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Title/Style of Cause:	Ovelario Tames v. Brazil
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Decided by:	Chairman: Professor Robert K. Goldman; Second-Vice Chairman: Dean Claudio Grossman; Members: Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia, Sir Henry Forde. As prescribed in Article 19(2)a of the Commission's Regulations, Member of the Commission Helio Bicudo, of Brazilian nationality, did not participate in the discussions or the voting on this case.
Dated:	13 April 1999
Citation:	Tames v. Brazil, Case 11.516, Inter-Am. C.H.R., Report No. 60/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by:	APPLICANT: the Roraima Indian Council, Human Rights Watch and the Center for Justice and International Law
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1. In June 1995 the Inter-American Commission on Human Rights (hereinafter "the Commission") received from the Roraima Indian Council, Human Rights Watch and the Center for Justice and International Law (CEJIL) a complaint against the Federal Republic of Brazil (hereinafter "Brazil" or "the State") in which Ovelário Tames, a Macuxi Indian, was arrested and assaulted by a civil police officer of the State of Roraima and the next day died of his injuries in a cell at the police station. The complaint states that the facts constitute violations of the rights guaranteed in the American Declaration of the Rights and Duties of Man (hereinafter "the Declaration") in Article I (right to life, liberty, and the security of the person) and in the American Convention on Human Rights (hereinafter "the Convention") in Articles 8 (fair trial) and 25 (judicial protection) in conjunction with Article 1(1) (obligation to respect the rights and freedoms recognized in the Convention).

2. The State advised that the tried officers had been acquitted, except in one case in which the time limit for criminal prosecution had run out. It also stated that it had opened discussions on compensation for the victim's family, and that the domestic remedies had not been exhausted.

I. THE FACTS

2. The complaint states that Ovelário Tames was arrested by civil police officers of the State of Roraima at dawn on October 23, 1988, and the next morning was found dead in a cell of the civil police station in Normandia municipality, allegedly as a result of having been beaten up and struck on several parts of his body. On October 25, 1988, a civil investigation was opened in that same police station. The investigation established that six civil police officers were present in the

police station from the time that Ovelário entered it until he died. The civil police investigation concluded with an indictment of only one of those officers.

3. The complaint states further that an investigation was opened by the Federal Police, to which the report of the civil investigation was attached. This Federal Police investigation concluded on May 24, 1989, with an indictment of the six civil police officers José Felipe da Silva Neto, Jairo Pinto de Sousa, Aginaldo da Silva Vieira, Nazareno Oliveira de Lima, Leônidas Nestor Pacheco, and Roger Afonso de Sousa Cruz Filho.

4. On September 21, 1989, all six officers were summoned to testify in court. Officer Roger Afonso, one of those indicted, failed to appear. The judge decided that Roger Afonso was to be summoned by public notice posted on November 9, 1990. However, the notice was not posted until February 13, 1995, more than four years after the date ordered by the judge and more than six years after the crime had been committed. The accused having failed to appear, he was declared in contumacy in April 1995.

II. PROCESSING IN THE COMMISSION

5. The complaint was received in June 1995. The Commission forwarded the relevant parts of it to the State on July 24, 1995, and set a term of 90 days in which to reply. In October 1995 the State requested an extension of 30 days, which was granted. In November the representative of the Brazilian State requested yet another 30-day extension. In February the Commission responded that it was granting a one-time extension of 90 days, ending on February 12, 1996.

6. On April 15, 1996, after the end of the 90-day period prescribed in Article 34(5) of the Commission's Regulations within which the State was required to reply to the complaint, complainants asked the Commission to repeat its request for a reply from the Brazilian State.

7. On April 24, 1996, the Commission sent the State a note granting an additional 30 days in which to reply.

8. On June 21, 1996, the State sent its reply to the Commission.

9. On July 16, 1996, the Commission forwarded the reply of the State to complainants, giving them 30 days in which to present their observations. On August 15, 1998, complainants sent in their comments on the State's reply.

10. On July 8, 1998, complainants sent the Commission additional information, which was forwarded to the State, which was required to present its final comments thereon within 30 days. The Commission has received no reply from the State.

III. FRIENDLY SETTLEMENT

11. On November 19, 1996, the Commission offered the parties the possibility to initiate a process of a friendly settlement of the case. The State did not accept such possibility.

12. On December 13, 1996, the Commission informed complainants that the State had not replied to the proposal for friendly settlement, that it took the attempt at friendly settlement as completed, and that it would start to process the case.

