part of the military courts constituted violations of articles XVIII and XXIV of the American Declaration of the Rights and Duties of Man and articles 8(1) and 25 of the American Convention on Human Rights.

85. The mother of the victim sued the state of São Paulo in the second District Treasury Court (Case 440/88) seeking moral and material damages. The lower-court ruling partially upheld the suit brought by the victim's mother. The civil appeals court refused to grant her appeal.

XVIII. PROCEEDINGS BEFORE THE COMMISSION

86. The Commission received the petition in September 1994 and forwarded its pertinent parts to the Government on December 13, 1994, giving it 90 days in which to present its own observations. The Government of Brazil requested and was granted three consecutive 30-day extensions (Article 34(6) of the Commission's Regulations). In June 1995, the Commission received the Government's response, wherein it stated that: Case No. 21,519/83 was being prosecuted in the first military court of São Paulo to conduct an inquiry into the death of Wanderley Galati, in which the accused was military police officer Ademar Cavalcante Dourado.

87. The Government added that the defendant in the case, military police officer Ademar Cavalcante Dourado, was unanimously acquitted on October 15, 1991; the ruling was read and published on March 30, 1995; the case files were with the military public prosecutor's office pending reception of the grounds justifying the appeal that had been lodged; the remedies under domestic law had not been exhausted, since the additional phases of the proceedings that the law requires to convict and sentence those eventually found guilty had not yet been completed.

88. In August 1995, the petitioner replied stating that the March 1995 publication of the acquittal handed down in October 1991 only proved the inadequate state of affairs within the São Paulo state military courts, which had taken four years to draft the sentence, and that there were therefore grounds for concern that the author of the crime could go unpunished. The case was with the public prosecutor's office for purposes of filing an appeal against the ruling that acquitted the defendant on the grounds of insufficient evidence, when there was ample, solid evidence of the defendant's guilt.

89. On October 6, 1995, the petitioner repeated its August observations and stressed that the delay in publishing the verdict confirmed that the military courts were slow and negligent in prosecuting their cases, with the result that defendants often went unpunished. The petitioner said there was no justification for the bias and slowness with which military courts proceeded. The petitioner also informed that the civil liability suit brought by the victim's mother against the state was upheld. The State Treasury was appealing the ruling with the Federal Supreme Court and a decision was still pending.

90. On September 20 and November 20 1995, respectively, the Commission forwarded the additional information received from the petitioner to the Government and requested its final observations. The Commission requested that the Government state the legal grounds for denying admissibility based on a failure to exhaust the remedies under domestic law; that it explain the delay in the proceedings in Case No. 21,519/83, and that it address the merits of the case, specifically the allegation that the right to life had been violated.

91. On November 15, 1995, the Government replied that the case files were with the public prosecutor's office for purposes of filing an appeal against the defendant's acquittal within the legal time frame. It said that as soon as new information became available it would forward it to the Commission.

92. On November 29, 1995, the Commission forwarded the Government's observations to the petitioner. In February 1996, the Commission received information from the petitioner

confirming the previous information supplied and clarifying that the files were still with the public prosecutor's office with a view to filing an appeal against the acquittal of the defendant accused of killing the victim.

93. On April 25, 1996, the Commission again asked the Government for its final observations, which were to be presented within a period of 30 days. In July 1996, the Commission received information from the Government to the effect that in November, the public prosecutor's office had filed an appeal challenging the verdict of acquittal published in March 1995. It added that the mother of the victim had won her suit in the lower court for compensation for the moral and material damages caused, a decision upheld by the higher court. Accordingly, the Public Treasury would have to pay the mother a pension until the date on which the victim would have turned 65.

94. On July 16, the Commission informed the Government that with presentation of the final observations, the statutory processing of this case had concluded. On July 30, 1996, the Commission forwarded the final information received from the Government to the petitioner and informed the latter that the statutory processing was completed. In October 1996, the petitioner reported that it was not getting information on the proceedings in the military court's records office.

XIX. CONSIDERATIONS REGARDING ADMISSIBILITY

95. The facts recounted by the petitioner in the petition describe possible violations of human rights, which will be examined when the merits of the case are considered in the corresponding phase of proceedings. The Commission will now examine the formal requirements that the petition must meet to be admitted.

96. Article 46 of the Convention, cited above, establishes the requirements for a petition to be admitted. In the petition presented in September 1994, the petitioner reported that five years after the crime was committed, the first hearing to take testimony was finally held on May 25, 1988. The previously scheduled hearings had been postponed for various reasons, including the defendant's promotion and the removal of one of the two military officers on the Permanent Council of Justice because he was himself a defendant in a military criminal proceeding.

