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Institution: Inter-American Commission on Human Rights  
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Session: Hundred and Sixth Regular Session (22 February – 10 March 2000)  
Title/Style of Cause: Alonso Eugenio da Silva v. Brasil  
Doc. Type: Decision  
Decided by: First Vice-Chairman: Claudio Grossman;  
Second Vice Chairman: Juan Mendez;  
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo  
Pursuant to Article 19(2)(a) of the Commission’s Regulations, Commission Member Hélio Bicudo, a Brazilian national, did not participate in the discussion or voting on this case.

Dated: 24 February 2000  
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## I. SUMMARY

1. On December 7, 1995, the Inter-American Commission on Human Rights (hereinafter, the “Commission”) received a petition from the Center for the Defense and Guaranteeing of Human Rights/Legal Project of the Brazilian Institute of Innovations in Public Health [Centro de Defensa y Garantía de los Derechos Humanos/proyecto legal del Instituto Brasileño de Innovaciones en Salud Social] (I.B.I.S.S.) against the Federative Republic of Brazil (hereinafter the “State,” “Brazil,” the “Brazilian State,” or the “State of Brazil”). The petition denounces the homicide of Alonso Eugenio da Silva, a minor aged 16, by a military policeman of the State of Rio de Janeiro, in a restaurant in Madureira, Rio de Janeiro, on March 8, 1992. According to the petition, the policeman supposedly shot him as he attempted to arrest him for an alleged robbery. Although more than three and a half years had elapsed since the incident, the police inquiry into the events had still not concluded.

2. The petition denounces the events as grave violations by the Brazilian State of the rights protected under Article I (right to life), Article XVIII (right to a fair trial), Article XXV (right of protection against arbitrary arrest), and Article XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man (hereinafter, “the Declaration”); and of the rights enshrined in Articles 8 and 25 (right to a fair trial and to judicial protection) of the American Convention on Human Rights (hereinafter, “the Convention”). The Commission processed the petition in accordance with its regulations and the State has submitted no comments in respect thereof. As indicated in this report, the Commission finds this case admissible and the acts in question constitute a violation of Articles I, XVIII, XXV, and XXVI

of the Declaration and of Articles 1(1), 8, and 25 of the Convention and recommends that the investigation be completed, that those responsible be tried and convicted, and that compensation be provided to the relatives of the victim.

## II. PROCEDURE BEFORE THE COMMISSION

3. The complaint was received on December 7, 1995, during the Commission's visit to Brazil; it was transmitted on March 22, 1996 to the Brazilian State, which was requested to comment on the facts under protest and on any other elements pertinent to the case within a period of 90 days. On August 28, 1996, the State requested a 30-day extension, and the Commission allowed 15 days. The State did not respond thereafter, despite a reiteration of the request on September 6, 1998, indicating the possibility of applying Article 42 of the Commission's Regulations.

4. On August 5, 1997, the petitioners informed the Commission that it had not received any notification from the responsible Brazilian authorities concerning the conduct of the police investigation and stressed that, under Article 34, paragraph 6 of the Commission's Regulations the maximum time period of 180 days for submission of the Brazilian State's response had expired in September of that year.

### Processing of friendly settlement

5. On October 13, 1998, the Commission contacted the parties and placed itself at their disposal to initiate a process of friendly settlement in accordance with Article 48(1)(f) of the Convention, but did not receive a positive response from the parties within the 60-day period allowed.

## III. POSITIONS OF THE PARTIES

### A. Position of the petitioner

6. According to the complaint, the minor Alonso Eugenio da Silva, born February 21, 1976, and then age 16, was shot and killed by a military police officer of the state of Rio de Janeiro, Nivaldo Vieira Pinto, and by a security agent accompanying him, in a pizzeria/grill in that city, on March 8, 1992, at 3:20 p.m., when the police officer and security guard entered the restaurant after having been alerted to an alleged assault. The victim, a hotel employee up to a few days earlier, was a member of a youth project known as "Flor de Mañana". The petitioners characterize the death as "extermination".

