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Decided by: Chairman: Claudio Grossman;
First Vice-Chairman: Juan Mendez;
Second Vice-Chairman: Marta Altolaguirre;
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Commission member Hélio Bicudo, a Brazilian, did not participate in the discussions or voting related to this case, in compliance with Article 19(2)(a) of the Regulations of the Commission.

Dated: 16 April 2001
Citation: Fernandes v. Brazil, Case 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)

Represented by: APPLICANTS: the Center for Justice and International Law and the Latin American and Caribbean Committee for the Defense of Women's Rights

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I. SUMMARY

1. On August 20, 1998, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition filed by Mrs. Maria da Penha Maia Fernandes, the Center for Justice and International Law (CEJIL), and the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) (hereinafter "the petitioners"), as provided for in Articles 44 and 46 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 12 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará or CMV).

2. The petition alleges that the Federative Republic of Brazil (hereinafter "Brazil" or "the State") condoned, for years during their marital cohabitation, domestic violence perpetrated in the city of Fortaleza, Ceará State, by Marco Antônio Heredia Viveiros against his wife at the time, Maria da Penha Maia Fernandes, culminating in attempted murder and further aggression in May and June 1983. As a result of this aggression, Maria da Penha has suffered from irreversible paraplegia and other ailments since 1983. The petition maintains that the State has condoned this situation, since, for more than 15 years, it has failed to take the effective measures required to prosecute and punish the aggressor, despite repeated complaints. The petition alleges violation of Article 1(1) (Obligation to Respect Rights), 8 (a Fair Trial), 24 (Equal Protection), and 25 (Judicial Protection) of the American Convention, in relation to Articles II and XVIII of

the American Declaration of the Rights and Duties of Man ("the Declaration"), as well as Articles 3, 4(a), (b), (c), (d), (e), (f), and (g), and 5 and 7 of the Convention of Belém do Pará. The Commission processed the petition in accordance with the regulations. In view of the fact that the State failed to provide comments on the petition despite the repeated requests of the Commission, the petitioners asked that the events related in the petition be presumed to be true and that Article 42 of the Regulations of the Commission be applied.

3. In this report, the Commission analyzes admissibility requirements and considers the petition admissible pursuant to Articles 46(2)(c) and 47 of the American Convention, and 12 of the Convention of Belém do Pará. With respect to the merits of the case, the Commission concludes that the State violated the right of Mrs. Maria da Penha Maia Fernandes to a fair trial and judicial protection, guaranteed in Articles 8 and 25 of the American Convention, in relation to the general obligation to respect and guarantee rights set forth in Article 1(1) of that instrument and Articles II and XVIII of the Declaration, as well as Article 7 of the Convention of Belém do Pará. It also concludes that this violation forms a pattern of discrimination evidenced by the condoning of domestic violence against women in Brazil through ineffective judicial action. The Commission recommends that the State conduct a serious, impartial, and exhaustive investigation in order to establish the criminal liability of the perpetrator for the attempted murder of Mrs. Fernandes and to determine whether there are any other events or actions of State agents that have prevented the rapid and effective prosecution of the perpetrator. It also recommends prompt and effective compensation for the victim, and the adoption of measures at the national level to eliminate tolerance by the State of domestic violence against women.

II. PROCESSING BY THE COMMISSION AND FRIENDLY SETTLEMENT OFFER

4. On August 20, 1998, the Inter-American Commission received the petition related to this case and on September 1 of that year, it forwarded a communication to the petitioners acknowledging receipt of their petition and informing them that it had begun to process the case. On October 19, 1998, the Inter-American Commission forwarded the petition to the State and requested information from it on the matter.

5. In light of the failure on the part of the State to respond, on August 2, 1999, the petitioners requested application of Article 42 of the Regulations of the Commission, so that the events related in the petition could be presumed to be true, in view of the fact that more than 250 days had elapsed since the forwarding of the petition to Brazil and no comments had been received from the latter on the case.

6. On August 4, 1999, the Inter-American Commission again asked the State to submit the information that it deemed pertinent, and warned of the possible application of Article 42 of its Regulations.

7. On August 7, 2000, the Commission made itself available to the parties for 30 days to begin the friendly settlement process pursuant to Articles 48(1)(f) of the Convention and 45 of the Regulations of the Commission. To date it has not received a positive response from either party, and, for this reason, the Commission holds the view that during this processing phase, the matter cannot be resolved through these channels.

III. POSITIONS OF THE PARTIES

A. The petitioners

8. The petition states that on May 29, 1983, Mrs. Maria da Penha Maia Fernandes, a pharmacist, was the victim of attempted murder by her then husband, Marco Antônio Heredia Viveiros, an economist, at her home in Fortaleza, Ceará State. He shot her while she was asleep, bringing to a climax a series of acts of aggression carried out over the course of their married life. As a result of this aggression of her spouse, Mrs. Fernandes sustained serious injuries, had to undergo numerous operations, and suffered irreversible paraplegia and other physical and psychological trauma.[FN1]

[FN1] According to the petition and documents enclosed by the petitioners, Mr. Viveiros shot his wife while she was asleep. Fearful and in order to avoid being shot a second time, Mrs. Fernandes lay prostrate in the bed pretending to be dead. However, when she was admitted to the hospital she was in shock, with tetraplegia resulting from injury to her third and fourth vertebrae, in addition to other injuries that became apparent later on. Correspondence from the petitioners of August 13, 1998, received by the IACHR Secretariat on August 20 of that year, page 2; and Fernandes (Maria da Penha Maida). *Sobrevivi Posso Contar*, Fortaleza, 1994, pages 28-30 (Enclosure 1 of the petition).

