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Title/Style of Cause: Gilson Nogueira Carvalho v. Brazil
Doc. Type: Decision
Decided by: First Vice-Chairman: Claudio Grossman;
Second Vice-Chairman: Juan E. Mendez;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
As prescribed in Article 19(2)(a) of the Commission’s Regulations, Member of the Commission Hélio Bicudo, of Brazilian nationality, did not participate in the discussions or the voting on this case.

Dated: 3 October 2000
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I. SUMMARY

1. On December 11, 1997 the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a complaint filed against the Federal Republic of Brazil (hereinafter “the State” or “Brazil”) by the Center for Human Rights and Popular Memory (CDHMP), the Holocaust Human Rights Project (HHRP), and the Group of International Human Rights Law Students (GIHRLS).[FN1] The complaint concerns the assassination of human rights attorney Gilson Nogueira Carvalho in Natal, Río Grande do Norte on October 26, 1996, allegedly as a result of the victim’s denunciations and human rights lawsuits in connection with the activities of a death squad known as the “Meninos de Ouro” (Golden Boys), which is reportedly composed of civilian policemen and staff of the Río Grande do Norte State Public Security Secretariat.

[FN1] With the consent of the other petitioners, the Global Justice Center joined the petition on August 25, 2000.

The petition also addresses the failure to provide a fair trial with due process and the lack of compensation for the acts committed.

2. The petition alleges that the acts constitute violations of the rights guaranteed in the American Convention on Human Rights (hereinafter “the Convention”) including: Article 4

(right to life); Article 8 (right to a fair trial); and Article 25 (right to judicial protection) in conjunction with Article 1(1) (obligation to respect rights).

3. The State replied that there was evidence of criminal activity in the case of Gilson Nogueira, as well as traces of evidence of the perpetrator, and the case is currently in the preliminary stages: specifically, at the arraignment (pronuncia) stage, which means that the investigations have reached a point at which the conviction that a crime was committed exists, along with traces of evidence of who committed it.[FN2]

[FN2] The full text of the State's reply was as follows:

Regarding case 11.852 (Gilson Nogueira de Carvalho), I have the honor to inform Your Excellency that, according to information recently received from the Office of the Attorney General of the State of R o Grande do Norte, the investigations into the death of attorney Gilson Nogueira de Carvalho have reached the arraignment stage, which is tantamount to the court admitting there is convincing evidence that a crime has been committed and traces of evidence as to who committed it. At the same time, given that the opinion of the Office of the Attorney General differs from that of the court, it will be up to the Court of Justice of the State of R o Grande do Norte to rule on admission.

4. After analyzing the petition and the fulfillment of the requisites for application of the Convention, the Commission decided to declare the case admissible with respect to the alleged violations of the Convention: Article 4 (right to life); Article 8 (right to a fair trial); and Article 25 (right to judicial protection) in conjunction with Article 1(1) (obligation to respect rights).

II. PROCESSING BY THE COMMISSION

5. The Commission received the initial complaint in English on December 11, 1997, and transmitted it to the State on January 21, 1998, requesting a reply within 90 days. At the State's request that it be sent in Portuguese, the Commission asked the petitioners to submit a translation, which was received on October 13, 1998, and transmitted that same day to the Government, with a request for a reply within 90 days.

6. In view of the State's failure to reply, on April 1, 1999, the Commission sent a second request to the Government to reply within 30 days. On May 1, 1999, the Commission reiterated to the State that it would consider application of Article 42 of its Regulations if a reply were not received within 30 days.

7. On June 29, 2000, the State sent a one-paragraph statement indicating that the procedure for investigating the murder of attorney Gilson Nogueira de Carvalho had started and that an appeal had been lodged against the previous file. No other response has been received. (See the full text of the reply in footnote 3.)

8. On August 25, 2000 the petitioners sent new information on the status of the case, which was forwarded to the State on August 30, with a request for a reply within 30 days. At the time this report was written, no answer had been received from the State.

III. FACTS ALLEGED IN THE PETITION

A. Background Information

9. Complainants note the prevalence of police violence in 1995 throughout the state of Rio Grande do Norte and especially in its capital, Natal. Allegedly, Deputy Secretary of Public Security, Maurilio Pinto de Medeiros (Pinto) participated in the coordination of a death squad known as the “Meninos de Ouro” (Golden Boys), comprised of civil police officers and employees of the State Secretariat of Public Security under Pinto’s direction.