97. The petitioner added that the trial was held on October 15, 1991. The defendant was acquitted on the grounds of insufficient evidence, despite the fact that there were a number of eye witnesses to the assault. The verdict of acquittal was written down but by the time the petition was filed -- three years after the trial -- had still not been signed by the military officers on the Permanent Council of Justice. According to the petitioner, until the verdict was signed no appeal could be filed. The petitioner argued the case for an exception to the rule requiring exhaustion of the remedies under domestic law so that the petition might be admitted.

98. In its reply of June 1995, the Government acknowledged that four years had passed between the time the verdict was handed down and the time it was published. It reported that the defendant had been acquitted unanimously in a verdict handed down on October 15, 1991, and then read and published on March 30, 1995. The acquittal was appealed and the files were with

the public prosecutor's office awaiting presentation of the grounds for the appeal that had been lodged. The Government argued that the remedies under domestic law had not been exhausted, as the additional phases of the proceedings required by law to convict and sentence those eventually found guilty, had not been completed.

99. Article 46(2)(c) of the Convention stipulates that the provisions of paragraphs (1)(a) (exhaustion of the remedies under domestic law) and (1)(b) (time period for filing a petition) shall not apply when there has been an unwarranted delay in rendering judgment under the aforementioned remedies. The same is stated by Article 37(2)(c), of the Regulations of the Commission.[FN8]

[FN8] See endnote No.1.

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100. The petitioner alleged that the initial phase of the proceedings, the criminal investigation, took eight years to conclude because hearings were repeatedly postponed. When the trial was finally held, the defendant was acquitted, although the verdict had still not been published as of the date of the petition, which was almost three years after the trial. The Government acknowledged that there had been a lapse of over four years between the trial and publication of the court's verdict, and reported that the defendant had been acquitted unanimously in a trial held on October 15, 1991, the verdict of which was not read and published until March 30, 1995. Twelve years after the crime was committed, the verdict was still not final, because the acquittal was being appealed and the case files were with the public prosecutor's office pending reception of the grounds for the appeal. The Commission considers that a final verdict is long overdue and grants the exception to the rule requiring exhaustion of the remedies under domestic law, according to Articles 46(2)(c) of the Convencion and 37(2)(c) of its Regulations.

101. The most recent communication from the petitioner, dated February 1996, reported that the case files were still with the public prosecutor's office with a view to making a case for the appeal filed against the verdict that acquitted the defendant charged with murder. There has been an unwarranted delay in justice. The Commission considers that the exception provided for in Article 46(2)(c) of the Convention applies, and that the petition was filed within the reasonable time period stipulated in Article 38(2) of its Regulations.[FN9]

[FN9] See endnote No.3.

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102. The Commission knows of no other similar body that is presently examining this case nor does the Government claim such knowledge. The petitioner has also complied with the formal requirements of Article 44 of the Convention.

CASE 11.414 (OZEAS ANTONIO DOS SANTOS)

XX. BACKGROUND

103. The Commission received a petition in September 1994, to the effect that metallurgist Ozeas Antônio dos Santos, a 27 year-old married man, was killed in his home in a gun fight with police. He was shot by Captain Roberval Conte Lopes Lima and R.O.T.A. (Toribio Aguiar Vigilante Group) Lieutenant Sérgio Teixeira Alves, both with the military police, on the night of March 16, 1982, on the south side of the city of São Paulo.

104. The petition explained that the police operation was conducted because the victim was a suspect in the slaying of Jesus Marques Vieira, who was killed some days before the victim was killed. Shortly after these events, the police themselves concluded that the victim was not the killer and that he only fired back because he was frightened. The victim owned a 32-caliber Taurus revolver, which was never found. The autopsy found that the bullets that killed the victim and another police officer and injured three other police officers came from a 38-caliber weapon.

105. Police Inquiry No. 747/82 named military police officers Roberval Conte Lopes and Sérgio Teixeira Alves as the individuals responsible for the victim's death. The two military police officers were indicted on charges of murder [CHECK: HOMOCIDIO CULPOSO], which led to Case No. 74,820/82, heard in the second military court. Later, when defendant Roberval Conte Lopes was elected a state deputy, he invoked a clause in the São Paulo State Constitution which requires the Legislative Assembly's authorization before a congressman can be prosecuted on criminal charges. More than twelve years after the crime, the Tribunal of Justice was still awaiting the Legislative Assembly's authorization. The petitioner alleged that the unwarranted delay on the part of the Brazilian authorities was a flagrant violation of articles XVIII and XXIV of the American Declaration of the Rights and Duties of Man and of articles 8(1) and 25(1) of the American Convention on Human Rights.

