I. SUMMARY

1. On July 5, 1995, the Inter-American Commission on Human Rights (hereinafter the "Commission") received a complaint from the Comissão Pastoral da Terra, do Centro de Justiça e o Direito Internacional [Pastoral Land Commission, Center for Justice and International Law] (CEJIL) and from Human Rights Watch/Americas (hereinafter the "Petitioners"), alleging violations of the rights enshrined in the American Convention on Human Rights (hereinafter the "Convention" or "American Convention") by the Federative Republic of Brazil (hereinafter "Brazil", "Brazilian State", or "State"), in connection with the death of Diniz Bento da Silva, nicknamed Teixeirinha, a member of the "landless" workers' organization,[FN1] at the hands of the military police of Paraná state, on March 8, 1993.

[FN1] The term "landless" workers is used in Brazil to refer to rural workers engaged in the struggle for agrarian reform.

---

2. The petitioners allege violations of Article 4 (right to life), Article 5 (right to integrity of person), Article 8 (judicial guarantees), Article 11 (protection of honor and dignity), and Article 25 (judicial protection), in conjunction with Article 1(1) (obligation to guarantee and respect the rights established in the Convention).

3. The Commission has decided to admit the case and is of the opinion that the military police of Paraná state summarily executed Mr. Diniz Bento da Silva in retaliation for the death of

other military police during a confrontation between the latter and landless workers, and that the State covered up the facts by prolonging inefficient investigations for more than seven years. The Commission concluded that the Brazilian State is responsible for violation of Articles 4, 8, 25, and 1(1) of the American Convention. The Commission also advises the State to conduct a complete investigation to determine the circumstances surrounding the death of Diniz Bento da Silva as well as the irregularities of the police inquiry. The Commission also recommends that the State take steps to compensate the victim's family.

II. PROCEEDINGS BEFORE THE COMMISSION

4. The case was opened on July 24, 1995 with a request for information from the State on the facts alleged by the petitioners. The State responded on June 27, 1996 and the petitioners in turn submitted their observations on September 23, 1996, and these were remitted to the State on October 29, 1996. On October 7, 1996, a hearing was held, in which both parties submitted additional information. The petitioners submitted further information on June 26, 1998, and on November 30, 1998, the State presented its comments. On November 22, 1999, the petitioners filed their comments in response to the State. The Commission requested final comments from the State on the petitioner's allegations on December 14, 1999 and again on May 2, 2000, but the State failed to respond to these requests.

A. Friendly Settlement

5. On October 7, 1996, the Commission held a hearing, formally offering its services to the parties for a friendly settlement, to no avail since the parties could not reach an agreement. Consequently, the Commission found that the circumstances did not permit a friendly settlement at that stage of the process.

III. POSITION OF THE PARTIES

A. Position of the petitioners

6. The petitioners allege that Mr. Diniz Bento da Silva was killed on March 8, 1993 by members of the military police of Paraná state even though he was unarmed and had surrendered without resisting. The petitioners report that Diniz Bento da Silva was being sought by the police because he had been accused of killing a military police office in a confrontation between "landless" workers and the police at the Santana Ranch in Campo Bonito, Paraná state, five days before his death. The petitioners indicated that, before March 8, 1993, military police had committed other acts of intimidation and torture in the "landless" workers community in an attempt to locate Diniz Bento da Silva, including threatening his son. According to the petitioners, Diniz Bento da Silva was executed extrajudicially by the military police in retaliation for the death of military police officers.

7. The petitioners reported that a military police inquiry was initiated on March 12, 1993 and ended on April 5, 1993, concluding that there was insufficient evidence of military crimes, as defined in the Military Penal Code. They stated that the case was referred to a Military Tribunal in Paraná on May 12, 1993 and that only 10 months later did the Public Prosecutor's

Office in Curitiba decide that the inquiry should be closed on grounds that the military police acted strictly in the line of duty, as the judge of the tribunal who reviewed the petition determined that the case should be closed on March 8, 1994.

8. The petitioners state that on September 30, 1994, they requested the reopening of the inquiry, based on the statements made to the Public Prosecutor's Office by journalist Adalberto Maschio, who had been assigned to cover the case. The journalist states that when he visited the Campo Bonito Police Station three days before the crime occurred, he heard the military and civil police authorities saying that they would get Diniz Bento da Silva dead or alive.[FN2] One year and six months later, on May 3, 1996, the Public Prosecutor's Office denied the petition on grounds that the evidence was not new and the military judge kept the inquiry closed, by decision of May 27, 1996.