9. The petitioners state that Mr. Heredia Viveiros was an aggressive and violent person, and that he would assault his wife and three daughters during his marriage. According to the victim, the situation became unbearable but she was too afraid to take steps to obtain a separation. They maintain that the husband tried to cover up the attack by reporting it as an attempted robbery and the work of thieves who had fled. Two weeks after Mrs. Fernandes returned from the hospital and was recovering from the attempt on her life on May 29, 1983, Mr. Heredia Viveiros again attempted to kill her by allegedly trying to electrocute her while she was bathing. At that point, she decided to seek a legal separation from him.[FN2]

[FN2] According to statements provided by the victim, the second weekend after she returned from Brasilia, Mr. Viveiros asked her whether she wanted to take a bath and when she went in the shower, she felt an electric shock that came from the water. Mrs. Fernandes panicked and tried to get out of the shower, but her husband told her that a small electrical shock was not going to kill her. She stated that at that moment she understood why, from the time of her return, Mr. Viveiros showered only in his children's bathroom. Correspondence of the petitioners dated August 13, 1998, page 5, and enclosure 2 of that document.

10. They maintain that Mr. Viveiros acted with premeditation, since the week before the attack he had tried to convince his wife to make him the beneficiary of a life insurance policy, and five days before attacking her, he tried to force her to sign a document for the sale of her car

that provided no indication of the name of the purchaser. They state that Mrs. Fernandes learned subsequently that Mr. Viveiros had a criminal record, that he was bigamous, and that he had a child in Colombia, information that he had concealed from her.

11. They add that because of the resulting paraplegia, the victim had to undergo extensive physical therapy, and, because of her loss of independence, required constant assistance from nurses in order to move around. The ongoing need for medication and physical therapy is expensive and Mrs. Maria da Penha receives no financial assistance from her ex-husband to cover her expenses. Also, he is not paying the alimony stipulated in the separation order.

12. The petitioners maintain that during the judicial investigation, which was launched a few days after the June 6, 1983 assault, statements were taken establishing that Mr. Heredia Viveiros was responsible for the assault, and that despite this, he maintained that it was the work of thieves who were trying to enter their home. During the judicial proceedings, evidence was presented demonstrating that Mr. Heredia Viveiros intended to kill her, and a rifle owned by him was found in the house, contradicting his claim that he did not own any firearms. Subsequent analyses indicated that this was the weapon used in the assault. Based on all of the above, the Office of the Public Prosecutor filed charges against Mr. Heredia Viveiros on September 28, 1984, leading to public criminal proceedings in the First District Court of Fortaleza, in Ceara State.

13. The petitioners indicate that despite the clear nature of the charges and preponderance of the evidence,[FN3] the case languished for eight years before the jury found Mr. Viveiros guilty on May 4, 1991, sentencing him to 15 years in prison for assault and attempted murder, which was reduced to ten years because he had no prior convictions.

[FN3] The petition states that "a great deal of evidence was collected showing that the former husband of Maria da Penha intended to kill her and pass it off as a robbery of his home." They include a copy of the decision of the Technical Police and the sworn statements of the maids who provided a detailed description of events that point to the guilt of Mr. Heredia Viveiros. Among the elements described is the defendant's denial; that he had a shotgun (espingarda), which was later proved to be in his possession; the constant physical attacks on his wife; and serious contradictions in his version of the events.

14. They state that on that same day, that is, May 4, 1991, the defense filed an appeal against the decision handed down by the Jury. According to Article 479 of the Brazilian Code of Criminal Procedure, this appeal was time-barred, since it could only be filed during rather than after the proceedings, a matter that has been borne out repeatedly by Brazilian case law and, in the case at hand, by the Office of the Public Prosecutor.

15. Another three years went by. On May 4, 1994, the Appeal Court ruled on the appeal. In that decision, it accepted the time-barred appeal, and, using as a basis the argument of the defense that the formulation of questions to the jury was flawed, threw out its decision.

16. They allege that at the same time, other legal action was being taken to appeal the indictment [pronuncia] (first judicial decision by means of which the judge identifies signs pointing to a perpetrator that warrant a trial by jury). This appeal was also time-barred and the judge handed down a ruling to that effect. That decision was also appealed in the Ceará State court, which agreed to hear the appeal and issued an unfavorable ruling, upholding the indictment on April 3, 1995, maintaining once more that there was sufficient evidence pointing to a perpetrator.

17. In the petition providing an account of legal ineptitude and delays, it is further stated that two years after the guilty sentence of the first jury was thrown out, a second trial by jury took place on March 15, 1996, in which Mr. Viveiros was condemned to ten years and six months in prison.

18. The petitioners claim that the Court again agreed to hear a second appeal filed by the defense, in which it was maintained that the accused was convicted without consideration being given to the evidence contained in the court file. Since April 22, 1997, a decision has been pending in the second instance appeal to the Ceará State Court. As of the date of submission of the petition to the Commission, no decision had been handed down regarding the appeal.

19. The petitioners maintain that as of the date of the petition, the Brazilian justice system had dragged its feet for more than 15 years without handing down a final ruling against the ex-husband of Mrs. Fernandes, who has been free during that entire period, despite the serious nature of the charges, the mountain of evidence against him, and the serious nature of the crime committed against Mrs. Fernandes. The judicial system of Ceará and the Brazilian State have thus been ineffective, as seen in their failure to conduct proceedings in a prompt and efficient manner, thereby creating a great risk of impunity, since punishment in this case will be barred by the statute of limitations twenty years after the occurrence of these events, a date that is approaching. They maintain that the primary aim of the Brazilian State ought to have been to ensure compensation for the suffering of Maria da Penha, by guaranteeing her a fair trial within a reasonable time period.[FN4]

[FN4] This same court noted the overwhelming guilt of the accused and his dangerous personality, as revealed by the crime committed, and its serious consequences, when he was convicted to 15 years in prison in the first trial. FERNANDES (Maria da Penha Maia), *Sobrevivi Posso Contar*, Fortaleza, 1994, page 74.