10. According to the complaint, during Pinto’s tenure as Deputy Secretary of Public Security, the Golden Boys, acting as state agents under Pinto’s direction, committed a series of human rights violations, including torture and murder.

11. The complaint refers to particular instances of police violence,[FN3] including the Mãe Luiza massacre, which occurred on March 5, 1995. Police Officer Jorge Luiz Fernandes, known as Jorge the Smotherer,[FN4] allegedly kicked down the door of Maria Lúcia Costa’s home at 1:30 in the morning, shot her in the face and shot her two sleeping children at close-range, injuring her daughter in the arm and hip and blinding her son in one eye. Allegedly, Fernandes continued to fire eight more shots, killing her husband, and then killed a pregnant woman observing the massacre from a neighboring window. Evidence suggests the crime was committed to prevent the husband from testifying about Fernandes’ involvement in another crime. Since the massacre, Mrs. Costa and her son have been stalked and threatened regarding their testimonies.[FN5]

[FN3] In petitions concerning that case, requesting precautionary measures, complainants mention 31 cases of killings, murders, attacks, and torture that they attribute to this already accused death squad.

[FN4] In the investigation carried out by the Office of the Attorney General and the report on it issued on July 31, 1995, Jorge Luis Fernandes (alias Jorge Abafador) is registered as charged with the commission, alone or in association with others, of five homicides, three attempted murders, and cases of serious bodily harm.

[FN5] Testimony of Maria Lúcia Costa during proceedings in Processo No. 5.030/95 pronounced on November 8, 1996, before the Criminal Court of Rio Grande do Norte and subsequently repeated on October 6, 1995, in the State Legislative Assembly of Rio Grande do Norte before the President of the Federal Human Rights Commission of the Federal Chamber of Deputies.

12. The complaint also notes the torture of Arivone Gonçalves who was allegedly taken to Pinto’s office at the State Secretariat for Public Security by three Golden Boys (Ranulfo Alves de Filho, Admilson Fernandes, and Maurilio Pinto de Medeiros, Jr.) on April 2, 1993. The three

agents interrogated, kicked, beat, and electrocuted Gonçalves through wires attached to his back, face, tongue, teeth, and testicles.[FN6] Despite complaints by Gonçalves and his attorney, Gilson Nogueira (the primary subject of this petition), no serious investigation into the torture was conducted.

[FN6] Deposition of Arivone Gonçalves signed by him and his attorney, Gilson Nogueira and confirmed in an interview between Gonçalves and a representative for the petitioner.

13. The third example of police violence noted in the complaint concerned Fernandes' and Ranulfo's alleged shooting of Wanderley Dantas Marques on December 18, 1993, for a fee of 200,000 cruzeiros.[FN7] Fernandes then allegedly fired into a crowd of bystanders, killing Jeferson do Nascimento, a sixteen-year-old boy.[FN8] Nascimento's family reported the incident to police officers at the hospital, at the local precinct, and at the Secretariat for Public Security;[FN9] however, a police inquiry into the case was not opened until two years later when Gilson Nogueira pressured prosecutors to investigate this incident in connection with numerous other homicides attributed to Fernandes.

[FN7] Equivalent to US\$770.00 at the time.

[FN8] Human Rights Watch/Americas at 97.

[FN9] Interview of Jeane do Nascimento on August 13, 1997.

14. According to the complaint, as a result of Nogueira's work and NGO pressure, a Special Federal Commission was established to investigate crimes committed by the Golden Boys. The Special Commission heard over 100 witnesses, investigated about 30 cases, filed seven prosecutorial indictments against members of the Golden Boys, filed two indictments against Pinto, and issued two reports, finding civil police agents and employees of the State Secretariat for Public Security responsible for all the crimes investigated.

15. The complaint states that by August 7, 1995, the Public Prosecutor's Office finally indicted Ranulfo and Fernandes for their criminal activities and requested their pre-trial detention, which was ordered. However, Ranulfo was released four months later, and Fernandes has been allowed to leave prison on numerous occasions.