106. Military police officer Sérgio Teixeira Alves was acquitted in a ruling handed down on July 28, 1994. This was the ruling sought by the public prosecutor's office, which argued that the police officer had acted in self-defense.

107. The victim's widow and children sued for indemnization with the second District Treasury Court of São Paulo, Case No. 153/87. The lower-court ruling dismissed the suit, and the appellate court verdict upheld the lower court ruling. [CHECK]

XXI. PROCEEDINGS BEFORE THE COMMISSION

108. The Commission received the petition in September 1994 and forwarded the pertinent parts thereof to the Government on December 13. In June 1995, the Commission received the Government's reply, wherein it stated that Case No. 19,269/82, to ascertain responsibility in the death of Ozeas Antônio dos Santos, was heard in the second military court of São Paulo. The defendants in the case were military police Captain Roberval Conte Lopes Lima and military police Second Lieutenant Sérgio Teixeira Alves.

109. The Government argued that because the principal defendant had been elected a State Deputy, he was no longer under the jurisdiction of the military courts and, on May 18, 1987, the case file was forwarded to the Tribunal of Justice of São Paulo, where they were assigned No.

7,428-0/0. The Government also said that a copy of the case file was returned to the State Military High Court on May 31, 1993, for the trial of defendant Sérgio Teixeira Alves. His trial was on July 29, 1994. The verdict was unanimous acquittal and was read on September 28, 1994. The case was filed on December 15 of that year.

110. The Government explained that the principal files concerning the responsibility of Roberval Conte Lopes Lima, were then with the São Paulo State Tribunal of Justice. The Government alleged that the remedies under domestic law had not been exhausted since the additional phases of the proceedings required by law to convict and sentence those eventually found responsible had not been completed.

111. In August 1995, the petitioner responded stating that the files of the case against Captain Roberval Conte Lopes Lima - who was the principal defendant in the case and had been elected to the São Paulo State Legislative Assembly- had been with the State Tribunal of Justice since May 1987, awaiting the Legislative Assembly's authorization to prosecute him; given the amount of time that had passed, it was almost certain that the case would go unresolved; the suit filed on behalf of the victim's wife was not upheld by the regular courts, which found that the victim had died in a shoot-out with the police.

112. In September 1995, the Commission forwarded the Government's observations to the petitioner, giving it 30 days in which to make its observations. In October 1995, the Commission received additional information from the petitioner wherein the latter repeats the earlier observations and responds to the Government's assertion that the remedies under domestic law had not been exhausted. The petitioner stated that the facts reported in the petition occurred in March 1983 and that almost 13 years later, the chief defendant in the victim's death had still not been tried. The petitioner therefore requested the exception to the rule requiring exhaustion of the remedies under domestic law, pursuant to the provisions of Article 37(2)(c) of the Commission's Regulations.

113. In November 1995, the Commission received the Government's observations, where it replied to the petitioner's allegation that it was a virtual certainty that the case would go unresolved since, under Brazil's legal system, anyone elected to the Legislature enjoyed parliamentary immunity. The decision as to whether to suspend that immunity for purposes of the congressman's prosecution was, the Government stated, the exclusive purview of the legislative body of which the interested party was a member; enjoyment of parliamentary immunity suspended the statute of limitations, so that parliamentary immunity had no effect on the statute of limitations with respect to the crime or liability to punishment.

114. In November, the Commission forwarded the Government's observations to the petitioner. In February 1996, the Commission received the petitioner's observations, which stated that: the Brazilian State, through its three branches (executive, legislative and judicial), was the agent responsible for promoting and ensuring basic rights; the parliamentary immunity that the defendant enjoyed in the case in question ought not to become synonymous with impunity; given the fact that the victim had been killed 13 years earlier and the fact that for 10 years all proceedings had been halted, to await the São Paulo State Legislative Assembly's authorization to proceed, it was impossible to establish the author's responsibility, which would only happen if

the immunity privileges were suspended. The petitioner stated that with all this, his fear that the case would remain unresolved was well founded.

115. In April 1996, the Commission forwarded the petitioner's observations to the Government and requested its final observations within 30 days. The Commission reiterated its request in September 1996 and again in November 1996, at which time it pointed out that if the Government did not respond within 30 days, its observations of November 1995 would be taken as its final observations.

XXII. CONSIDERATIONS REGARDING ADMISSIBILITY

116. The facts recounted by the petitioners describe possible violations of human rights, which will be examined when the merits of the case are analyzed at the appropriate point in the proceedings. The Commission will now examine the formal requirements for the petition to be admitted.

117. Article 46 of the Convention, cited above, establishes the requirements for the petition to be admitted. In the petition lodged in September 1994, the petitioner informed the Commission that 12 years after the crime, one of the accused had still not been tried and the other, at the request of the public prosecutor's office, had been acquitted on the grounds that the defendant acted in self-defense.