7. The petitioners indicate that the official version of the facts comes from the documents of the investigation opened at police station #28 on March 9, 1992. According to those documents, the police officer stated he was forced to fire on the minor because he was resisting arrest for assault on the restaurant. In the report on resisted arrest 48/92 (files 13 and 14) a police officer and a witness described the events as follows: "Alerted by a bystander that a person of suspicious demeanor had entered the pizzeria, [the two police officers] left the police booth where they were on duty and made their way into the kitchen, where they found Alonso and asked him what he

was doing there. In replying, Alonso moved his hand toward his waist, whereupon the police officer drew his pistol and fired while, simultaneously, Alonso fired as well (file 14). Alonso was hit by the shot and the police officer maintained that he provided medical attention while moving the victim to the hospital.

8. It is also noted in the police report that two firearms were requisitioned, one of them a “service” arm, and that each of them contained five unfired cartridges and one fired shell (file 15).

9. The petitioners, on the other hand, maintain that the circumstances were otherwise. They assert that the events took place in broad daylight when the restaurant was filled with customers. Members of Alonso’s family maintain that the waiters in the pizzeria where the death took place had told them that Alonso had gone to buy a hot sandwich and was unable to show a receipt when he left. One waiter believed him and let him go, but another did not believe him, and an argument ensued. They maintain that someone called the police officer, who entered and fired at point blank range. The person who heard this from the waiters maintained that it was someone from restaurant security who was called and who killed Alonso. She states that “the place is full of security staff, and if there is a problem, they don’t have to call the police”. She also states that the owner of the restaurant himself said “this is cowardice, killing a person like that unnecessarily”.

10. According to the petition, several friends and relatives attending the funeral heard that when Alonso’s body reached the hospital, the doctor said: “the boy’s gun; he was a nobody; don’t you see that this is a police gun?” The petition points out that the Police Commissioner did not call for an expert examination of the shooting site (the restaurant kitchen) maintaining that the investigating detectives had not found bullet marks on the premises.

11. The petition also indicates that Alonso had confided earlier to several relatives that he had had an altercation with a police officer in Madureira and was very fearful of reprisals. Alonso allegedly confided in his relatives that the police officer wanted Alonso to respond to his advances (which the petitioner implies were sexual in nature), that Alonso was offended and reacted by throwing the shoeshine box he was carrying at the police officer’s face.

12. The petition indicates further that an uncle of Alonso had stated that Alonso arrived at the hospital in a fireman’s ambulance, and the doctor announced that he was already dead; that Alonso had a work identity card and was carrying it that day when he left home, but it could not be recovered or found at the hospital or anywhere else. (File 12).

13. The complaint points out that up to a few days earlier, Alonso had worked in a hotel, but had lost his job. In addition, he was a member of a youth project entitled Flor de Mañana (file 12).

14. The petitioners affirm that when they attempted to obtain information on the course of the police investigation at Station 28, they were informed that the file had been misplaced. The petitioners requested information from Station 28 on the status of the investigation on December 5, 1995, and again on March 29, 1996, but without success.

15. The petitioners argued that the requisitioned firearm did not belong to the minor but to the police officers. They reaffirm that Alonso's family members feared for his life, since on another occasion he had argued and fought with a police officer.

16. With respect to admissibility, the petitioners allege unwarranted delay, since the investigation has not been completed 3 and a half years after the events. They request application of the exception in Article 46(2)(c) of the Convention to the exhaustion of domestic remedies requirement. They also maintain that the investigation proved ineffective, since there was abundant evidence and numerous witnesses never pursued in the case, that a serious and prompt investigation should have been conducted, but that the police officers assigned to the case did not conduct such an investigation in order to cover up the police operation and their complicity in the unjustified assault on the minor.

17. The petitioners also request that the Commission recommend the Brazilian State to complete the investigation, try, and punish the perpetrators of the violations; and that the victim's relatives be compensated.