16. The complaint points out that after the report of December 18, 1995,[FN10] the Special Commission was disbanded and the cases were effectively dropped due to the apparent lack of institutional support within the state apparatus and due to death threats against prosecutors, discouraging them from pursuing the cases. To date, no one has been convicted for any of the crimes investigated by the Special Commission.

[FN10] In this report the Commission stated that the civil police under investigation formed part of the Golden Boys death squad, an informal vigilante group tied directly to the Deputy Secretariat for Public Security.

B. Specific Violations Alleged in the Complaint

17. According to the complaint, attorney and human rights defender Gilson Nogueira spearheaded investigations into the previously mentioned cases of torture and murder committed by police officers under the authority of the Deputy Secretary of Public Security, Maurilio Pinto de Medeiros (Pinto). Nogueira provided legal assistance to the surviving relatives and victims of state sponsored torture, murder, and other human rights violations attributed to the Golden Boys. In addition, Nogueira pressed the public prosecutors' office to conduct independent investigations into police-led death squad activities in Natal, and he served as Assistant to the Prosecution in several of these cases.[FN11] Nogueira also exposed the climate of impunity in Natal that allowed the Golden Boys to repeatedly escape prosecution for criminal acts.

[FN11] According to the petitioners, Articles 268-273 of the Brazilian Code of Criminal Procedure allow the victim or the immediate family to appoint an Assistant to the Prosecution. The petitioners contend that this is one of the methods used by human rights organizations and those with sufficient economic resources to pressure Brazil's notoriously slow judicial system into quicker action. This individual (who may also be the victim) can propose arguments about the evidence, request questions to be put to witnesses, participate in the oral debate in the case, and participate in the appeals made by the public prosecutor's office or advance his or her own appeals.

18. The complaint alleges that as a result of attorney Nogueira's efforts to expose police violence, his was the first name on a "hit list." [FN12] In addition, he received death threats, which he reported to federal authorities during a hearing organized by the Federal Human Rights Commission in Brasilia on August 14, and 15, 1995.

[FN12] The Commission asked the State to take precautionary measures to protect those threatened persons, as described in this admissibility report, in the section entitled Request for Precautionary Measures.

19. The complaint notes that as a result of this hearing, Nogueira received federal police protection, which began on September 6, 1995. However, this protection was withdrawn on June 3, 1996.

20. According to the complaint, on October 20, 1996, in the state of Rio Grande do Norte, Nogueira was gunned down outside of his home just after midnight. The complaint indicates that seventeen bullets were fired at Nogueira by three hit-men in a red Volkswagen Golf, license

plate number KCP171Z, which had been reported stolen from its owner, Bruno Netto Ferraz, three weeks earlier. According to the complaint, medical exams established that Nogueira's wounds were caused by rounds fired from a twelve-shooter shotgun and a 9-mm. rifle.

21. The complaint alleges that the three hit men fled the scene and burned the stolen vehicle in an attempt to destroy forensic evidence.

22. The complaint reports that on October 28, 1996, federal authorities sent a delegation from Brasilia to investigate Nogueira's murder. The delegation of federal deputies urged local authorities to investigate Nogueira's killing and to prosecute those responsible.

23. According to the complaint, the Public Prosecutor also visited Natal and exerted pressure on the Governor of Rio Grande do Norte to suspend Pinto from his position as Deputy Secretary for Public Security. Continuing efforts to keep Pinto from resuming his post as Deputy Secretary of Public Security have been made by the Federal Attorney General for Human Rights.[FN13]

[FN13] In August 2000, the Commission received information, not contradicted by the Government, that the above-mentioned person was reinstated in his post.

24. The complaint notes that despite these visits, federal agents closed investigations into Nogueira's murder without naming suspects for indictment, notwithstanding significant evidence pointing to the involvement of members of the Golden Boys in the crime. The complaint alleges that one of the primary suspects in Nogueira's murder is civil police officer, Jorge Luiz Fernandes. Federal investigators identified him, but, according to the petition, conducted inadequate inquiries into his involvement in the crime because they failed to pursue various leads or to question potentially key witnesses.