118. In its reply of June 1995, the Government alleged that one of the defendants had been tried and acquitted and that the files in the case against the other defendant were with the São Paulo Tribunal of Justice, inasmuch as said defendant had been elected a State Deputy. The Government also alleged that the remedies under domestic law had not been exhausted, since the additional phases of the proceedings required by law to convict and sentence those eventually found guilty had still not been completed. Later, the petitioner reported and the Government confirmed, that the proceedings had been at a halt for ten years, and would only resume with the Legislative Assembly's authorization, inasmuch as deputies enjoyed parliamentary immunity.

119. Article 46(2)(c) of the Convention stipulates that the provisions of paragraphs (1)(a) (exhaustion of the remedies under domestic law) and (1)(b) (deadline for presenting the petition) shall not apply when there has been an unwarranted delay in rendering a judgment under the aforementioned remedies. The same is stated by Article 37(2)(c), of the Regulations of the Commission. [FN10] The Commission considers that the trial of the other defendant is long overdue and grants the exception to the rule requiring exhaustion of the remedies under domestic law, pursuant to Articles 46 (2) (c) of the Convention and 37(2)(c) of the Regulations.

[FN10] See endnote No.1.

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120. In his last communication, received in February 1996, the petitioner reported that the case files were still with the São Paulo State Tribunal of Justice, awaiting the Legislative Assembly's authorization to proceed against the other defendant charged in the case. The Commission

considers that the exception provided for in Article 46(2)(c) applies and therefore believes that the petition was presented with a reasonable time period, as stipulated in Article 38(2) of its Regulations.[FN11]

[FN11] See endnote No. 3.

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121. The Commission knows of no other similar body that is presently examining this case nor does the Government claim such knowledge. The petitioner has also complied with the formal requirements of Article 44 of the Convention.

CASE 11.415 (CARLOS ADUARDO GOMES RIBEIRO)

XXIII. BACKGROUND

122. The Commission received a petition in September 1994 to the effect that Carlos Eduardo Gomes Ribeiro, a 19-year-old salesman, married, was physically assaulted by military police officers Donizetti Aparecido Bezerra da Silva, Dorival Bernardo de Senna, Marcos Aparecido Correa Cesar and Mauro Garofo on May 3, 1989, on the east side of the city of São Paulo.

123. The petition alleges that Carlos Eduardo was with three friends -Sérgio Pereira Pinto (18), Edinaldo Camilo Cavalcanti (23), and Nesutã dos Santos (17)- when they were approached by military police who, under the pretext of searching them although nothing was irregular, accosted all four both psychologically and physically. Carlos Eduardo was left with mild bodily injuries, according to the attached medical report.

124. The petition reports that the young men were forced into the police vehicle, after running a gauntlet that the police officers formed to subject them to further mistreatment. After being taken to the 32nd Police Precinct, where they were warned not to say anything about how they had been treated, they were released. No record of the incident was registered.

125. The second military prosecutor's office indicted the military police officers on July 6, 1990, whereupon Case No. 37,662/89 was opened. According to the petition, the proceedings moved very slowly and on July 20, 1994, the Judge Advocate of the second military court ruled that the State's punitive authority had prescribed and declared the defendants exempt from punishment. The responsible parties thus went unpunished because of the extremely slow pace with which the wheels of justice moved. According to the petitioner, in the instant case, therefore, the Government of Brazil had obviously and unjustifiably failed to observe articles XVIII and XXIV of the Declaration of the Rights and Duties of Man and articles 8(1) and 25(1) of the American Convention on Human Rights.

126. The victim filed suit for damages before the State Treasury on April 13, 1994. As of the date of the petition, a notification was still pending since the court was deliberating whether or not to grant the author pro bono legal services.

XXIV. PROCEEDINGS BEFORE THE COMMISSION

127. The Commission received the petition in September 1994 and forwarded the pertinent parts thereof to the Government on December 14, 1994, giving it 90 days in which to present its observations. The Government of Brazil requested and was given three consecutive 30-day extensions (Article 34(6) of the Commission's Regulations).

128. In June 1995, the Commission received the Government's reply to the effect that: Case No. 37,662/89 was in the secondnd military court of São Paulo, and was instituted to ascertain culpability in the assault against Carlos Eduardo Gomes Ribeiro; the defendants were military police corporal Donizetti Aparecido Bezerra da Silva and military police soldiers Dorival Bernardo de Senna, Marcos Aparecido Correa Cesar and Mauro Garofo. On July 29, 1994, the defendants' liability to punishment was declared to have prescribed on July 23, 1994. The proceedings in the case were, therefore, filed on January 30, 1995.