IV. POSITIONS OF THE PARTIES

A. Position of petitioner

13. Complainants allege that the fact that the criminal proceeding is still in the preliminary phase in which the judge, on receiving a complaint, sets the day and hour for the taking of testimony and orders the indictment of the accused almost six years after the crime was committed, constitutes "unwarranted delay" in the terms of Article 46(2)(c) of the Convention, as an exception to the requirement that the remedies under domestic law shall have been exhausted. Complainants request that the Commission pronounce the Brazilian State in violation of Article I of the Declaration and of Articles 8 and 25 in conjunction with Article 1(1) of the Convention, and order Brazil to arrange for conclusion of the judicial proceeding in order to identify and sentence those responsible for the crime.

14. Complainants point out that, despite the fact that eight years had gone by, the principal judge of the third criminal jurisdiction of Roraima had decreed that hearings would be postponed from July 8, 1996, to October 8, 1996, owing to the heavy backlog of business in that court.

15. In response to the reply of the State (see paragraph 20, below) complainants stated that the Brazilian State had not fulfilled what it had proposed in its reply, that is, that the Council for Defense of the Rights of the Human Being had not at that writing asked the Roraima justice authorities to step up the pace of the proceeding nor made any contact with the family of the victim to propose an action for civil damages.

16. Complainants added that this delay in the conduct of the judicial proceeding not only calls for an exception to the requirement of exhaustion of domestic remedies but constitutes a violation of the rights of access to justice guaranteed in the American Declaration and Convention. Complainants emphasize that the Brazilian State not only did not deny that the proceeding was being dragged out, but admitted that this was happening, which makes the violations flagrant and calls for condemnation of the State.

17. In the additional information complainants assert that the proceeding is in the phase of final arguments. They also advise that the Office of the Public Prosecutor did not accept the thesis set forth in the complaint and issued an opinion favorable to acquittal of the six accused officers.

18. According to the information presented, regarding officer José Felipe da Silva Neto, who arrested Mr. Tames, the State's attorney ruled out the possibility of bodily harm followed by death, and admitted only the infliction of slight bodily injuries based on the assumption that the officer had not acted with deliberate intent. According to complainants, the opinion of the Office of the Public Prosecutor is riddled with contradictions. In the view of the State's attorney the assault made by officer José Felipe did not cause the death of Ovelário Tames. However, she

based this opinion on statements by witnesses who had not been present when the assault was made, who said there were wounds on the victim's abdomen but no visible injuries on his head, and on the forensic report, which assigned his death to intracranial hemorrhage. This being the case, even admitting the presence of injuries on the victim's abdomen, she considered that they had not caused his death, which, according to the forensic examination, had been caused instead by injuries to the head. The Attorney General concluded his opinion favoring conviction of the policeman for the misdemeanour of assault and battery, but since the statute of limitations had tolled on this crime, he asked that the accused be found not guilty.

19. According to the evidence supplied by complainant, State's attorney asserts that the record shows nothing that can be used against the other police officers.

B. Position of the State

20. In its reply the State asserted that the police investigation to ascertain the circumstances surrounding the death of Ovelário Tames ended with the indictment of six persons for the crime of bodily injury followed by death. It also advised that a criminal action had been brought against the six civil police officers. The State added that, except for one police officer who had been declared in contumacy, the accused had been interrogated and the criminal action was in the investigatory phase, and that the taking of the testimony developed in the investigation was scheduled for September 2, 1996.

21. The Brazilian State further asserted that, in view of the slowness of the proceeding, the Council for Defense of the Rights of the Human Being (CDDPH) of the Ministry of Justice would direct the Roraima State judiciary to proceed at a faster pace.

22. The Brazilian State added that the CDDPH would open an action for civil indemnification, and to that end would enter into contact with the victim's family.

23. The State argues that the domestic remedies have not yet been exhausted, as complementary stages of the proceedings remain to be completed for the sentencing and punishment of those found guilty in accordance with the law.

V. REPORT ON ADMISSIBILITY

24. As stated in the admissibility report,[FN1] the Commission is of the view that eight years is far too long a time for a criminal investigation, and concurred in the thesis of "unwarranted delay" as an exception from the requirement of exhaustion of domestic remedies under Articles 46(2)(c) of the Convention and 37(2)(c) of the Regulations. The Commission also felt that the complaint had been presented in a reasonable time more than six years after the date of the violation of rights under Article 38(2) of the Regulations.

[FN1] Report No. 19/98, Annual Report of the Inter-American Commission on Human Rights, 1997, pp. 115-120.