25. The complaint cites as an indicator of impunity and lack of preventive action by the State, the fact that, although Fernandes was already under pre-trial detention for his participation in other homicides, he was released from custody the weekend of Nogueira's murder, as was documented by the detention center's official registry and Pinto's statement. Judicial authorities in Natal permitted Fernandes to make conjugal visits to his wife, inconsistent with Brazilian law, which only permits detainees to receive conjugal visits (not to leave prison for that purpose).[FN14] Fernandes also frequently left his place of detention during times not specified by the judicial order, escorted by Maurílio Pinto de Medeiros, Jr. and the personal driver of the Deputy Secretary for Public Security, Medeiros Pinto. While outside jail, Fernandes and the other Golden Boys allegedly intimidated and threatened witnesses to prevent them from testifying and reporting criminal police activity.

[FN14] The file contains a copy of the note from the Regular Judge for application of criminal law, Official Letter 108/96 of October 31, 1996, indicating that Jorge Luiz Fernandes was authorized to leave prison with a police escort for conjugal visits of six hours each twice a week.

There is also a note from the Office of the Attorney General of Natal (RN) accepting the accused's request for these outings, dated July 31, 1995.

IV. POSITIONS OF THE PARTIES

A. Position of the petitioners

26. Complainants allege that the State is directly responsible for the murder of Gilson Nogueira due to the involvement of its state agents. The State failed to suppress routine acts of violence committed by police agents, thus allowing a climate of impunity to develop. The State also failed to undertake thorough and meaningful investigations into Nogueira's killing, to prosecute those responsible, and to provide adequate and effective judicial recourse.

27. The petitioners maintain that the State failed to fulfill its obligations under the Convention for the following reasons:

- a. It withdrew police protection for Nogueira too soon.
- b. It allowed violent and criminal members of the death squad known as the Golden Boys to continue in active service in the police, thereby risking that they would continue to misuse their authority by torturing and murdering those who, like Nogueira, dared to object to their conduct.
- c. It allowed Jorge Luiz Fernandes regularly to leave the precincts in which he was detained, knowing that such outings jeopardized the lives of witnesses of the crimes committed by him and those of others, like Nogueira, who were trying to have Fernandes tried;
- d. It failed to conduct thorough investigations into police involvement in the murder of Nogueira; and
- e. It neglected to provide adequate protection for witnesses or judicial remedy for the victims of police violence and their relatives.

28. Regarding admissibility, the complainants claim in their original petition exhaustion of domestic remedies since investigations were closed before any suspect could be indicted for the crime, and police involvement in the killing was dismissed without serious consideration. Federal Police Investigator Gilson Campos neither questioned the credibility of Fernandes' alibi, nor did he adequately probe police involvement into Nogueira's murder, claiming that he lacked sufficient resources to conduct thorough investigations. On June 19, 1997, after seven months of investigations, Campos and the local prosecutor recommended that Judge Talita de Borba Maranhao e Silva shelve the case. As a result, no formal charges were brought and police investigations were closed.

29. The petitioners contend that the shelving of the case constitutes a final judgment since under Brazilian law, once a case has been shelved (arquivado) proceedings may only be reopened if new facts are found, and petitioners are not authorized to reopen cases that have been shelved.

30. The petitioners assert in that original petition that although the decision to shelve a case is not necessarily final, for purposes of Article 46(1)(b), the decision may be considered a "final

judgement” for admitting a petition seeking recourse for violations of the Convention. Since the petition was filed within six months of the shelving date, the petitioners contend that it satisfies the requirements of Regulation 46.

31. The petitioners request that the Commission find that the State of Brazil violated Articles 4 (right to life); 8 (right to a fair trial); and 25 (right to judicial protection) in conjunction with Article 1(1) (obligation to respect rights) of the Convention and recommend that the State: 1) reopen the investigation into the death of Gilson Nogueira, conducting thorough and meaningful inquiries into police involvement, particularly that of Jorge Luiz Fernandes; 2) prosecute to the fullest extent of the law those found directly and indirectly responsible; 3) provide protection for individuals willing to testify against police and state agents; and 4) pay reparations to Gilson Nogueira’s family.

32. In regard to Deputy Secretary of Security, Pinto, the petitioners request that the Commission recommend that the State: 1) investigate his background, expose his involvement in criminal activities, and prosecute him in accordance with Brazilian law; 2) remove him from his post as head of the Special Arrests Precinct (Delegacia de Capturas); and 3) suspend him from the police force.