[FN2] In his statements to the Public Prosecutor's Office, the journalist affirmed: "that he went to the Police Station in Campo Bonito to gather information on the case and that, while inside, some persons were gathered in the station room including the local police chief, Lieutenant Silveira of the Cascavel military police, and Delgado Almari Pedro Kochianki, of the civil police, who was specially assigned to the case, and he overheard snatches of a conversation between the three in which they stated: "that Teixeirinha is a 'goner'. He won't escape. He's dead," (…) "When he asked questions about what he had overheard, Lieutenant Silveira denied having said any such thing, but added 'Teixeirinha is a dangerous element. He has already killed three and he'll do it again, and we'll catch him, dead or alive'".

---

9. In their additional information, the petitioners included a statement by Diniz Bento da Silva's son to the Commission describing how the police held him so that he would show them where his father was hiding, that he saw his father led away handcuffed and unarmed by the police, thus he knew that his father could not have accosted the police.

10. The petitioners allege that the Human Rights Defense Council of the Justice Ministry (hereinafter the CDDPH) visited the scene of the crime March 11-13, 1993, to monitor the investigations and that the Minister of State for Justice and President of the CDDPH decided to open an administrative procedure to determine the circumstances surrounding the death of Diniz Bento da Silva.

11. The petitioners argued that the expert report prepared at the request of the CDDPH and completed on August 7, 1995 found a number of irregularities in the conduct of the investigations, but that said expert report was never publicized by the Brazilian government. The petitioners added that the irregularities included: a) failure to seal off the crime scene and lack of the corresponding expert analysis; b) no data on the report of the Forensic Institute regarding the trajectory, direction, or distance of the shots fired at the victim; c) failure to collect samples from the victim's hands to verify his alleged reaction; d) need to exhume the body and write another report; d) need for expert analysis of the tape recorded by the journalists; e) lack of ballistic results on the weapons involved. According to the petitioners' allegations, although the report recommends conducting additional technical tests, five years later, the tests had still not been

done. The petitioners argue that the existence of this report shows that the public authorities in Brazil were fully aware of the irregularities that occurred during the military police investigation and of the need to issue orders as the only way of gathering substantial evidence to warrant the reopening of Military Justice investigations.

12. The petitioners reported that they repeatedly requested that the inquiry be opened, after public statements had been made by the Secretary of Labor of the Paraná Government, Joni Varisco, who accused the former governor of the state, Roberto Requião, of involvement in the crime. The request for the inquiry to be reopened was submitted to the State Public Prosecutor's Office in August 1997 under the new law (Law 9299/96), which determined that the ordinary justice system had jurisdiction in intentional crimes against life, committed by military police. On March 3, 1998, the Public Prosecutor requested reopening of the inquiry in light of accusations by the Secretary of Labor that the "death of Diniz Bento da Silva had not resulted from conduct in the strict performance of their duties under the law, but was indeed an execution ordered by the Governor of Paraná state, Roberto Requião," thereby constituting evidence that would warrant the reopening of the case. The state judge ruled that the inquiry be reopened on March 9, 1998. The petitioners alleged that the investigations resumed on May 18, 1998, five years after the crime had been committed. The petitioners added that the deadline for completion of the investigations was extended more than twice and that, up until November 1999, the inquiry had still not been completed.

13. The petitioners reported that the family of Diniz Bento da Silva filed a civil suit for damages against Paraná State in the state courts, to establish the liability of the military police, but that the Public Prosecutor's Office denied the petition.

14. Regarding the exhaustion of domestic remedies, the petitioners argued that the case should be admitted given the ineffectiveness of domestic remedies and the undue delay in reaching decisions through the remedy envisaged in Article 46(2)(c) of the Convention. On that point, the petitioners allege that domestic remedies proved ineffective because there were irregularities in the investigations and failure to produce the additional evidence necessary to proceed with the investigations. With respect to the undue delay in the pursuit of domestic remedies, the petitioners allege that, despite the reopening of the investigations in May 1998 said remedies were still pending one year prior to the reporting date.

15. As to the ineffectiveness of domestic remedies, the petitioners allege that the expert report provided and the request of the CDDPH shows that there were irregularities during the investigations with the military police and recommended that additional technical evidence be sought, but that the State did not proceed with such discovery to determine the circumstances surrounding the death of the victim.