129. On July 11, 1995, the Commission forwarded the Government's reply to the petitioner, allowing 45 days for observations. In August 1995, the petitioner replied that as the original petition explained and the Government confirmed, the military criminal prosecution had prescribed. The petitioner added that this frequently occurred in bodily harm cases, because of military court delays in conducting trials. As for the civil liability suit for damages, the case was still at the investigative phase in the seventh District Treasury Court, as case No. 335/94.

130. In September 1995, the Commission received additional information from the petitioner, who stated that the case had prescribed because of the various hearing postponements and the slow pace at which they were conducted, with 11 months between one hearing and the next. The military courts were responsible for the delays that caused prescription. The courts failed to perform their function and in so doing had guaranteed that those responsible for the violation of the victim's basic rights would go unpunished.

131. The Commission forwarded information from the petitioner to the Government on September 19 and November 2, 1995, respectively, and asked for the following information: the legal reasons why the pre-trial hearings and trial hearings were postponed; the legal reasons why the witnesses were interrogated two years after the fact; a copy of the respective case file, including a copy of the police investigation reports and a copy of the most recent court ruling handed down, if any; a copy of the provisions in the military criminal justice system that apply to prescription under military court proceedings, and any other information or a copy of the pertinent parts of lawbooks that examine the way that Brazilian military criminal law operates on this subject.

132. On April 25, 1996, the Commission reiterated its earlier request of the Government, and did so again on September 23 of that year. However, no reply was forthcoming.

XXV. CONSIDERATIONS REGARDING ADMISSIBILITY

133. The facts recounted by the petitioner in the petition describe possible violations of human rights guaranteed by the American Convention on Human Rights, which will be examined in due

course. The Commission will now examine the formal requirements for the petition to be admitted.

134. Article 46 of the Convention, cited above, establishes the requirements that a petition must meet to be admitted. In the petition filed in September 1994, the petitioner reported that because the military courts were slow to conduct the criminal proceedings the case had prescribed, with the result that the assailants had gone unpunished. The Government did not allege a failure to exhaust the remedies under domestic law, but confined itself to confirming the fact that the case had prescribed. The Commission finds, therefore, that the remedies under domestic law were exhausted.

135. The Commission received the petition in September 1994, three months after the military court found that the case had prescribed and the offense was no longer punishable as of July 1994. The Commission considers that the declaration that the case had prescribed constitutes a form of setting the start of the deadline referred to under Article 38.1 of its Regulations which reads:

The Commission shall refrain from taking up those petitions that are lodged after the six month period following the date on which the party whose rights have allegedly been violated has been notified of the final ruling in cases where the remedies under domestic law have been exhausted.

136. The Commission knows of no other similar body that is presently examining this case nor does the Government claim such knowledge. The petitioner has also complied with the formal requirements of Article 44 of the Convention.

CASE 11.286 (ALUISIO CAVALCANTI JR. AND CLAUDIO APRECIDO DE MORAES)

XXVI. BACKGROUND

137. The Commission received a petition in February 1994, to the effect that Aluísio Cavalcanti Junior was killed and that Claudio Aparecido de Moraes was the victim of attempted murder; that both crimes were allegedly the work of Sao Paulo state military police officers José Carvalho, Robson Bianchi, Luís Fernando Goncalves, Francisco Carlos Gomes Inocêncio, Rubens Antônio Baldasso and Dirceu Bortoloto, in the Jardim Camargo Velho neighborhood of São Paulo on March 4, 1987.

138. The petition states that one of the minors was suspected of murdering the son of one of the two policemen that apprehended them. The juveniles were taken into custody, questioned, threatened and one juvenile implicated the other as the author of the crime. The police officers decided to kill both, although, despite the shooting, one survived.

139. On November 9, 1987, the military prosecutor indicted Lieutenant Robson Rianchi, Corporal Jose de Carvalho and soldiers Rubens Antônio Baldasso, Luís Fernando Goncalves, Dirceu Bortoloto and Francisco Carlos Gomes Inocêncio for the murder of Aluísio and the attempted murder of Claudio. Sergeant João Simplício Filho and soldier Roberto Carlos de

Assis, who did not participate in the execution per se and were not in favor of it, were indicted for failure to prevent a murder.

140. The petition reported that the proceedings in the military courts had had virtually no results and that no one had been taken into custody. The petition sought to redress the unjustified murder of Aluísio and the attempted murder of Claudio and accused the Government not only of the murder but of failure to investigate and properly punish those directly responsible. It also asked that the State be condemned for violating its international obligations, specifically articles I, XXV and XXVI of the American Declaration of the Rights and Duties of Man and Articles 8(1) and 25(1) of the American Convention on Human Rights.