#### B. Position of the State

18. The Brazilian State did not submit a written response commenting on the complaint. The Commission also notes that the Brazilian State has not responded to the presentation of facts in the complaint, despite several notes from the Commission requesting it to do so, and despite the fact that the time periods established in the Convention and the Commission's Regulations for such responses have long since expired. The State's silence on this point is contrary to its obligation as a State Party to the American Convention with respect to the Commission's authority to "take action in respect of petitions and other communications in the exercise of its authority under Articles 44 to 51 of the Convention...".

#### IV. ANALYSIS OF ADMISSIBILITY

19. The Commission has jurisdiction *ratione materiae* and *ratione temporis*, inasmuch as the case concerns rights protected by the American Declaration and Convention at a time when they were in force in the Federative Republic of Brazil. The Commission recalls that, although the events took place on March 8, 1992, a number of months before Brazil ratified the Convention on September 25, 1992, the Brazilian State is not exempt from responsibility for acts violating human rights occurring prior to ratification of the Convention, since the rights guaranteed by the Declaration were binding. The Inter-American Court of Human Rights explicitly recognized the binding character of the Declaration when it stated "Articles 1(2)(b) and 20 of the Commission's Statute define the Commission's jurisdiction with respect to the human rights enshrined in the Declaration. In other words, for States that ratified the Buenos Aires Protocol, the American Declaration constitutes a source of international obligations under the Organization's Charter." [FN1]

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[FN1] Advisory Opinion of the Inter-American Court of Human Rights, paragraph 45, July 14, 1989 on “the interpretation of the American Declaration on the Rights and Duties of Man in the context of Article 64 of the American Convention on Human Rights”.

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20. The Commission also has jurisdiction in this case to analyze the judicial guarantees and due process recognized by Articles 8 and 25 of the Convention subsequent to ratification, since the facts targeted by the complaint potentially represent continued denial of these rights since that time.[FN2] In depositing its instrument of accession to the Convention, Brazil undertook to respect the rights and freedoms recognized therein and to ensure their full and free exercise to all persons subject to its jurisdiction (Article 1(1)).[FN3]

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[FN2] “...the doctrine established by the European Commission and the Human Rights Committee of the Civil Rights Pact is applicable to the American system. According to this doctrine, these organs declared themselves competent to review facts prior to the Convention’s entry into force for a particular State, provided that these acts are of a nature to have constituted continued violation of the Convention beyond the aforementioned date.” Andrés Aguilar, *Derechos Humanos en las Américas*, note 8, page 202.

[FN3] The rule of prior exhaustion of domestic remedies under the international law of human rights has certain implications that are present in the Convention. Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 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 (Article 1). Thus, when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the State in question is also charged with a new violation of the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case.

(Inter-American Court of Human Rights, *Velásquez Rodríguez* case, Judgment of July 26, 1987, preliminary exceptions, paragraph. 91).

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21. With respect to jurisdiction *ratione personae*, the same Article 1(1) of the Convention implies that any impairment of those rights, which can be attributed under the rules of international law to the action or omission of any public authority, constitutes an act imputable to the State.[FN4] Under Article 28 of the Convention, in the case of a federal state, such as Brazil, the national government is responsible internationally for actions of the agents of entities forming the federation.

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[FN4] Inter-American Court of Human Rights, *Velásquez Rodríguez*, Judgment of July 29, 1988, paragraph. 164.

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22. The case in question concerns allegations of violations of several human rights protected by the Declaration and the Convention, violations committed by agents of the State, and in particular by the military police of the state of R o de Janeiro, as far as the death is concerned, and by the military and civil police of that state as far as the investigation is concerned--also because of the responsibility of the State Public Ministry for supervising the investigation's activities, compliance with deadlines, and soundness. Accordingly, the Commission concludes that it has jurisdiction *ratione personae*.

23. The present petition meets the formal requirements for admissibility under Articles 46(1)(c) and 46(1)(d) of the Convention and Article 32 of the Commission's Rules of Procedure. The Commission has no knowledge that the matters covered by the petition are pending a solution, or have been the object of a decision, by any other international organ.