20. They maintain that this complaint does not represent an isolated situation in Brazil; rather, it is an example of a pattern of impunity in cases of domestic violence against women in Brazil, since the majority of complaints filed do not lead to criminal prosecution and in the few cases where they do, the perpetrators are convicted in only a small number of cases. We note the comments of this Commission in its report on Brazil:

The crimes which fall within the heading of violence against women constitute human rights violations under the American Convention, as well as under the more specific terms of the

Convention of Belém do Pará. When committed by state agents, the use of violence against the physical and/or mental integrity of an individual gives rise to the direct responsibility of the State. Additionally, the State has an obligation under Article 1(1) of the American Convention and Article 7.b of the Convention of Belém do Pará to exercise due diligence to prevent human rights violations. This means that, even where conduct may not initially be directly imputable to a state (for example, because the actor is unidentified or not a state agent), a violative act may lead to state responsibility "not because of the act itself, but because of the lack of due diligence to prevent the violation or respond to it as the Convention requires.[FN5]

[FN5] Report on the Situation of Human Rights in Brazil, 1997, Chapter VIII.

21. They allege that the State has not taken effective measures to prevent and punish, from a legal standpoint, domestic violence in Brazil, despite its international obligation to prevent and sanction this violence. They also note that statistics on homicide and sexual violence against women show that in most instances, these acts are perpetrated by their companions or persons whom they know.[FN6]

[FN6] The petitioners state that this situation has also been recognized by the United Nations and have submitted newspaper articles with their petition. They note that 70% of the cases of violence against women occur in their homes (Human Rights Watch. Report of Brazil, 1991, page 351), and that a police officer in Río de Janeiro stated that of the more than 2,000 cases of rape or beatings reported at his police station, he did not know of any that resulted in the punishment of the perpetrator (HRW Report, page 367).

22. They maintain that the State of Brazil should take preventive action, in accordance with its international commitments, to reduce the incidence of domestic violence, and to investigate, prosecute, and punish the aggressors within a reasonable time period, in compliance with its obligations assumed internationally to protect human rights, something that it has failed to do. In the case of Mrs. Fernandes, the primary aim of action by the Brazilian Government should have been to ensure compensation for the wrongs suffered and the guarantee of fair proceedings against the aggressor within a reasonable time period.

23. In their view, it has been demonstrated that domestic resources have not been effective in providing redress for the human rights violations suffered by Maria da Penha Maia Fernandes, and this situation is further aggravated by the fact that the delay on the part of the Brazilian justice system in handing down a final decision may lead, in 2002, to the barring of the punishment of the offense by the statute of limitations, inasmuch as 20 years would have elapsed since its commission, thereby preventing the State from exercising *jus punendi* and the accused from being held accountable for the crime committed. This inaction of the State is also leading to the inability on the part of the victim to obtain appropriate civil reparations.

24. Finally, the petitioners are seeking application of Article 42 of the Regulations of the Commission so that the acts alleged in the petition may be presumed to be true, since the State has failed to respond, despite the fact that more than 250 days have elapsed since the forwarding of the petition to Brazil.

B. The State

25. The Brazilian State has not provided the Commission with a response regarding the admissibility or the merits of the petition, despite the requests of the Commission to the State on October 19, 1998, August 4, 1999, and August 7, 2000.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission

26. The petitioners maintain that the State has violated the rights of the victims pursuant to Articles 1(1), 8, 24 (in relation to Articles II and XVIII of the American Declaration), and Article 25 of the American Convention (ratified by Brazil on November 25, 1992), and Articles 3, 4, 5, and 7 of the Convention of Belém do Pará (ratified on November 27, 1995), as a result of the events that occurred from May 29, 1983, on an ongoing basis, to the present. They maintain that the lack of effective action and the tolerant attitude of the State continued after the entry into force of these two inter-American Conventions.

27. In the view of the Commission, it has *ratione materiae*, *ratione loci*, and *ratione temporis* competence since the petition pertains to rights originally protected by the American Declaration on the Rights and Duties of Man; and by the American Convention and the Convention of Belém do Pará when they became binding with respect to the Federative Republic of Brazil. Despite the fact that the original assault occurred in 1983, while the American Declaration was in effect, the Commission holds the view, with regard to the alleged failure to guarantee due process that, inasmuch as it is an ongoing violation, it would also be covered under the American Convention and the Convention of Belém do Pará, which took effect later on, since the alleged tolerant attitude of the State constituted an ongoing denial of justice, to the detriment of Mrs. Fernandes, which could make it impossible to convict the perpetrator and compensate the victim. Consequently, the State allegedly tolerated a situation of impunity and defenselessness, the effects of which were felt even after the date on which Brazil acceded to the American Convention and the Convention of Belém do Pará.[FN7]

[FN7] In this regard, the Commission has abundant case law. See IACHR Case 11.516, Ovelario Tames, Annual Report 1998, (Brazil) para. 26 and 27; Case 11.405 Newton Coutinho Mendes et al., Annual Report 1998 (Brazil); Case 11.598 Alonso Eugenio da Silva, Annual Report 1998 (Brazil), para. 19 and 20; Case 11.287 João Canuto de Oliveira, Annual Report 1997 (Brazil). The Inter-American Court of Human Rights has addressed the concept of the ongoing violation of rights on many occasions, particularly in the context of forced disappearances, and in this regard, it has stated the following:

forced disappearance implies the violation of various human rights recognized in international human rights treaties, including the American Convention, and that the effects of such infringements -even though some may have been completed, as in the instant case- may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established.