XXVII. PROCEEDINGS BEFORE THE COMMISSION

141. The Commission received the petition in February 1994 and forwarded the pertinent parts thereof to the Government on May 25 of the same year, giving it 90 days in which to present its observations. In August 1994, the Government of Brazil replied by stating that the federal and state authorities in the executive and judicial branches were working in their respective areas of competence to shed light on the facts with a view to determining where the responsibilities lay. It asked for and was granted a thirty-day extension.

142. In September 1994, the petitioner presented additional information wherein it alleged that the Government had not replied on time since May 25, which was a violation of Article 34(5) of the Commission's Regulations, which stipulated that the Government had to reply within 90 days. The petitioner went on to say that over seven years after the fact, the case had finally been scheduled to go to trial on August 8, 1994; however, when one of the defendants' attorneys failed to appear, the trial was postponed until September 23, 1994.

143. In November 1994, the Government replied that according to information received from the Council for the Defense of Human Rights, from the Ministry of Justice, and from the Secretariat for Public Security of the State of São Paulo, inquiries were carried out by the São Paulo State Military Police Magistrate's Office, as a result of which the Command of the Second Metropolitan Military Police Battalion instituted Military Police Inquiry No. 030/90/87 against all the military police officers implicated in the case. At the same time Council of Justice Case No. CJ-41/87 was instituted against Second Lieutenant Robson Bianchi. Disciplinary boards [CHECK - Court martial proceedings?] were also created against Third Sergeant João Simplício Filho, MP soldier Roberto Carlos de Assis and Corporal José de Carvalho.

144. The Government added that in the course of the investigation, MP soldier Francisco Carlos Gomes Inocêncio and MP soldier Dirceu Bortoloto were dismissed from service by an administrative decision of the São Paulo State Military Police Commander General. The São Paulo Military Prosecutor's Office brought an indictment against Lieutenant Robson Bianchi, Corporal José de Carvalho and soldiers Rubens Baldasso, Luis Fernando Goncalves, Dirceu Bortoloto and Francisco Carlos Gomes Inocêncio in November 1987, which led to Case No. 30,051/87, with the trial set for November 26, 1994. Thus, the Government argued that the remedies under domestic law had not been exhausted since the additional phases of the

proceedings required by law to convict and punish those eventually found guilty, had not been completed.

145. In November 1994, the Commission accumulated another petition on the same case with the following documents taken from the military criminal proceedings attached: a copy of the military police inquiry report, the indictment brought by the third military prosecutor's office, the autopsy report and medical examiner's report on the victims, and the depositions of the prosecution's witnesses.

146. In December 1994, the Commission informed the new petitioner that Case 11,409 had been opened and forwarded the pertinent parts of the petition to the Government. That same December, the Government replied saying that this was a case of duplication of the kind provided for in Article 39 of the Commission's Regulations and requested that the petition be declared inadmissible for that reason.

147. In January 1995, the Commission informed the Government that a mistake had been made and that the information supplied by the second petitioner had been added to the case already being processed. The Government had been duly informed of that information and there had been no infringement of its right to defense and due process in accordance with the Regulations.

148. In June 1995, the Commission received additional information from the Government to the effect that at the request of the victim's representative (assistente de acusacão, assistent to the prosecutor), the trial hearing slated for November 26, 1996, was changed to a pre-trial inquiry in order to enter into the record the collective judgment rendered by the Tribunal of Justice in appeal No. 117,669.3/1, as that case was materially related to the case being investigated in the military criminal proceedings. The trial was rescheduled for May 9, 1995. In a petition dated May 8, 1995, the victim's representative (or assistent to the prosecutor) again requested that the trial be made a pre-trial inquiry instead, since the appeals ruling in question was not available within a reasonable period of time. The trial was then rescheduled to July 18, 1995, and the parties and the defendants duly notified.

149. In July 1995, the Commission forwarded the Government's additional information to the petitioner and gave the later 45 days in which to make its observations. In August 1995, the petitioner replied that prior to the request to change the trial to a pre-trial inquiry, other dates had been set for the trial, but it was never held. The inquiry requested was essential to solving the case; a ruling handed down in the regular courts (as opposed to the military courts) was in the process of becoming final, in which the police officers who were the defendants in the military proceedings prosecuting the murder were found guilty of hiding the murder victim's body. One of the peculiarities of Brazilian procedural law is that concealment of the corpus delicti is a crime in regular criminal law (but not in military criminal law). The petitioner added that July 18 and August 8 were the dates set for the trial, which, at the defense's request, had not yet been held. The petitioner also informed that no lawsuit seeking indemnization had begun. The case had prescribed and the military police officers had to be convicted in the criminal trial for a damages suit to prosper.