33. The petitioners also request that the Commission recommend that the State: 1) monitor the independence and the integrity of the judiciary; 2) support efforts by the State Prosecutors’ Office to prosecute and try local police; 3) immediately suspend local police officers from duty for their involvement in criminal activities and reverse judicial orders allowing Jorge Luiz Fernandes to leave his place of detention on a regular basis; and 4) clarify and strengthen the power of the Federal Government in disputes with state authorities.

34. On August 5, 2000, the petitioners provided updated information on the investigation and criminal proceedings. According to the information provided, one of the current petitioners, James Cavallaro, at that time Director of the Human Rights Watch office in Brazil and persons filming documentaries for the British Broadcasting Corporation were able to meet a former policeman in Rio Grande do Norte. This former police officer (whose name they do not disclose for security reasons and whom they call “Luis”) provided them with information on policemen and civil servants in the Secretariat of Public Security who, he said, had taken part in actions attributed to the Golden Boys, and with whom he had worked as a police agent for several years.

35. The information provided states that Luis told them of the existence of a place about 10 to 15 kilometers outside Natal, where the bodies of the victims of the “White Hand” and “Golden Boys” death squads were buried. Luis also provided details of the conspiracy to kill attorney Gilson Nogueira and of his actual murder. According to Luis, four members of the death squad (two from each subdivision of “Golden Boys”) took part in the murder led by the Deputy Secretary of Defense Maurilio Pinto de Medeiros. The four that took part, according to Luis, were Maurilio Pinto Jr., Otávio Ernesto, Jorge Luis Fernandes (alias “The Smotherer”) and policeman Admilson Fernandez.

36. The then Director of Human Rights Watch (HRW) and the BBC reporters apparently met Luis on several occasions, with each encounter yielding more information as to the pattern of the

killings and location of the clandestine graveyard. Luis also gave the names of the victims. The BBC and HRW professionals checked those names in local newspaper archives and confirmed that several of them were dead or had disappeared. The BBC reporters filmed one of the interviews in which Luis provided extensive information, and, specifically, details of Gilson Nogueira's assassination.

37. According to this information provided by the petitioners, the Human Rights Watch and BBC staff contacted investigate reporter Caco Barcellos of the Globo television network, who in turn hand the information over to the Federal Police authorities in Brasilia. Armed with the data on the existence of a clandestine burial place, together with the information on the death of Gilson Nogueira, the Federal Police obtained a warrant to search the property where the bodies had allegedly been disposed of. The plot of land belonged to former civil police officer Otavio Ernesto.

38. On November 16, 1998, Federal Police agents entered the premises owned by Otavio Ernesto pursuant to the warrant, accompanied by Globo network and BBC journalists and Human Rights Watch staff. After a morning spent searching in vain for the bodies, the police decided to suspend the search. The petitioners maintain that with the (archeological) search method employed it would have taken 20 days to comb the area completely. During their search, the police found weapons and arrested Otavio Ernesto for illegal possession of firearms. A few days later Otavio Ernesto was released.

39. The authorities in charge of the investigation decided to conduct a laboratory test to see whether the weapons seized matched the deflagrated bullet shells found at the site where Gilson Nogueira was killed. The ballistic analyses showed conclusively that they belonged to one of those weapons. On that ground, and on the basis of the Luis interview, the Government Attorney (Promotor de la Justicia) indicted Otavio Ernesto and ordered his arrest. As this report was written no date had been set for his trial.

40. According to this same information, in April 1999 Judge Patricia Gondim Moreira Pereira summoned James Cavallaro, Director of HRW, to testify and in his statement he told her the names of the policemen and civilians who, according to Luis, took part in the murder of Gilson Nogueira, together with details of the conspiracy and assassination, including Luis' statement that Maurilio Pinto de Medeiros had coordinated the murder.

41. The next day, James Cavallaro gave an interview to the local newspaper in Natal (Diario de Natal), in which he repeated the information he had given the judge. As a result of that interview, Maurilio Pinto de Medeiros filed a civil action against Cavallaro, demanding payment of damages. He also filed a criminal accusation with the Office of the Public Prosecutor, which admitted it and opened a case for libel, in which evidence had already been heard on August 4, 2000.