25. The Commission decided that the petition met the formal requirements for admissibility prescribed in Article 46(1) of the Convention and Articles. 32, 37, and 38 of the Regulations.

VI. THE MERITS

A. General considerations

26. Firstly, the Commission is competent to hear this case because it concerns allegations of violations of rights recognized in Article I of the Declaration (right to life, liberty and security of the person) and Articles. 26 and 51 of its Regulations. The fact that Brazil ratified the Convention on September 25, 1992, does not exempt it from responsibility for acts committed prior to that ratification in violation of human rights guaranteed in the Declaration, which, according to an advisory opinion of the Inter-American Court of Human Rights, is binding.[FN2]

[FN2] Paragraph 45 of the Advisory Opinion issued by the Inter-American Court on July 14, 1989, on "Interpretation of the American Declaration of the Rights and Duties of Man in the framework of Article 64 of the American Convention on Human Rights."

27. Secondly, the Commission is also competent to consider acts committed by the Brazilian Judiciary subsequent to Brazil's ratification of the Convention when those acts constitute continuous violation of or disregard for[FN3] Articles 8 and 25 (right to a fair trial and to judicial guarantees) in conjunction with Article 1(1) of the Convention. In depositing its instrument of accession to the Convention, Brazil undertook to respect the rights and freedoms recognized therein and to ensure to all persons subject to its jurisdiction the free and full exercise (thereof) [Article 1(1)]. Thus the Brazilian State acquires the obligation to provide judicial guarantees and judicial protection for its nationals in compliance with Articles 8 and 25 of the Convention. As pointed out by the Inter-American Court of Human Rights,[FN4] under this obligation the State is duty-bound to so organize its government and the administrative structures through which it exercises its public power, that the free exercise of human rights can be legally guaranteed.

[FN3] Report N° 24/98, Annual Report of the Inter-American Commission on Human Rights, pars. 13-18. "the doctrine established by the European Commission and by the Covenant on Civil Rights, under which these bodies have declared themselves competent to hear acts precedent to the date of entry into force of the Convention for a given State provided that those acts can result in a continuous violation of the Convention extending beyond that date." (Andrés Aguilar, *Dereitos Humanos nas Américas*, p. 202, footnote 8.

[FN4] ACourtHR, Case of Velásquez Rodríguez, Judgment of July 29, 1988, par. 172.

28. In consequence, the Commission is competent *ratione temporis* to hear and decide the present case in accordance with the Declaration in relation to the violations committed prior to Brazil's ratification of the Convention, and also in accordance with the Convention in regard to

the acts and procedures carried out by the Brazilian judiciary to the extent that they may constitute a continuous violation of Articles 8 and 25 of the Convention in relation to Article 1(1) thereof.

B. Responsibility of the State in respect of acts and omissions of its organs and agencies

29. As noted above, Article 1(1) of the Convention clearly establishes the obligation of the State to respect the rights and freedoms recognized in it and to ensure the free and full exercise thereof. The American Declaration of the Rights and Duties of Man prescribes in Article XVIII the right to judicial safeguards against acts of authority, and states in its preamble that juridical and political institutions of states have as their principal aim the protection of human rights. Hence these provisions of international law impose on the State the basic obligation to respect and guarantee, in consequence of which every violation of the rights recognized by the Declaration and the Convention that may be ascribed under the rules of international law to acts or omissions by any public authority constitutes an act for which the State is responsible.[FN5]

[FN5] IA Court of HR. Case of Garrido and Baigorria. Judgment of August 27, 1998. Reparations. When a Federal State's constituent have jurisdiction over human rights matters, Article 28 of the Convention makes provision for said Federal State becoming a party to the Convention....(T)he Court should note that the case law, which has stood unchanged for more than a century, holds that a State cannot plead its Federal structure to avoid complying with an International obligation.

30. According to Article 28 of the Convention, when a State Party is constituted as a federal state, as Brazil is, its national government is answerable internationally for the acts of its constituent federal units.

31. The present case has to do with allegations of violations of human rights committed by civil police officers of the state of Roraima. In view of the foregoing, the Commission concludes that, in the present case, Brazil is responsible and must answer in the international sphere for acts violative of the rights established by the Convention that are committed by public agents of any of the states of its Federation.

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

32. Since the Brazilian State ratified the Convention on a date (September 25, 1992) subsequent to the acts that gave rise to the present complaint (October 23, 1988), complainants allege violation of the right to life established in Article I of the Declaration, which reads as follows:

Every human being has the right to life, liberty and the security of his person.