In the light of the above, as Mr. Blake's fate or whereabouts were not known to his family until June 14, 1992, that is, after the date on which Guatemala accepted the contentious jurisdiction of this Court, the preliminary objection raised by the Government must be deemed to be without merit insofar as it relates to effects and actions subsequent to its acceptance. The Court is therefore competent to examine the possible violations which the Commission imputes to the Government in connection with those effects and actions.

Inter-American Court, Blake case, Judgment on Preliminary Objections of July 2, 1996, paras. 39 and 40. In that regard, see also: Inter-American Court, Velásquez Rodríguez case, Judgment of July 29, 1988, para. 155; and Godínez Cruz case, Judgment of January 20, 1989, para. 163. Also in the Genie Lacayo case (paragraphs 21 and 24 Excep. Preliminaries), the Court agreed to consider violation of Articles 2, 8, 24, and 25, involving the denial of justice that started prior to the non-retroactive acceptance of the competence of the Court but continued after acceptance thereof.

In addition, the notion of an ongoing situation has also been accepted by the European Court of Human Rights in decisions on cases pertaining to arrests dating back to the 1960s, and by the Human Rights Commission, the practices of which, under the United Nations International Covenant on Civil and Political Rights and its first Optional Protocol, from the early 1980s, contains examples of ongoing situations that led to events that occurred or persisted after the entry into force of the Covenant and Protocol with respect to the State in question, and thus violated rights enshrined in the Covenant.

28. The Commission has general competence with respect to application of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará or CMV), since it is an inter-American human rights instrument, and because of the competence assigned to it specifically by States in Article 12 of the Convention, which stipulates:

Any person or group of persons, or any non-governmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.

29. With respect to *ratione personae* competence, the petition was filed jointly by Mrs. Maria da Penha Maia Fernandes, the Center for Justice and International Law (CEJIL), and the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), all of whom have legal authority to file a petition with the Commission pursuant to Article 44 of the American Convention. In addition, insofar as the State is concerned, Article 28 of the American

Convention states that when a federative State is involved, as is the case with Brazil, the national Government is answerable in the international sphere for its own acts and for those taken by the agents of the entities that compose the Federation.

B. Requirement for admissibility of a petition

a. Exhaustion of domestic remedies

30. Article 46(1)(a) of the Convention states that domestic remedies must be exhausted if a petition is to be considered admissible by the Commission. However, Article 46(2)(c) also states that where there has been unwarranted delay in obtaining a decision in the domestic sphere, that provision shall not apply. As the Inter-American Court has stated, this is a rule which, when cited, may be explicitly or implicitly waived by the State, and, to be timely, must be invoked during the initial stages of proceedings, failing which the State in question will be considered to have tacitly waived its right in this regard.[FN8]

[FN8] Inter-American Court, Godínez Cruz case. Preliminary Objections. Judgment of June 26, 1987. Series C. N° 3. Paragraphs 90 and 91 state: "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, N° G 101/81. Series A, para. 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."

In applying the foregoing principles to this case, the Court notes that the case file reveals that the Government did not file an objection in a timely manner when the Commission began hearings related to the complaint brought before it, nor did it even do so later on during the entire period that the case was being examined by the Commission.

31. The Brazilian State has not responded to numerous communications forwarded with this petition; consequently, it has not raised this objection. It is the view of the Commission in this case that the silence of the State constitutes tacit waiver of the right to invoke this requirement, and, for this reason, the Commission is not required to consider fulfillment thereof later on.

32. Furthermore, the Commission considers it necessary to point to the uncontested fact that after 15 years, the Brazilian justice system has not handed down a final ruling in this case, and, since 1997, a decision has been pending at the second instance level of appeal in the Ceará State Court. The Commission also thinks that there has been an unwarranted delay in the processing of the complaint, which is exacerbated by the fact that this delay can lead to barring of the offense by the statute of limitations and, as a result, definitive impunity of the perpetrator and the inability of the victim to receive compensation. Consequently, the exception provided for in Article 46(2)(c) of the Convention can also be applied.

b. Time period for submission

33. In accordance with Article 46(1)(b) of the American Convention, acceptance of a petition is subject to the submission thereof in a timely manner, within six months of the date of notification of the petitioner of the final ruling in the domestic sphere. Since there has not been a final ruling, the Commission holds the view that the petition was submitted within a reasonable time frame, based on analysis of the information submitted by the petitioners, and that the exception with regard to the six-month period set forth in Article 46(2)(c) and Article 37(2) (c) of the Regulations of the Commission is applicable. The Commission notes that it holds the same view regarding its competence with respect to the Convention of Belém do Pará, as stipulated in the final part of Article 12 thereof.

c. Duplication of proceedings

34. With regard to the duplication of proceedings, it does not seem that this case has been referred to another entity and the State has not made any claim to that effect. Consequently, the Commission considers the petition admissible pursuant to Article 46(c) and 47(d) of the American Convention.

d. Conclusions related to competence and admissibility

35. In light of the foregoing, the Commission considers itself competent to make a decision on the case, and holds the view that this petition fulfills the requirements of admissibility set forth in the American Convention on Human Rights and the Convention of Belém do Pará.