150. On September 19, 1995, the Commission forwarded the petitioner's observations to the Government. In September, the Commission received additional information from the Government to the effect that the trial had been rescheduled to September 12, 1995.

151. In October 1995, the Commission received information from the second petitioner to the effect that the first petitioner had dropped out of the case; the second petitioner would continue it.

152. In October, the Commission received more information from the petitioner arguing that the information presented by the Government was incomplete; while the latter had mentioned the two trial hearings that had been changed to pre-trial inquiries at the request of the victim's representative, the Government failed to mention the fact that another six trial dates had been postponed.

153. The petitioner alleged that as copies of the attached petitions would show, there were ample grounds for the requests mentioned by the Government to change two trial hearings to pre-trial inquiries; those requests concerned a matter that had a bearing on the outcome of the case, which was the possibility of entering into the record of the military criminal proceedings the finalized ruling of the regular court that had prosecuted and convicted the very same military police officers who were the defendants in the military court case and whom the regular court had convicted of concealing the victim's body. Concealment of the body was only a crime under regular criminal law, which meant that the crime of homicide and the crime of concealment of the body were prosecuted in different jurisdictions.

154. The trial was held on September 12, where it was decided to nullify all the oral evidence produced in the trial and the defendants' interrogation, the reason being conflicting defense pleas. This would further delay the punishment of those responsible for the victim's murder, which had occurred more than eight years earlier. Given the slow pace at which the wheels of military justice were moving, the fear of impunity was well founded.

155. The petitioner explained that concerning the indemnization of the victim's next-of-kin, the suit for indemnization that was being heard could not move forward. The military police officers would have to be convicted in the military criminal proceedings so that the conviction might serve as the basis of a subsequent conviction in a civil action.

156. On November 17, 1995, the petitioner's observations were forwarded to the Government, which was asked to explain the legal grounds for the requested exception arguing failure to exhaust the remedies under domestic law, pursuant to Article 37 of the Commission's Regulations, and to address the merits of the case, i.e., whether the Government had violated the articles of the Convention that the petitioner alleged it violated. On April 17, 1996, and again in September 1996, the Commission reiterated that request. No answer was forthcoming.

XXVIII. CONSIDERATIONS REGARDING ADMISSIBILITY

157. The facts recounted by the petitioner in the petition describe possible violations of human rights guaranteed by the American Convention on Human Rights, and will be examined in due course. The Commission will now examine the formal requirements for a petition to be admitted.

158. Article 46 of the Convention, cited above, establishes the requirements for a petition to be admitted. In the petition filed in September 1994, the petitioner reported that over seven years after the fact, the accused had still not been brought to trial.

159. In its reply of June 1995, the Government alleged that certain administrative punitive measures had already been taken and that a case had been instituted in the military courts to investigate and ascertain the identity of those responsible for Aluízio's murder and the attempted murder of Claudio. The Government also alleged a failure to exhaust domestic remedies, on the grounds that "the additional stages of the proceedings required by law to convict and sentence those eventually found guilty had not been completed." Later, the petitioner reported, and the Government confirmed, that the trial had still not been held, eight years after the crime was committed.

160. Article 46(2)(c) of the Convention stipulates that the provisions of paragraphs (1)(a) (exhaustion of the remedies under domestic law) and (1)(b) (deadline for filing the petition) shall not apply when there has been an unwarranted delay in rending judgment under those remedies. The same is stated by Article 37(2)(c), of the Regulations of the Commission. [FN12] The Commission is persuaded that the defendants' trial is long overdue and grants the exception to the rule requiring exhaustion of internal remedies, pursuant to Article 46 (2) (c) of the Convention and 37(2)(c) of its Regulations.

[FN12] See endnote No.1.

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161. The most recent communication from the petitioner, received in October 1995, reported that on September 12, a trial hearing was held where it was decided to nullify all the oral evidence produced during the trial and the interrogation of the accused because of conflicting defense pleas. This would further delay punishment of those responsible for the victim's murder eight years earlier. The Government did not respond to this allegation by the petitioner or the Commission's requests sent in November 1995 and April and September 1996. The Commission considers that the exception provided for in Article 46(2)(c) of the Convention applies and therefore considers that the petition was filed within a reasonable time period, as stipulated in Article 38(2) of its Regulations.[FN13]

[FN13] See endnote No.3.

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162. The Commission knows of no other similar body that is presently examining this case nor does the Government claim such knowledge. The petitioner has also complied with the formal requirements of Article 44 of the Convention.