A. Exhaustion of domestic remedies

24. According to Article 46(1)(a) of the Convention, in order for a petition to be admissible by the Commission, domestic judicial remedies must first have been exhausted in accordance with the principles of international law. Paragraph 12 of that same Article, however, allows for exceptions when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

25. The petitioners point out that, although the police investigation began on March 9, 1992, and more than 3 and a half years had passed by the date of the petition, the investigation still had not been completed. Brazilian criminal legislation establishes a period of 30 days to complete police investigations, which may be extended by authorization of the judge. There was no such extension in the instant case. For the purposes of admissibility, the Commission considers that the police investigation has been prolonged to an excessive degree, without any sign that the government intends to intensify or accelerate it. The Commission therefore accepts the hypothesis that the exception to exhaustion of domestic remedies established in Article 46(1)(a) is applicable, based on the unwarranted delay in rendering a final judgment under the aforementioned remedies, in accordance with Article 46(2)(c) of the Convention and 37(2)(c) of its Regulations.

26. The Commission notes that, to date, the Brazilian State has not presented its response to the petition, although the Commission has reiterated its requests beyond the conventional time period stipulated in its Regulations. The Commission interprets this silence as a tacit waiver of the right to invoke a failure to exhaust domestic remedies under Article 46 of the Convention[FN5].

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[FN5] IACHR, Viviana Gallardo case, September 13, 1981, paragraph. 16; Velázquez Rodríguez, paragraph 88; Caballero Delgado and Santana, preliminary exceptions, Judgment of January 21, 1994, paragraph. 66. Scholarly commentary on this question includes the following: “Given that the right in question can be waived, even tacitly, it must be assumed that there has been an opportunity to exercise it, and that opportunity is in fact that available during the admissibility phase of the petition before the Commission. Accordingly, if, due to the negligence, carelessness, or ignorance of its attorneys the impugned State does not argue failure to exhaust domestic remedies in that stage of the process, it may not do so subsequently before the Commission or the Court.” (Faúndez L. Hector, “El Sistema interamericano de protección de los derechos humanos, aspectos institucionales y procesales”, page 198, IIDR, 1998).

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#### B. Timeliness of the petition

27. Under Article 38 of the Regulations, in the presence of an unwarranted delay in the administration of justice the exception contemplated in Articles 46(2)(c) of the Convention and 37(2)(c) of the Regulations applies in respect of the requirement stipulating a period of six months for presentation of a petition to the Commission reckoned from the date on which the injured party has been notified of the final decision. Since it was received three years after the alleged violation of rights occurred, the Commission considers that the petition was presented within a reasonable period of time under the aforementioned Article 38(2).

#### V. ANALYSIS OF THE MERITS OF THE CASE

28. The silence on the part of the State concerning this petition contradicts its obligation as a State Party to the American Convention with regard to the functions of the Commission to “take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention”. The analysis that follows is done based on the elements in the record before the Commission. Taking into consideration Article 42 of the Commission’s Regulations, noting that during the maximum time period set in accordance with Article 34(5) of the Regulations, the State has not provided the information requested. The Commission has analyzed the available evidence presented by the petitioners, which was not contradicted by the State, and makes the following conclusions.

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

29. The death of the minor da Silva occurred on March 8, 1992. At that time, the American Declaration was in force in Brazil. Article I of the Declaration provides: “Every human being has the right to life, liberty and the security of his person.”

30. In the instant case, there is abundant evidence in the police reports that the military police officer Nivaldo Vieira Pinto himself declared that he had shot and killed the minor Alonso Eugenio da Silva, although he maintains that he did so in self defense. The file contains copies of the statements by military police officer Nivaldo and another witness, interrogated at civil police station 28 (files 13-18). The petitioner indicates that the shots could have come from the police officer or from the private security agent. There is nothing in the Commission’s file to support

the contention that it was the security agent who had fired; and if that had been the case, the responsibility of the police officer would be complicated still further. Not only was he present when the act took place, but afterwards assumed responsibility for it, presumably to cover up the crime and make it appear to be legitimate police intervention. In his report of the incident (file 14), Officer Nivaldo maintains that he shot Alonso because the minor moved his hands toward his waist after the police officer asked him what he was doing in the restaurant. Later, in his statements, this police officer affirmed that there was an exchange of fire between him and the minor and that the minor was hit by one of his shots. According to a police report, an inspection of the site did not find traces of gunfire aside from the shot that hit the victim.