V. ANALYSIS OF THE MERITS OF THE CASE

36. The silence of the State with respect to the case outlined in this petition is at odds with its obligation assumed upon ratification of the American Convention, pertaining to the authority of the Commission "to act on petitions and other communications, pursuant to the provisions of Articles 44 to 51 of the Convention." The Commission has analyzed the case on the basis of the documents provided by the petitioners and other materials obtained, taking into account Article 42 of its Regulations. The documents reviewed include:

- The book published by the victim entitled: "Sobreviví Posso Contar".
- The police station report on robberies and thefts, with respect to its investigation.
- The medical reports on the treatment required by the victim, Maria da Penha.
- Newspaper articles on the case and on domestic violence against women in general in Brazil.
- The complaint against Heredia Viveiros filed by the Office of the Public Prosecutor.
- The report filed by the Technical Police Institute and the Police Station on robberies and thefts of October 8, 1983, both of which deal with the crime scene and discovery of a weapon.
- The statements of the domestic employees of January 5, 1984.
- The request for background information on Marco Antonio Heredia Viveiros of February 9, 1984.
- The report on the state of health of the victim of February 10, 1984.

- The indictment declared as a result of the complaint by the First Division Judge, dated October 31, 1986.
- The conviction by a jury of May 4, 1991.
- The arguments of the Office of the Attorney General seeking denial of the appeal on December 12, 1991.
- The overturning by the State Court of the conviction by the original jury on May 4, 1994.
- The decision by the State Court of April 3, 1995, agreeing to hear the appeal against the indictment decision, but refusing to grant it and ordering the accused to a new trial by jury.
- The decision of March 15, 1996 of the second jury convicting the accused.

In the view of the Commission, an analysis of all the evidence available does not lead to conclusions that are different from those presented below, with respect to the matters analyzed.[FN9] The Commission will analyze first the right to justice in accordance with the Declaration and the American Convention, and then complete the analysis by applying the Convention of Belém do Pará.

[FN9] In this analysis, the Commission used the documents submitted by the petitioners as the main source of information for its review, in addition to other instruments available such as: IACHR, Report of the Inter-American Commission on Human Rights on the status of women in the Americas. October 13, 1998, page 91; IACHR, Report on the Situation of Human Rights in Brazil, September 29, 1997, page 164. United Nations Development Programme, Human Development Report 2000. Oxford University Press, 2000, pages 290, as well as the different sources of case-law of the inter-American and international system.

A. Right to Justice (Article XVIII of the Declaration); and to a Fair Trial (Article 8) and Judicial Protection (Article 25), in relation to the Obligation to Respect and Guarantee Rights (Article 1(1) of the Convention

37. Articles XVIII of the Declaration and 8 and 25 of the American Convention on Human Rights stipulate that all persons are entitled to access to judicial remedies and to be heard by a competent authority or court when they think that their rights have been violated, which is reaffirmed in Article XVIII (right to justice) of the Declaration, all in relation to the obligation set forth in Article 1(1) of the Convention. Article 25(1) of the Convention states:

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.

38. More than 17 years have elapsed since the launching of the investigation into the attack on the victim Maria da Penha Maia Fernandes and to date, based on the information received, the case against the accused remains open, a final ruling has not been handed down, and remedies have not been provided for the consequences of the attempted murderer of Mrs. Fernandes.[FN10]/ The Inter-American Court of Human Rights has stated that the term

"reasonable time" established in Article 8(1) of the Convention is not a concept that can be defined easily and has referred to the decisions of the European Court of Human Rights for guidance in this regard. These decisions state that the following elements must be evaluated in determining whether the time period within which proceedings take place is reasonable: the complexity of the case, the procedural activity of the interested party, and the conduct of the judicial authorities.[FN11]

[FN10] During almost half of that period, since September 25, 1992, this situation has existed while the American Convention has been in effect for Brazil. The Convention of Belém do Pará has been in effect since November 27, 1995.

[FN11] Inter-American Court of Human Rights Genie Lacayo Case, Judgment of January 29, 1997, para. 77.

39. In that regard, the determination of the meaning of the term "within a reasonable time" must be made taking into account the specific facts surrounding each case. In this case, the Commission took into account the claims of the petitioners and the silence of the State.[FN12] The Commission concludes that the police investigation completed in 1984 provided clear and decisive evidence for concluding the trial and that the proceedings were delayed time and time again by long waits for decisions, acceptance of appeals that were time-barred, and unwarranted delays. Moreover, in the view of the Commission, the victim/petitioner in this case has fulfilled the requirement related to procedural activity with respect to the Brazilian courts, which is being handled by the Office of the Public Prosecutor and the pertinent courts, with which the victim/complainant has cooperated at all times. In the view of the Commission therefore, the characteristics of the case, the personal situation of persons involved in the proceedings, the level of complexity, and the procedural action of the interested party cannot explain the unwarranted delay in the administration of justice in this case.

[FN12] In this regard, the Commission deems it important to point out that the Inter-American court stated that:

The State controls the means to verify acts occurring within its territory. Although the Commission has investigative powers, it can exercise them within a State's jurisdiction only with the cooperation and resources offered by that State. Inter-American Court of Human Rights, Velásquez Rodríguez, Judgment of July 29, 1988, para. 136.

40. Eight years elapsed between the time that Mrs. Fernandes was the victim of attempted murder in 1983, allegedly by her then husband, and the launching of the appropriate investigations, given the fact that the first trial of the accused did not take place until 1991. The defendants filed a time-barred appeal that was accepted despite its procedural irregularity and, after more than three years, the court decided to declare the proceedings and conviction null and void.[FN13]

[FN13] The petitioners maintain that this appeal was inadmissible based on Article 479 of the Code of Criminal Procedure of Brazil. The Commission is considering this aspect pursuant to the authority conferred on it under Article XVIII of the American Declaration.