XXIX. CONSIDERATIONS REGARDING THE NINE CASES

A. CONSIDERATIONS REGARDING THE COMPETENCE OF THE COMMISSION

163. The various petitioners have alleged violations of rights guaranteed in Article I (right to life, liberty and personal security), XVIII (right to a fair trial) and XXIV (right of petition), of the American Declaration of the Rights and Duties of Man, and in articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights. The Commission is competent to analyze possible violations to human rights which are protected by the Declaration and by the Convention, in accordance to articles 1.2b and 20, of its statute. The fact that Brazil has ratified the Convention on September 25, 1992, does not exempt its responsibility for violations of human rights occurred prior to that ratification, rights guaranteed in the Declaration, which has a binding character.

164. The Inter-American Court of Human Rights explicitly recognized the binding force of the Declaration stating that "Articles 1(2)(b) and 20 of the Commission´s Statute define...the competence of that body with respect to the human rights enunciated in the Declaration, with the result that to this extent both the American Declaration and the Convention are, for those States which ratified the Protocol of Buenos Aires, in pertinent matters and in relation to the Charter of the Organization"[FN14], a source of international obligations.

[FN14] Advisory Opinion of the Inter-American Court of Human Rights, paragraph 45, July 14, 1989, on the 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.----------

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B. CONSIDERATIONS REGARDING ACCUMULATION OF CASES FOR THE PURPOSE OF DECIDING ON THEIR ADMISSIBILITY

165. Article 40 of the Regulations of the Commission establishes criteria for separation and combination of 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.

166. Nevertheless, the Commission has interpreted Article 40 in a broad sense, as its practice shows. Regarding Article 40(1) of its Regulation:

The Commission has not interpreted this provision to require that the facts, victims and violations set forth in a petition strictly coincide in time and place in order to allow processing as a single case.

Rather, the Commission has processed individual cases dealing with numerous victims who have alleged violations of their human rights occurring at different moments and in different locations so long as all of the victims allege violations arising out of the same treatment. Thus, the Commission may process as a single case the claims of various victims alleging violations arising out of the application of legislation or a pattern or practice to each of the victims that received this similar treatment. The Commission not only has refused to separate such cases for processing but has also accumulated separate cases with such characteristics into single cases for processing.[FN15]

[FN15] Report No. 4/97, Regarding Admissibility, March 12, 1997, (Colombia) Annual Reprt of the Inter-American Commission on Human Rights, 1996, paragraphs 40 and 41, and footnote No. 23 about Report No. 24/82, Chile, March 8, 1982, which accumulated 50 cases.

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167. All the present cases had separate proceedings but the Commission acknowledges the similarities of the petitions and the fact that the alleged violations occurred within the same context. The alleged crimes were committed by military police of the same State, São Paulo, allegedly acting illegally against defenseless and (except in one case) unarmed) victims; and the authors of the alleged violations have gone unpunished because the military courts have been slow and biased in prosecuting and deciding their cases. Therefore, the Commission decided for the sake of procedural economy to join the cases with a view to preparing a single report.[FN16]

[FN16] See also: Report No. 9/ 94, January 1st, 1994 (Haiti), about Cases: 11.105, 11.107, 11.110, 11.111, 11.112, 11.113, 11.114, 11.118, 11.120 and 11.102, Annual of Report IACHR, 1993; Report No. 28/92, October 2nd, 1992 (Argentina), about Cases: 10.147, 10.181, 10.240, 10.262, 10.309, and 10.311, Report No. 1/93, March 3rd, 1993 (Argentina), about Cases: 10.288, 10.310, 10.436, 10.631, and 10.771 and Report No. 24/92, October 2nd, 1992 (Costa Rica), about Cases: 9328, 9329, 9742, 9884, 10.131, 10.193, 10.230, 10.429, and 10.469, Annual Report of IACHR 1992-1993; Report about Cases 9.768, 9.780, and 4.828 (Mexico), Annual Report of IACHR, 1989-1990; Report about Cases 9777 and 9718, March 30, 1988, (Argentina), Annual Report of IACHR, 1987-1988; Resolution No. 19/83, March 30, 1983 (Nicaragua), about cases 5154, 7313, 7314, 7316 and 7320, Annual Report of IACHR, 1982-1983.

CONCLUSIONS

168. The Commission considers that it is competent to hear these cases; and that they are admissible according to the requirements established in Articles 46 and 47 of the American Convention.

On the basis of the foregoing factual and legal grounds,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

169. To declare the present cases admissible.

170. To send this report on admissibility to the Government of the Federative Republic of Brazil and to the petitioners.

171. To place itself at the disposal of the parties with a view to reaching an agreement based on respect for the rights protected under the American Convention; and to invite the parties to express their opinion within 30 days regarding the possibility of a friendly settlement.

172. To continue to examine the substantial issues.

173. To publish this report and include it in the Annual Report to the OAS General Assembly.