31. The report of the incident filed at the police station refers to the requisition of a firearm belonging to the minor Alonso. However, the petitioners argue that Alonso did not own a firearm. The doctor who received the body allegedly had said that the weapon in Alonso's possession when he arrived at the hospital was not his, but a police weapon. That characterization is plausible. An additional element contradicting the police version of legitimate defense is that no trace of any shots fired by the victim was found, according to the police report. This is noted in the judicial file itself (files 13-14), according to which the second revolver contained a fired cartridge. All of this leads the Commission to the conclusion that the second gun had been fired by the police and placed on the victim to implicate him. Moreover, the lack of any evidence of this other gunshot was used as police justification for not conducting an expert inspection of the site normally required in a case of this kind.

32. With regard to motive, several witnesses maintain that the victim had quarreled with a police officer in rejecting his advances and that he was living in a state of fear. In addition, based on numerous investigations, the Commission has observed generally that the military police of several Brazilian states, including Río de Janeiro, have repeatedly shown a disregard for the lives of poor minors, and that it is not implausible that they might shoot them under any pretext to "exterminate them". Although that tendency cannot in itself provide grounds for a conclusion, it is an important element of plausibility supporting the concrete facts in the case.

33. The Commission has also noted that during those years, the persecution and extermination of street children and youths was a frequent practice in Río de Janeiro among government or private security agents, for personal reasons or, supposedly, for the purpose of "social cleansing". The Commission has denounced this practice, which constitutes one of the most horrible systematic violations of the right to life and humane treatment, and amounts to a failure by the State to perform its obligation of guaranteeing the rights of all persons, and in particular the rights of children and young people.[FN6] In analyzing the case, the Commission regards the testimony and evidence in the file as the main grounds for determination of the case. However, it believes it must mention this general situation to make it clear that this was not an isolated and anomalous case, but an example of a systematic attitude among certain police officers during that time.

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[FN6] "The rights of minors and children", Report on the Human Rights situation in Brazil. IACHR, Washington, D. C., September 1997.

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34. The Commission must consider that the shot fired by the security agent that cost the victim his life could have been fired out of necessity to avoid a serious crime, or constituted an act of legitimate defense by the police officer. The Commission takes into account the “Basic Principles on the use of Force and Firearms by Law Enforcement Officers”, which clearly define the legitimate uses.[FN7] Although the State has not made such an argument in its defense, the Commission believes this point must be addressed. There is no convincing evidence in the case supporting either of these hypotheses, nor any evidence that the youth was armed or was threatening the life of the police officer or other persons. Killing persons presumed to be committing acts of theft is not how security forces are expected to react, except in circumstances of extreme danger or legitimate defense. Moreover, there is evidence that this police officer had had prior confrontations with this young person. There is no information indicating that required investigative procedures were followed in respect of evidence and testimony that should have been gathered immediately after a homicide and which might have clarified the question of responsibility.

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[FN7] United Nations. “Basic Principles...” adopted by the 8th Congress on Crime Prevention and Treatment of Offenders. Havana, Cuba, August 27th to September 7, 1990. The following paragraphs apply in particular:

Law enforcement officers will not use firearms except in self defense or the defense of others against imminent threat of death or serious injury; to prevent the execution of a crime particularly grave involving serious death threat; to arrest someone that presents such danger and resists the authority, or to prevent his/her escape, and only when other measures less extreme are insufficient to achieve those goals. In all cases, the intentional use of firearms can only be accomplished when strictly unavoidable to protect human life.