41. The new proceedings were delayed by a special appeal against the 1985 indictment (an appeal that was also alleged to be time-barred), and a decision was handed down recently, after a long delay, on April 3, 1995. The Ceará State Court upheld, ten years later, the 1985 decision of the court that there were signs pointing to commission of the crime by the accused. One year later, on March 15, 1996, another jury condemned Mr. Viveiros to ten years, six months in prison, that is, five years after a ruling was first handed down with respect to this case. Finally, proceedings have not yet ended inasmuch as an appeal against this conviction has been pending since April 22, 1997. In that regard, the Inter-American Commission notes that the judicial delay and long wait for decisions on appeals reveal conduct on the part of the judicial authorities that violates the right to the prompt and effective remedies provided for in the Declaration and the Convention. Throughout these 17-year proceedings, the individual accused of attempting to kill his wife on two occasions has been and continues to be free.

42. As the Inter-American Court of Human Rights has stated:

What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court's task is to determine whether the violation is the result of a State's failure to fulfill its duty to respect and guarantee those rights, as required by Article 1(1) of the Convention.[FN14]

[FN14] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, para. 173.

Also, the Court has stated the following:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.[FN15]

[FN15] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, para. 176; and Inter-American Court of Human Rights, Godínez Cruz case, Judgment of January 20, 1989, para. 187.

43. With regard to the obligations of the State in situations where action has not been taken to guarantee the victim the ability to exercise his rights, the Inter-American Court has stated the following:

The second obligation of the States Parties is to "ensure" the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.[FN16]

[FN16] Inter-American Court of Human Rights, Godínez Cruz case, Judgment of January 20, 1988, para. 175.

44. In this case, the Brazilian courts have failed to hand down a final ruling after seventeen years and this delay is leading to the distinct possibility of definitive impunity because of barring of the offense by the statute of limitations, thereby precluding receipt of compensation which, in any event, would be very late. The Commission holds the view that the domestic judicial decisions in this case reveal inefficiency, negligence, and failure to act on the part of the Brazilian judicial authorities and unjustified delay in the prosecution of the accused. These decisions are standing in the way of punishment of the accused and are raising the specter of impunity and failure to compensate the victim as a result of barring of the offense by the statute of limitations. They demonstrate that the State has not been capable of organizing its entities in a manner that guarantees those rights. As a whole, this situation represents a separate violation of Articles 8 and 25 of the American Convention on Human Rights in relation to Article 1(1) thereof and the corresponding Articles of the Declaration.

B. Equality before the Law (Article 24 of the Convention) and Articles II and XVIII of the Declaration

45. The petitioners also allege violation of Article 24 of the American Convention in relation to the right to equality before the law and the right to justice enshrined in the American Declaration on the Rights and Duties of Man (Articles II and XVIII).

46. In that regard, the Inter-American Commission notes that it has followed with special interest developments related to respect for the rights of women, particularly those related to domestic violence. The Commission has received information on the high number of domestic attacks of women in Brazil. In Ceará alone (the place where the events related to this case took place), there were 1,183 death threats reported to special police stations handling women's affairs in 1993, out of a total of 4,755 complaints.[FN17]

[FN17] Maia Fernandes, Maria da Penha "Sobrevivi Posso Contar" Fortaleza 1994, page 150; data based on information received from police stations.

47. Compared to men, women are the victims of domestic violence in disproportionate numbers. A study done by the National Movement for Human Rights in Brazil compares the incidence of domestic violence against women and men and shows that in terms of murders, women are 30 times more likely to be killed by their husbands than husbands by their wives. In its special report on Brazil in 1997, the Commission found that there was clear discrimination against women who were attacked, resulting from the inefficiency of the Brazilian judicial system and inadequate application of national and international rules, including those arising from the case law of the Brazilian Supreme Court. In its 1997 Report on the Situation of Human Rights, the Commission stated:

Moreover, even where these specialized stations exist, it remains frequently the case that complaints are not fully investigated or prosecuted. In some cases, resource limitations hinder efforts to respond to these crimes. In other cases, women refrain from pressing formal charges. In practice, legal and other limitations often expose women to situations where they feel constrained to act. By law, women have to register their complaint at a police station, and explain what happened so the delegate can write up an "incident report." Delegates who have not received sufficient training may be unable to provide the required services, and some reportedly continue to respond to victims in ways that make them feel shame and humiliation. For certain crimes, such as rape, victims must present themselves at an Institute of Forensic Medicine (Instituto Médico Legal), which has the exclusive competence to perform the examinations required by law to process a charge. Some women are not aware of this requirement, or do not have access to such a facility in the timely manner necessary to obtain the required evidence. These Institutes tend to be located in urban areas, and, where available, are often understaffed. Moreover, even when women take the steps necessary to denounce the use of criminal violence, there is no guarantee that the crime will be investigated and prosecuted.

Although the Supreme Court of Brazil struck down the archaic "honor defense" as a justification for wife-killing in 1991, many courts remain reluctant to prosecute and punish the perpetrators of domestic violence. In some areas of the country, use of the "honor defense" persists, and in some areas the conduct of the victim continues to be a focal point within the judicial process to prosecute a sexual crime. Rather than focusing on the existence of the legal elements of the crime in question, the practices of some defense lawyers—sustained in turn by some courts—have the effect of requiring the victim to demonstrate the sanctity of her reputation and her moral blamelessness in order to exercise the remedies legally required to be available to her. The initiatives taken by the public and private sector to confront violence against women have begun to combat the silence which customarily has concealed it, but have yet to surmount the social, legal and other barriers which contribute to the impunity in which these crimes too often languish.