33. In the present case, Ovelário Tames was arrested and assaulted by the Roraima State civil police officer José Felipe da Silva, placed in a cell in the police station, where he remained for 8

hours complaining of pain and without receiving any care or aid from the police officers on duty, and subsequently died.

34. According to the complaint, the investigation conducted by the civil police contains testimony taken from police officer José Felipe and from other prisoners who had been in the same cell with Ovelário. The police officer asserts that he struck Ovelário in the stomach to subdue him, Ovelário having resisted arrest. The other prisoners declared that they saw Ovelário enter the cell squirming in pain, and that he spent the night groaning and spitting blood.

35. According to additional information supplied by complainants, the opinion of the State's attorney cites the testimony of witnesses who describe the deplorable physical state of Ovelário when he arrived in the cell:

that when the Indian arrived in the cell at the police station, he was near death:... that the corpse showed visible signs of violence on its abdomen up to the base of the neck, with purple stains; that the Indian appeared to have taken a pretty bad beating;...

36. Moreover, according to the Office for the Promotion of Justice of Boa Vista, Roraima, of the Office of the General Prosecutor:

the Indian victim[FN6] in that proceeding was arrested at about 2 o'clock in the morning. There were three persons in the cell. The Indian was brought by police officers Roger and Felipe and thrown into their cell, where he remained twisting and turning until he died... That the witness asked the Indian whether he had been badly beaten, and the Indian replied that yes, he had been severely beaten in the abdominal region, and he actually vomited in the cell. That the Indian was short of breath and found it difficult to speak... That the Indian was groaning loud enough to be heard by the police officers in other rooms of the station...[FN7]

[FN6] The Commission draws attention to the way the State's Attorney refers to Brazilian citizen Ovelario Tames, a member of the Macuxi Indian people.

[FN7] Letter dated March 25, 1998, from Elba Christine Amarante de Moraes, State's Attorney, to the judge of the 3rd Criminal Court. (pp. 263-274 of the file in the possession of that Court).

37. Paragraph XLIX, Article 5 of the Brazilian Federal Constitution prescribes that "the physical and moral integrity of the prisoner shall be respected."

38. Ovelário Tames died inside the police station after having been violently beaten by civil police officer José Felipe da Silva Neto and being then left groaning in pain for hours without receiving medical care from either officer José Felipe or any of the other officers on duty. It is found, therefore, that the police officers did not fulfill their legal duty of ensuring the physical integrity of the prisoner.

39. As previously noted, under international law the State is responsible for the acts committed by its agents on official duty.[FN8] Therefore, the Commission holds the Brazilian

State responsible for the violations committed by the police officer who struck Ovelário Tames, and for the omission of the officers on duty in doing nothing to help the victim while he was in the cell at the police station. The Brazilian State did not fulfill its obligation to protect a person in its custody in order to keep him alive.[FN9] The Commission emphasizes once again that one of the most important consequences of the international responsibility of states in relation to human rights is that they must see to the life and the physical and mental integrity of persons in their custody. In the present case not only did the victim die as a result of the illegal treatment to which he was subjected by a Roraima State police officer, but while in jail he was denied the medical care required to restore him despite loud pleas and signs of suffering that continued for several hours in the presence of police officers and other prisoners and were disregarded with fatal results. In consequence, the Commission holds that the Brazilian State violated Article I of the Declaration.

[FN8] IACourtHR, Case of Velásquez Rodríguez, Judgment of July 29, 1988, par. 170.

[FN9] "The burden of proof is on the State because, when it arrests a person and keeps that person under its exclusive control, it becomes the guarantor of that person's safety and rights." (Report 5/98, case 11019 Alvaro Moreno Moreno, Colombia, p. 434, par. 74).

Right to a fair trial (Article XVIII of the Declaration)

40. Although complainants have not invoked Article XVIII of the Declaration, which establishes the right to a fair trial, the Commission is of the view that this provision, too, should be examined in keeping with the general principle of international law *jura novit curia*, in which international agencies have the power, and indeed the duty, to apply all relevant legal provisions, even if they have not been invoked by the parties.[FN10] That article reads as follows:

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

[FN10] Permanent Court of International Justice, Lotus case, Judgment N° 9, 1927, Series A, No. 10, p. 31, and European Court of Human Rights, Handyside case, Judgment of Sept. 7, 1976, Series A., No. 24, par. 41.