In the cases indicated in Principle 9, law enforcement officers shall identify themselves as such and give clear notice of their intent to use firearms, with enough time for the notice to be received, except when to do so may unduly put in risk the law enforcement officer, or it could create a death risk or risk of serious injury to others, or it will be clearly inappropriate or not useful in the circumstances of the incident.

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35. Based on the testimony and evidence in the file, and that presented earlier, the Commission considers that there is sufficient evidence to conclude that a R o de Janeiro police officer violated the right to life of Alonso Eugenio da Silva on March 8, 1992 in that city.

B. Right of protection from arbitrary arrests (Article XXV of the Declaration)

36. The petitioners allege violation of Article XXV concerning arbitrary arrest. The Commission has interpreted the complaint as characterizing a violation of the right to life through an abuse of police power. There are no elements supporting the characterization of the acts in question as an arrest; accordingly the Commission considers the petition’s arguments on this point to be unfounded.

C. Rights to a fair trial and judicial protection and the obligation to respect rights (Article XVIII of the Declaration) and (Articles 8, 25, and 1(1) of the Convention)

37. Article XVIII of the American Declaration, an instrument in force and applicable to the impugned acts prior to ratification of the Convention on September 25, 1992, provides:

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.

38. Although the petitioners did not invoke Articles 8, 25, and 1(1) of the Convention, it is the opinion of the Commission that these provisions should also be examined in accordance with the general principle of international law *jura novit cura*, under which international organizations have the power and even the duty to apply all of the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them[FN8]. Article 25 of the Convention provides the following:

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

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[FN8] Inter-American Court of Human Rights. Velásquez Rodríguez case, Judgment of July 29, 1998, paragraph 163, citing the Permanent Court of International Justice, “Lotus” case, Judgment no. 9, 1927, series A. no. 10, p. 31, and European Court of Human Rights, Handyside case, Judgment of September 7, 1976, series A. no. 24, paragraph. 41.

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39. Article 8 provides that every person has the right to a hearing, with due guarantees, and within a reasonable time, by a competent, independent, and impartial tribunal. Under Article 1(1) of the Convention, the States Parties undertake to respect the rights and freedoms recognized in the Convention and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

40. The Commission has indicated earlier that when, as in the instant case, the victim is not in a position to seek judicial remedy, the right to such recourse necessarily transfers to the victim’s next-of-kin. The Commission has reached the conclusion that the victims and/or their next-of-kin are entitled to a judicial investigation entrusted with a criminal court to determine and establish responsibilities in cases of human rights violations.[FN9]. This stems from the legal duty of the State to “use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction to identify those responsible, impose the appropriate punishment and ensure the victim adequate compensation”.[FN10]

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[FN9] See, in general, Reports Nos. 28/92 (Argentina) and 29/92 (Uruguay) in the IACHR Annual Report 1992-93, OEA/Ser.L/V/II.83, doc. 14 corr.1, March 12, 1993, pp. 51-53, 169-174  
[FN10] Velásquez Rodríguez case, supra, paragraph 174.

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41. The Inter-American Court of Human Rights has expressed its opinion concerning the duty of the State to investigate acts violating human rights protected by the Convention:

[the duty to] investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends on the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.[FN11]

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[FN11] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, paragraph. 177, p. 156.

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42. In the instant case, the investigation appears to be biased towards legitimizing the conduct of the police in the death of Alonso Eugenio da Silva, and did not include essential regulatory procedures. There was no serious investigation of the alleged resistance of the minor, even though the owner of the restaurant himself had protested saying that there was no need to kill him. Nothing in the file shows that a statement was taken from the owner, waiters, and other persons present in the restaurant, taking into account that the events took place in the middle of the afternoon in a very busy place. No expert investigation into the facts took place on the premises, nor was the restaurant closed until such an investigation had been completed. Nor is there convincing evidence that the victim was armed, except the appearance of a gun containing a fired cartridge next to the body when it arrived at the hospital. There was no serious investigation as to why, if gunfire was exchanged (as the police officer said), no trace of the shot (except for the fatal shot) was found in the preliminary inspection of the premises. Nor was there a serious investigation into the opinion expressed by the doctor who received the victim's body when he said that the weapon could not have belonged to the minor. There was no investigation to determine whether the minor had had previous confrontations with the police officer in question, and particularly the episode involving the alleged offense against the minor and his aggressive response to the police officer. There was no investigation into the background of the police officer with respect to other minors, who could have shed light on the motive for his action. These elements lead the Commission to the conclusion that the investigation was not conducted with the guarantees of seriousness required by Article 25 of the Convention.