48. That report also makes reference to various studies that demonstrate that in cases where statistics have been kept, they have shown that only one percent of the offenses reported to specialized stations are actually investigated. (Unido de Mulheres de Sao Paulo, A Violencia

Contra a Mulher e a Impunidade: Una Questão Política (1995). In 1994, of 86,815 complaints filed by women who were assaulted in the home, only 24,103 led to police investigations, according to that report.

49. Other reports indicate that 70% of the criminal complaints pertaining to domestic violence are put on hold without any conclusion being reached. Only 2% of the criminal complaints for domestic violence against women lead to conviction of the aggressor. (Report of the San Pablo Catholic University, 1998).

50. In this analysis examining the pattern shown by the State in responding to this kind of violation, the Commission also notes that positive measures have been taken in the legislative, judicial, and administrative spheres.[FN18]/ The Commission points to three initiatives that are directly related to the situation seen in this case: (1) the establishment of special police stations to handle reports on violence against women; (2) the establishment of shelters for battered women; and (3) the 1991 decision of the Supreme Court to strike down the archaic concept of "honor defense " as a justification for crimes against wives. These positive and other similar initiatives have been implemented on a limited basis in relation to the scope and urgency of the problem, as indicated earlier. In this case, which stands as a symbol, these initiatives have not had any effect whatsoever.

[FN18] As a result of joint action taken by the Government and the CNDM [National Council for Women's Rights], the 1988 Brazilian Constitution has been amended in a manner that reflects significant progress in women's rights. In the context of the National Program on Human Rights, the initiatives proposed by the Government aimed at strengthening the rights of women include: support for the National Council for Women's Rights and the National Program to Prevent Violence against Women; efforts to support and prevent sexual and domestic violence against women, to provide comprehensive assistance to women who are at risk, and to educate the public about discrimination and violence against women and safeguards that are available; repeal of certain discriminatory provisions in the Penal and Civil Code on parental authority; support for efforts to develop gender-specific approaches in the training of State agents and in the establishment of curriculum guidelines at the primary and secondary education levels; and support for statistical studies related to the status of women in the labor sphere. The program also recommends that the Government implement the decisions contained in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

C. Article 7 of the Convention of Belém do Pará

51. On November 27, 1995, Brazil deposited its ratification of the Convention of Belém do Pará, the inter-American instrument by means of which American States acknowledge the extent of this problem, establish guidelines to be followed, make commitments to address it, and establish the possibility for any individual or organization to file petitions and take action on a matter before the Inter-American Commission on Human Rights and through its proceedings. The petitioners are seeking a finding of violation by the State of Articles 3, 4, 5, and 7 of this Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against

Women, and are alleging that this case must be analyzed in a context of gender-based discrimination by Brazilian State organs, which serves to reinforce the systematic pattern of violence against women and impunity in Brazil.

52. As indicated earlier, the Commission has *ratione materiae* and *ratione temporis* competence to hear the case pursuant to the provisions of the Convention of Belém do Pará with respect to acts that occurred subsequent to ratification thereof by Brazil, that is, the alleged ongoing violation of the right to effective legal procedures, and, consequently, the tolerance that this would imply of violence against women.

53. The Convention of Belém do Pará is an essential instrument that reflects the great effort made to identify specific measures to protect the right of women to a life free of aggression and violence, both outside and within the family circle. The CVM provides the following definition of violence against women:

Article 2

Violence against women shall be understood to include physical, sexual, and psychological violence:

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

54. Within the scope of application of the CMV, reference is made to situations defined by two conditions: first, violence against women as described in sections (a) and (b); and, second, violence perpetrated or condoned by the State. The CMV protects, *inter alia*, the following rights of women when they have been violated by acts of violence: the right to a life free of violence (Article 3), the right to have her life, her physical, mental, and moral integrity, her personal safety, and personal dignity respected, to equal protection before and of the law; and to simple and prompt recourse to a competent court for protection against acts that violate her rights (Articles 4 (a), (b), (c), (d), (e), (f), and (g), and the resulting duty of the State set forth in Article 7 of that instrument. Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women states:

DUTIES OF THE STATES

Article 7

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b. apply due diligence to prevent, investigate and impose penalties for violence against women;
- c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
- g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
- h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

55. The impunity that the ex-husband of Mrs. Fernandes has enjoyed and continues to enjoy is at odds with the international commitment voluntarily assumed by the State when it ratified the Convention of Belém do Pará. The failure to prosecute and convict the perpetrator under these circumstances is an indication that the State condones the violence suffered by Maria da Penha, and this failure by the Brazilian courts to take action is exacerbating the direct consequences of the aggression by her ex-husband. Furthermore, as has been demonstrated earlier, that tolerance by the State organs is not limited to this case; rather, it is a pattern. The condoning of this situation by the entire system only serves to perpetuate the psychological, social, and historical roots and factors that sustain and encourage violence against women.

56. Given the fact that the violence suffered by Maria da Penha is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors, it is the view of the Commission that this case involves not only failure to fulfill the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices. That general and discriminatory judicial ineffectiveness also creates a climate that is conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.