41. The judicial proceeding on the death of Ovelário Tames remained in the preliminary stage for almost eight years after the date of the events, and it took more than four years just to post the summons to one of the accused. In its reply the State admitted that the proceeding had been delayed and asserted that it would act through the Council for Defense of the Rights of the Human Being in the Ministry of Justice to have the Roraima State judiciary with utmost speed in the criminal proceeding and contact the relatives of the victim in connection with a possible civil action for damages. The State never did any of this.

42. In the present case the Brazilian State has not guaranteed to the family of Ovelário Tames a simple and brief proceeding to try the officers whose acts violated fundamental rights recognized even in the Brazilian Federal Constitution. In consequence, the Commission considers that the Brazilian State violated Article XVIII of the Declaration.

Right of protection from arbitrary arrest (Article XXV of the Declaration)

43. Though complainants have not invoked Article XXV of the Declaration, which provides that every individual who has been deprived of his liberty has the right to humane treatment while in custody, the Commission is of the view that, in keeping with the general principle of international law *jura novit cura*, cited above, this provision must also be considered.

44. In view of the evidence mentioned above in the opinion of the State's attorney in regard to the blows dealt to Ovelário Tames and struck by the civil police officer when Ovelário was arrested, aggravated by the failure of the other officers on duty to come to his aid when he was groaning in pain in the cell, the Commission decides that the Brazilian State violated Article XXV of the Declaration because its agents gave Ovelário no humane treatment when he was in the State's custody.

45. Moreover, on the right of protection from arbitrary arrest, Article XXV provides that "no person may be deprived of his liberty except in the cases and according to the procedures established by preexisting law." In the present case, according to complainants, both the testimony taken during the police investigation and the opinion of the state's attorney demonstrate that the civil police officer arrested Ovelário Tames because the latter was getting on or off a truck, which the officer regarded as "suspicious behavior."

46. In Brazilian law a person may only be arrested in cases of flagrante delicto or for cause stated in a written order from a competent judicial authority (paragraph LXI, Article 5 of the Federal Constitution of Brazil), and the imprisonment of any person must be immediately reported to the competent judge and to the prisoner's family, together with the place where he is being held (par. LXII, Article 5 of the same Constitution).

47. In the present case the police officer imprisoned Ovelário Tames even though he had not been caught in any unlawful act, that is, without any legal justification or judicial order; in other words, the officer acted arbitrarily. The Commission concludes that the Brazilian State also violated Article XXV of the Declaration on protection from arbitrary arrest.

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

48. Articles 8 and 25 of the Convention grant the individual, when his rights have been violated, the right of access to a competent tribunal and to be heard in it within a reasonable time, with due guarantees. Article 25 of the Convention provides:

Every person has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights

recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

49. Article 8 establishes that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent and independent tribunal.

50. When Brazil deposited its instrument of accession to the Convention on September 25, 1992, the judicial proceeding concerning the death of Ovelário Tames had been in the stage of posting of summons to one of the accused for four years (1990 to 1995). In addition, the proceeding remained in the preliminary phase for almost six years even after Brazil's ratification of the Convention.

51. The right to a hearing with due guarantees and of recourse to law must be considered from a formalist standpoint, in which it suffices if there are procedural avenues for the opening of criminal action and the corresponding judicial judgement. Articles 8 and 25 embody the principle, recognized in the international law of human rights, that the procedural instruments or means to guarantee those rights must actually exist. It is not enough for the legal system of the state to formally recognize the remedy in question: it must also make the remedy truly available, and applicable in accordance with the rules of due process.[FN11]

[FN11] Report N° 29.96, Annual Report of the Commission on Human Rights, p. 445, par. 83, IACHR Cases of Velásquez Rodríguez, Fairen Garbi and Solis Corrales and Godínez Cruz, Preliminary Objections, judgments of June 26, 1987, pars. 90, 91 and 92, respectively.

52. The Inter-American Court points out:

Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction)Art. 1).[FN12]

[FN12] IACourtHR, case of Velásquez Rodríguez, Preliminary Objections, par. 91.

53. The Brazilian State did not make available to the family of Ovelário Tames a real, actual recourse that provided the essential minimum guarantees and led to a decision on his violated rights. In other words, the Brazilian State did not give the victim's family a simple and prompt remedy for clearing up the circumstances of his death, punishing those responsible for it, and indemnifying his family and other rightful claimants. More than eight years went by after the events without the Brazilian State, while admitting unwarranted delay in the conduct of the proceeding, taking any action through the competent organs (the Council for Defense of the Rights of the Human Being and the Roraima State judiciary) to speed up the proceeding and

bring about payment of civil damages to the victim's family. In short, the inefficiency of the existing judicial remedies has frustrated the right to justice and to reparation of damages.