43. Those judicial guarantees must also be analyzed with respect to the alleged delays in the investigation of the facts. To determine whether the time taken was reasonable[FN12] under Articles 8 and 25 of the Convention, the Commission must undertake a comprehensive analysis of the police investigation in question.

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[FN12] “The right to a trial within a reasonable time provided for in the American Convention is based, among other things, on the need to avoid undue delays that translate into a deprivation and denial of justice to the detriment of persons who argue that their rights protected in the American Convention have been violated.” (Report 43/96, case 11.411, Mexico, page 483, paragraph 30, Annual Report 1996 IACHR).

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44. In the Inter-American system for the Protection of Human Rights there are provisions concerning the period of time that can be reasonably taken to solve cases of human rights violations. The American Convention stipulates a series of guarantees that must be provided in every judicial investigation process, to ensure that it is resolved within a reasonable period of time. Article 8(1) provides that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal. (emphasis added by the Commission)

Article 25 provides that:

Everyone has the right to simple and prompt recourse (...) to a competent court or tribunal for protection against acts that violate his fundamental rights. (emphasis added by the Commission)

45. The Commission and the European Court of Human Rights, as well as the Inter-American Commission, have established a series of criteria or considerations that must be taken into account to determine whether an unwarranted delay has occurred in the administration of justice, “which does not mean that in a particular case any particular one of these criteria will not prove the decisive factor”. [FN13] Jurisprudence has established the following criteria to determine whether such a period of time is reasonable: (1) the complexity of the case; (2) the conduct of the injured party in terms of his cooperation in the course of the proceedings; (3) the form in which the preliminary investigation of the proceedings has been carried out; (4) the activities of the judicial authorities.

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[FN13] See, for example: IACHR, Resolution N° 17/89 Report Case N° 10.037 (Mario Eduardo Firmenich), in Annual Report of the Inter-American Commission on Human Rights 1988-1989, page, 38; European Court of Human Rights: Case “Konig”, Judgment of 28 June 1978, Series A N° 27, pages 34 a 40 paragraphs 99, 102-105 y 107-111; Case Guincho, Judgment of 10 July 1984, Series A, N° 81, page 16, paragraph 38; Unión Alimentaria Sanders S.A., Judgment of 7 July 1989, Series A, N° 157, page 15, paragraph 40; Case Buchholz, Judgment of 6 May 1981, Series A N° 42, page 16, paragraph 51, pages 20-22, paragraphs 61 y 63; Case Kemmache, Judgment of 27 November 1991, Series A N° 218, page 27, paragraph 60.

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46. To conduct an appropriate analysis of the complexity of the case, it is necessary to refer to the substance of the case: the violation of the right to life. Here we encounter a single presumed crime, homicide, under defined and simple circumstances. These characteristics are

such that the instant case is not complex and is easy to investigate. The jurisprudence applied by the Inter-American Commission on Human Rights in case 10.037 (Firmenich) is instructive: it declared the complaint inadmissible because the particular characteristics of the case and the complexity of the factors contributing to it were such that no unwarranted delay in the administration of justice could be asserted.

47. In another case before the Commission, a State referred to the complexity of the dispute, arguing that the investigation had not been completed because of the extreme gravity of the impugned acts, the complexity of the situation, and the seriousness with which the competent authorities undertook its examination and clarification. In that case, the Commission considered the facts that more than two years had passed since the events had occurred, that up to the time of the complaint no criminal prosecution had taken place, and that there was no sign of any such action about to take place, which it concluded clearly demonstrated a failure to conduct a serious and effective investigation.[FN14]

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[FN14] IACHR, Annual Report 1997. Page 655 et seq. (report 48/97 case 11.411 “Ejido Morelia”, paragraphs 46-48).