42. This additional information was transmitted to the State on August 30, 2000, with a request that it reply within 30 days. No reply from the State has been received.

B. Position of the State

43. The State has not contested the facts alleged in the petition. However, in its succinct reply, the State indicated that there is evidence of criminal activity in the case of Gilson Nogueira, as well as traces of evidence of the perpetrator, and the case has been reopened with an accusatory statement (“pronuncia”, indiciamiento) that has been appealed by the public prosecutor.[FN15] See footnote 1 for the full text of the reply. The State has not replied regarding the additional information it was sent on August 30, 2000.

[FN15] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, paragraph 164.

C. Request for precautionary measures related to the case

44. On November 8, 1996, the Commission received a request for precautionary measures to protect various judicial authorities and human rights defenders in Río Grande do Norte allegedly on a death list drawn up by the “Golden Boys” because of their opposition to the death squad’s activities and their denunciations in connection with the murder of Gilson de Nogueira, the month before. The applicants cited, for the Commission’s information, a list of 31 instances of repression, murder, and torture by police that they attributed to the “Golden Boys” under the leadership of the Deputy Secretary for Public Security.

45. The Commission informed the Government of this denunciation on November 13, 1996 and asked it to comment. The Commission received no answer to this request. However, on December 17, the petitioners reported that the Federal Minister of Justice and the Chair of the Council for the Defense of the Individual had formed a committee to investigate the situation in Río Grande do Norte, but that the resolution concerned did not contemplate providing protection to the people on the hit list.

46. On December 19, 2000, pursuant to Article 29(2) of its Regulations, the Commission decided to request precautionary measures to protect that list of threatened persons, which included the State Attorney General (Procurador General de Justicia del Estado), the Prosecutor (Procurador de Justicia), five justice outreach workers (promotores de justicia) and a congressman; as well as two human rights defenders at the Center for Human Rights and Popular Memory.

47. In April 1997, the Commission was notified that one of these persons resigned from his post in the Chamber of Deputies due to the lack of security in his work environment. It was also told that no security measures had been adopted and that there had been an attack on the home of one of the human rights defenders, Dr. Roberto Monte. Moreover, the Deputy Secretary of Public Security, Maurilio Pinto de Medeiros, who had been denounced as the commander of the “Golden Boys” death squad, had been reinstated in the post from which he had been temporarily suspended.

48. The Commission received further information on May 19 and October 16, 1998, and on April 19, 1999, updating the information on the judicial proceeding related to the events that gave rise to the request for precautionary measures. That information showed and described the still dangerous situation in R o Grande do Norte. The information referred to the discovery of new evidence regarding the activities of the “Golden Boys” and mentioned that several public and private human rights defenders had had to leave R o Grande do Norte for security reasons.

49. In each of these cases, the information was transmitted to the Government within the process of requesting precautionary measures. No reply from the State has been received.

V. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Competence Ratione Materiae, Ratione Tempori, Ratione Personae and Ratione Loci of the Commission

50. The Commission has jurisdiction *ratione materiae* (over the subject matter), *ratione loci* (over the place), and *ratione tempori* (by reason of time) since the case concerns rights protected by the Convention under Articles 4, 8, 25, and 1, and the alleged violation of those rights that occurred in Brazil on October 20, 1996, subsequent to Brazil’s ratification of the Convention on September 25, 1992.[FN16]

[FN16] The Commission notes that the General Assembly of the OAS resolved on June 5, 2000 “To invite the Inter-American Commission on Human Rights to continue to pay due attention to the situation of human rights defenders in the Americas” and said it was “concerned over the persistence in the Americas of situations that directly or indirectly prevent or hamper the work of individuals, groups, or organizations working to promote and protect fundamental rights.” [AG/RES. 1711 (XXX-O/00)]

51. The Commission has jurisdiction *ratione personae* (over the person). Regarding its passive *ratione personae* competence, the petitioners claim that the violations were committed by government officials of Brazil, a member State. Article 1(1) of the Convention implies that any impairment of rights guaranteed by the Convention, 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.[FN17] 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.