54. The Commission concludes, therefore, that the Brazilian State has violated Articles 8 and 25 of the Convention in not fulfilling for the victim's family the right to justice in a reasonable time by means of a simple, prompt remedy.

Obligation to respect rights [Article 1(1) of the Convention]

55. Article 1(1) of the Convention establishes that the States Parties to the Convention undertake to respect the rights and freedoms recognized therein and to make it possible for all persons subject to their jurisdictions to exercise those rights fully and freely.

56. That undertaking implies, as the Inter-American Court of Human Rights states:[FN13]

the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States, must prevent, investigate and punish any violation of the rights recognized by the Convention...

[FN13] IACourtHR, case of Velásquez Rodríguez, Judgment of July 29, 1988, par. 166.

57. Thus, in depositing its instrument of ratification of the Convention Brazil assumed the international obligation to respect the rights to legal guarantees and protection and, accordingly, to prevent, investigate and punish all violations of the rights enshrined in the Convention.

58. In the present case the Brazilian State did not take the necessary action with the competent organs to speed up the criminal proceeding on the death of Ovelário Tames, or to provide for proposal of an action for civil damages to be paid to the victim's family, which demonstrates failure on the part of the State to fulfill its obligation to respect and guarantee the rights established in Articles 8 and 25 of the Convention (legal guarantees and judicial protection). Accordingly, the Commission concludes that Brazil has violated Article 1(1) of the Convention.

VII. PROCEEDINGS SUBSEQUENT TO REPORT N° 80/98

59. On September 29th, 1998 the IACHR, at its 100th Session, approved Report N° 80/98 about this case, on the basis of Article 50 of the Convention, and sent it to the State with its conclusions and recommendations on October 30th, 1998. In those recommendations it asked the State to report within three months, about measures taken on that regard, for the Commission to have all necessary information to decide on them, as stated by Article 51 of the Convention. That period having passed, the Commission has not received any answer from the Brazilian State, on this case.

VIII. CONCLUSION

60. In view of the facts and analysis set forth above, the Commission concludes that the Federal Republic of Brazil is responsible for the violation of the rights to life, liberty and personal security (Article 1), to a fair trial (Article 18), and to protection from arbitrary arrest (Article XXV) of the American Declaration on the Rights and Duties of Man, and to a fair trial and judicial protection (Articles. 8 and 25), and of the obligation of the State to respect the rights [Article 1(1)] established in the American Convention on Human Rights in connection with the death of Ovelário Tames of the injuries inflicted by members of the civil police force of the State of Roraima when he was imprisoned and in custody; as also the failure to actively investigate, try and punish those responsible, and also for failure to make reparation to his family and legitimate claimants.

IX. RECOMMENDATIONS

61. The Commission reiterates the following recommendations to the Brazilian State:

1. That the Brazilian State open a serious, impartial and effective investigation into the facts so that an official report can be produced on the circumstances surrounding the death of Ovelário Tames and the culprits can be duly tried and punished.

2. That this investigation include an analysis of the possible omissions and acts of negligence and obstructions of justice that may have led to failure to pass final sentences on those responsible, including the possible acts of negligence and improprieties of the Office of the Public Prosecutor and the judges, which may have resulted in avoidance or mitigation of those sentences.

3. That the necessary steps be taken to complete, as soon as possible and in absolute conformity with law, the judicial and administrative proceedings concerning all the persons involved in the violations cited in the above conclusions.

4. That the Brazilian State repair the consequences of these violations of rights to the members of the victim's family and rightful claimants who have been prejudiced by the aforesaid violations of rights, which reparation is to be based on the concept of the family established by the Inter-American Court of Human Rights.[FN14]

[FN14] IACourHR, case of Aloeboetoe, Judgment of September 10, 1993

X. PUBLICATION

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

to submit information on the measures adopted to comply with the Commission's recommendations. The State failed to present a response within the time limit.

63. Pursuant to the foregoing considerations, and in conformity with Article 51(3) of the American Convention and Article 48 of its Regulations, the Commission decides to reiterate the conclusions and recommendations of paragraphs 60 and 61, to make this Report public, and to include it in its Annual Report to the General Assembly of the OAS. The Commission, pursuant to its mandate, shall continue evaluating the measures taken by the Brazilian State with respect to the recommendations at issue, until they have been fully fulfilled.

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