57. The Commission must consider, in relation to Articles 7(c) and (h), the measures taken by the State to eliminate the condoning of domestic violence. The Commission notes the positive measures taken by the current administration towards that objective, in particular the establishment of special police stations, shelters for battered women, and others.[FN19] However, in this case, which represents the tip of the iceberg, ineffective judicial action, impunity, and the inability of victims to obtain compensation provide an example of the lack of commitment to take appropriate action to address domestic violence. Article 7 of the Convention of Belém do Pará seems to represent a list of commitments that the Brazilian State has failed to meet in such cases.

[FN19] See the chapter pertaining to the rights of Brazilian women in the 1997 IACHR Special Report on the Situation of Human Rights in Brazil.

58. In light of the foregoing, the Commission holds the view that this case meets the conditions for domestic violence and tolerance on the part of the State, defined in the Convention of Belém do Pará, and that the State is liable for failing to perform its duties set forth in Articles 7(b), (d), (e), (f), and (g) of that Convention in relation to rights protected therein, among them, the right to a life free of violence (Article 3), the right of a woman to have her life, her physical, mental, and moral integrity, her personal safety, and personal dignity respected, to equal protection before and of the law, and to simple and prompt recourse to a competent court for protection against acts that violate her rights (Articles 4(a), (b), (c), (d), (e), (f), and (g)).

VI. PROCEEDINGS SUBSEQUENT TO REPORT N° 105/00

59. The Commission approved Report N° 105/00 pertaining to this case on October 19, 2000, at its 108th session. This report was transmitted to the State on November 1, 2000, and it was granted a period of two months to implement the recommendations made. The Commission informed the petitioners of the approval of a report in accordance with Article 50 of the Convention. Inasmuch as the period granted has expired and the Commission has not received a response from the State regarding these recommendations, the IACHR adopts the view that these recommendations have not been implemented.

VII. CONCLUSIONS

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES THAT

60. The Inter-American Commission on Human Rights reiterates to the State the following conclusions:

1. It is competent to hear this case and that the petition is admissible pursuant to Articles 46(2)(c) and 47 of the American Convention and in accordance with Article 12 of the Convention of Belém do Pará, with respect to violation of the rights and duties established in Articles 1(1) (Obligation to Respect Rights); 8 (a Fair Trial); 24 (Equal Protection); and 25 (Judicial Protection) of the American Convention, in relation to Articles II and XVIII of the

American Declaration (the Declaration); as well as Article 7 of the Convention of Belém do Pará.

2. Based on the facts, which have not been disputed, and the foregoing analysis, the Federative Republic of Brazil is responsible for violation of the right to a fair trial and judicial protection, guaranteed in Articles 8 and 25 of the American Convention, in accordance with the general obligation to respect and guarantee rights set forth in Article 1(1) of this instrument, because of the unwarranted delay and negligent processing of this case of domestic violence in Brazil.

3. The State has adopted a number of measures intended to reduce the scope of domestic violence and tolerance by the State thereof, although these measures have not yet had a significant impact on the pattern of State tolerance of violence against women, in particular as a result of ineffective police and judicial action in Brazil.

4. The State has violated the rights of Mrs. Fernandes and failed to carry out its duty assumed under Article 7 of the Convention of Belém do Pará and Articles 8 and 25 of the American Convention; both in relation to Article 1(1) of the Convention, as a result of its own failure to act and tolerance of the violence inflicted.

VIII. RECOMMENDATIONS

61. Based on the foregoing analysis and conclusions, the Inter-American Commission on Human Rights recommends once more that the Brazilian State:

1. Complete, rapidly and effectively, criminal proceedings against the person responsible for the assault and attempted murder of Mrs. Maria da Penha Fernandes Maia.

2. In addition, conduct a serious, impartial, and exhaustive investigation to determine responsibility for the irregularities or unwarranted delays that prevented rapid and effective prosecution of the perpetrator, and implement the appropriate administrative, legislative, and judicial measures.

3. Adopt, without prejudice to possible civil proceedings against the perpetrator, the measures necessary for the State to grant the victim appropriate symbolic and actual compensation for the violence established herein, in particular for its failure to provide rapid and effective remedies, for the impunity that has surrounded the case for more than 15 years, and for making it impossible, as a result of that delay, to institute timely proceedings for redress and compensation in the civil sphere.

4. Continue and expand the reform process that will put an end to the condoning by the State of domestic violence against women in Brazil and discrimination in the handling thereof. In particular, the Commission recommends:

a. Measures to train and raise the awareness of officials of the judiciary and specialized police so that they may understand the importance of not condoning domestic violence.

b. The simplification of criminal judicial proceedings so that the time taken for proceedings can be reduced, without affecting the rights and guarantees related to due process.

c. The establishment of mechanisms that serve as alternatives to judicial mechanisms, which resolve domestic conflict in a prompt and effective manner and create awareness regarding its serious nature and associated criminal consequences.

d. An increase in the number of special police stations to address the rights of women and to provide them with the special resources needed for the effective processing and investigation of all complaints related to domestic violence, as well as resources and assistance from the Office of the Public Prosecutor in preparing their judicial reports.

e. The inclusion in teaching curriculums of units aimed at providing an understanding of the importance of respecting women and their rights recognized in the Convention of Belém do Pará, as well as the handling of domestic conflict.

f. The provision of information to the Inter-American Commission on Human Rights within sixty days of transmission of this report to the State, and of a report on steps taken to implement these recommendations, for the purposes set forth in Article 51 (1) of the American Convention.

IX. PUBLICATION

62. The Commission transmitted the report adopted pursuant to Article 51 of the American Convention to the State and to the petitioner on March 13, 2001, 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 1 and 2, 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.

Approved by the Inter-American Commission on Human Rights on April 16, 2001. (Signed): Claudio Grossman, Chairman; Juan Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chair; Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo Commissioners.