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48. According to the information in the possession of the Commission, the police investigation began on March 9, 1992, and remains open to this day. More than six years have passed, and the Commission has not received information indicating that it has been completed, although Brazilian law establishes that the investigation should be completed within 30 days.

49. In the instant case, it was the responsibility of the Public Ministry to enforce the law in respect of judicial acts and time periods, and to require an investigation by the police department responsible, but it did not do so. And in October 1994, the police authorities indicated that the investigation file had been misplaced. The petitioners requested information twice on the status of the investigation, but did not receive a response from the local authorities. It can be seen in the file that more than six years have passed since the events took place, five of them at a time when the Convention was in force, and yet the investigation still has not taken place and criminal prosecution has not been instigated.

50. According to the Inter-American Court of Human Rights, this duty consists of: [FN15]

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[FN15] Inter-American Court of Human Rights, Velásquez Rodríguez, Judgment of July 29, 1988, paragraph 166.

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...the duty of the State 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...

51. Thus, in depositing its instrument of ratification of the Convention, Brazil assumed the international obligation to respect the rights to a fair trial and judicial protection so as to prevent, investigate, and punish any violation of the rights enshrined in the Convention. Article 1(1) of the Convention, in turn, provides that the States Parties to the Convention undertake to respect the rights and freedoms recognized in the Convention and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

52. Accordingly, the Commission considers that the ineffectiveness, negligence, or omission by the authorities in the investigations, which resulted in an unwarranted delay in the completion of the police investigation, not only exempted the petitioners of the obligation to exhaust domestic judicial remedies, as already noted above in relation to admissibility, but also violated Article XVIII of the Declaration and Articles 8 and 25 of the Convention, by depriving the victim's next-of-kin of the right to obtain justice within a reasonable period of time by means of simple and prompt recourse.

## VI. PROCEEDINGS SUBSEQUENT TO REPORT 22/99

The Commission transmitted the previous report to the State on March 24, 1999, granting it a period of two months in which to comply with the recommendations formulated. Furthermore, the Commission notified the petitioners of the approval of a report under Article 50 of the Convention. The period granted having elapsed, the Commission has not received a response from the State in respect of the said recommendations.

## VII. CONCLUSIONS

53. The Commission concludes that it is competent to take cognizance of this case and that the petition is admissible, in accordance with Articles 46 and 47 of the American Convention, and Article 1 and 20 of its Statute.

54. Based on the foregoing facts and analysis, the Commission concludes that the Federative Republic of Brazil is responsible for violation of the rights to life (Article I) and to a fair trial (Article XVIII) recognized in the American Declaration of the Rights and Duties of Man; as well as of the right to a fair trial and judicial protection (Articles 8 and 25) and of the obligation of the State to ensure and respect rights (Article 1(1)) enshrined in the American Convention on Human Rights in connection with the murder of Alonso Eugenio da Silva by a military policeman of the State of Rio de Janeiro; and for failure to investigate and effectively punish those responsible.

## VIII. RECOMMENDATIONS

Based on the foregoing analysis and recommendations, the Inter-American Commission on Human Rights reiterates the following recommendations to the State of Brazil:

1. To conduct a complete, impartial, and effective investigation to determine the circumstances in which the death of the minor Alonso Eugenio da Silva took place; to investigate the irregularities in the subsequent police investigation and the activities of the Public Ministry

and judicial authorities; and to punish all those responsible in accordance with Brazilian legislation.

2. To adopt the measures necessary to enable the victim's next-of-kin to receive adequate and timely compensation for the violations established herein.

## IX. PUBLICATION

55. The Commission transmitted the report adopted pursuant to Article 51 of the American Convention to the State and to the petitioner on October 15, 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.

56. 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 53 and 54, 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 24th day of the month of February in the year 2000. (Signed): Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.