[FN17] Inter-American Court of Human Rights, Vel squez Rodr guez case, Judgment of July 29, 1999, paragraph 164.

52. Regarding its active *ratione personae* competence, Regulation 26(1) provides that “[a]ny person or group of persons or nongovernmental entity legally recognized in one or more of the

member states of the Organization may submit petitions to the Commission, on one's own behalf or on behalf of third persons." Therefore, the nongovernmental organizations, CDHMP, HHRP and GIHRLS, have standing to petition on behalf of Nogueira.

A. Admissibility Requirements

i. Exhaustion of Domestic Remedies

53. The rule contained in Article 46(1)(a) of the Convention, requiring that any remedy offered by domestic law first be pursued and exhausted, stipulates that the substance of all petitions brought before the Commission must have first been heard by the domestic courts. This rule allows states to resolve disputes under their own legal systems before facing international proceedings. The petitioner notes that inquiries into Nogueira's death were closed and the case was shelved (*arquivado*). According to Brazilian law, once a case has been shelved, it may only be reopened if new facts are found. Therefore, the Commission must analyze: a) whether the State has invoked this exception and did so on time; and alternatively b) if the new facts have a bearing on the admissibility of the case.

54. In its only reply, the State does not invoke the non-exhaustion of domestic remedies objection. According to Article 46(1)(a) of the Convention, the remedies under domestic law must have been exhausted for a petition to be admitted by the Commission. As the Inter-American Court has pointed out, this is a rule that can be waived by the State either expressly or by implication and to be timely it must be invoked at an early stage of the proceedings, failing which the State may be presumed to have tacitly waived this requirement.[FN18] The Commission considers that the State's silence in this case constitutes a tacit waiver of the right to invoke this objection and relieves the Commission of the need to continue to consider the question of compliance. The Commission therefore declares the case admissible with respect to this requirement.

[FN18] Inter-American Court of Human Rights. *Godínez Cruz case. Preliminary Objections*. Judgment of June 26, 1987. Series C, No. 3, paragraphs 90 and 91 state: 90. Generally recognized principles of international law indicate, first, that this is a rule that may be waived, either expressly or by implication, by the State having the right to invoke it, as this Court has already recognized (see *Viviana Gallardo et al.* Judgment of November 13, 1981, No. G 101/81. Series A, paragraph 26). Second, the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed. Third, the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective. 91. The record shows that the Government failed to make a timely objection when the petition was before the Commission and did not object at any time during the proceedings.

55. In addition to the above, and even had the Commission not recognized a tacit waiver by the State of its right to timely objection to nonexhaustion of the domestic remedies requirement, the Commission considers that the exceptions stipulated in Article 46(2)(a)(b) and (c) of the

Convention would have applied. They allow for admission of cases when: 1) 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; and 2) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them. The Commission reached on the basis of the following facts.

56. It is an undisputed fact that the State shelved the case and ended the investigations seven months after the death of Nogueira, without having made any serious effort to identify and try the person or persons responsible.

57. It is also an undisputed fact that the reopening of the proceedings mentioned by the State in its note of June 2000 refers to only one of those accused of the murder of Gilson Nogueira, and that that reopening was not due to any urge to investigate and indict on the part of the State but a result of pressure exerted by human rights defenders and local and foreign journalists, who managed to persuade a former policeman involved in the activities of the “Golden Boys” death squad to tell them about those activities and the plot to murder Gilson Nogueira, together with the names of the perpetrators. This information was corroborated to the extent that the weapon used in the crime was found on a plot belonging to one of the policemen accused. Only the actions undertaken by these human rights defenders proved capable of provoking a response from the Federal Police (not the state police, nor military court prosecutors) and achieving a partial reopening of the case.

58. It is also an undisputed fact that the reopening of proceedings concerned only one of the five policemen involved, since the investigations focused exclusively on the responsibility of the civilian policeman, Otavio Ernesto. The State has not conducted any other serious and effective inquiry into the criminal association of the other policemen and civilian authorities accused along with the policeman currently on trial, despite the fact that human rights defenders have submitted evidence linking them to the crime.

59. There has been unwarranted delay in moving ahead with this case, primarily due to the lack of a proper investigation, which led to its being shelved, and then due to the absence of investigations or proceedings against the majority of those responsible. The Commission has been told that, as of the date of this report, no date has yet been set for the trial of the only accused.

60. The Commission considers that the exhaustion of domestic remedies requirement is subject, under Article 46(2)(1), to the existence of effective domestic remedies. In the Fairén Garbí and Solís Corrales case, the Court maintained that the merely theoretical existence of legal remedies is not sufficient for this objection to be invoked: they have to be effective, They are not effective when “formal requirements make them inapplicable in practice; the authorities against whom they were brought simply ignored them, or because attorneys and judges were threatened and intimidated by those authorities.”[FN19]

[FN19] Inter-American Court of Human Rights, Fairén Garbí and Solís Corrales, Judgment of March 15, 1989. Series C No. 6, paragraph 102.

61. As emerges from the information in the petition, the additional information provided, and in the various different requests for precautionary measures, none of which has been disputed by the State, inquiries by the military courts, the state police, the Attorney General's office, and the judicial authorities have been—and in this case—are still ineffective. The Commission would again like to point out that it had to ask the State to take steps to protect senior officials in the Public Prosecutor's Office, justice outreach workers, attorneys, and human rights defenders, all of whom have been threatened and intimidated.

62. In principle the intimidation would appear to be continuing in the form of lawsuits against two human rights defense attorneys for alleged libel offenses, for having repeated to the press the testimony they gave to the judge in the case.

ii. Filing Period

63. Article 46(1)(b) of the Convention stipulates that for a petition to be admissible, it must be submitted to the Commission within six months of the date on which the petitioner was notified of the final ruling. The Commission finds in the instant case that the decision to shelve the case constitutes a final decision for determining the filing period. Since the petition was placed before the Commission on December 11, 1997, within six months from the date the case was shelved (June 19, 1997), the Commission concludes that this requirement has been met. In the alternative, since the Commission notes that the petitioners meet at least one of the exceptions under Article 46(2) of the Convention, the 6 month filing period does not apply as is stated in Article 46(2).

iii. Duplication of Proceedings and Res Judicata

64. With regard to the requirement in Article 46(1)(c) of the Convention, stating that the petition must not be pending settlement in any other international proceeding, the Commission has received no information indicating that any such situation exists. The Commission therefore holds that this requirement has been met. In addition, the Commission also concludes that the requirement set forth in Article 47(d) has been met, in that this petition is not substantially the same as any petition already studied by the Commission or ruled on by another international organization.

iv. Nature of the Violations

65. Article 47(b) of the Convention states that the Commission shall consider inadmissible any petition or communication that “does not state facts that tend to establish a violation of the rights guaranteed by this Convention.” The petitioners claim that the State, through its agents, assassinated Nogueira, violating his right to life (Article 4), and that in failing to make adequate investigations into the murder, the State violated Nogueira's rights of due process (Article 8). Finally, the petitioners contend that the State has allowed crimes to go unpunished, fostering a climate of impunity which has led to human rights violations, violating the right to judicial protection and the obligation to respect the rights set forth in the Convention (Article 1).[FN20]

If proven true, the facts alleged by the petitioners could constitute violations of rights protected by the Convention. Therefore, the Commission concludes that this requirement has been met.

[FN20]The Commission has in mind resolution AG/RES. 1711 (XXX-000) of June 5, 2000 on Human Rights Defenders in the Americas, and similar resolutions in previous years.

66. The Commission concludes that it is competent to take cognizance of this case and that the petition meets the admissibility requirements under Articles 46 and 47 of the American Convention and Articles 1 and 20 of its Regulations.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare, without prejudging the merits of the instant case, that this petition is admissible with respect to the alleged facts, and to Article 4 (right to life); Article 8 (right to a fair trial); and Article 25 (right to judicial protection), in conjunction with Article 1(1) (obligation to respect rights) of the American Convention.
2. To transmit this report to the State and to the petitioners.
3. To place itself at the disposal of the parties concerned with a view to reaching a friendly settlement, in accordance with Article 48(f) of the Convention.
4. To continue processing the case with an analysis of the merits of the petition.
5. To publish this report and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C. on the third day of the month of October, 2000. (Signed): Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Commissioners Marta Altolaguirre, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.