B. Position of the State

16. The State reported that Diniz Bento da Silva was accused of qualified homicide of military police and that his death occurred during a military police operation in Paraná state, aimed at his capture. It reported also that although military police inquiry 245/93 was opened, it was closed by the judge of the military tribunal on March 8, 1994, having received the opinion of

the Public Prosecutor's Office ruling out any unlawful act, in other words, stating that the police officers had acted strictly in the line of their legal duty. The State also indicates that the military justice system considered that the new evidence presented and requests by the petitioners were not sufficient to justify the reopening of the inquiry and that, on August 25, 1997, the appeal was submitted ton the ordinary courts for consideration under the new Law 9299/96, which reopened the inquiry on March 9,1998. Finally, the State alleges that new depositions were taken on May 11, 1998 and again on August 18, 1998, and that the government intended to continue with the police inquiry and taking new statements from the press officers who witnessed the incident and other witnesses who did not have the opportunity to submit statements during the previous investigation.

17. The State argues that the police inquiry was carried out in accordance with Brazilian legislation, that the determination to reopen the case results in a new police inquiry, with investigations conducted by the civil police and monitored by the Pubic Prosecutor's Office and that, consequently, domestic remedies had not been exhausted, as the new police inquiry is the appropriate legal channel for investigation the facts alleged by the petitioner.

18. In respect of the civil suit for damages, the State reports that it was temporarily suspended by the presiding judge until the related criminal action was decided. According to the State, Brazilian legislation admits the trial of a civil suit for damages independently from the filing of a criminal action, while enabling the judge in the civil action for damages to suspend it until the criminal suit is heard.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence ratione materiae, personae, temporis and loci

19. The Commission has competence ratione personae to review the report because the petition shows the alleged victim to be an individual with rights under the Convention that the Brazilian State has promised to respect and guarantee. The alleged facts are related to action by officers of the State.

20. The Commission has competence ratione materiae to hear allegations of violations of rights recognized by the Convention, namely, the right to life (Article 4), the right to integrity of person (Article 5), judicial guarantees (Article 8), protection of honor and dignity (Article 11), and judicial protection (Article 25), in addition to the obligation to guarantee and respect the rights established in the Convention (Article 1(1)).

21. The Commission has competence ratione temporis given that the alleged facts date back to March 8, 1993, when Brazil was bound by the obligation to respect and guarantee the rights established in the Convention, having ratified the Convention on September 25, 1992.

22. The Commission has competence ratione loci because the alleged facts occurred in Paraná State, in the territory of the Federative Republic of Brazil, a ratifying party.

B. Exhaustion of domestic remedies

23. Pursuant to Article 46(1)(a) of the Convention, the Commission may only admit a petition if the remedies under domestic law have been pursued and exhausted in accordance with the principles of international law. Notwithstanding, Article 46(2) of the Convention establishes that these provisions shall not apply when:

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

24. In this case, according to information given by the petitioners and confirmed by the Brazilian State, the police inquiry initiated on March 12, 1993 and conducted by the military police was closed by the judge of the military tribunal. Subsequently, when a new law was passed, the inquiry case was transferred to the State Public Prosecutor's Office and reopened by court ruling on March 9, 1998. The investigations were resumed by the civil police of Paraná state on May 18, 1998, in light of new evidence that had arisen and the deadline for their completion was extended twice. According to information provided by the petitioners on November 22, 1999, the police inquiry had still not been completed at that date. The State did not contest the facts, even though the Commission requested that it report on December 14, 1999 and May 2, 2000.

25. Regarding the inquiry carried out by the military, the Commission has firmly established jurisprudence that human rights violations tried by the military justice system does not constitute an adequate remedy, thus the petitioners were not obliged to exhaust domestic remedies under military jurisdiction. The Commission is also of the view that, a case revived seven years after the death of Diniz Bento da Silva, followed by an additional two-and-a-half-year delay in carrying out the investigation initiated with the civil suit on March 18, 1998, while the police inquiry remains pending, represents an unwarranted delay, as described in Article 46(2)(c) of the Convention. The delay in conducting the investigations into the death of Diniz Bento da Silva had precluded the filing of a criminal action and the possibility of punishing the perpetrators, and prevents the family from continuing the civil suit for damages. As indicated earlier, the civil suit for damages has been adjourned by order of the court pending the outcome of the corresponding criminal action. For these reasons, the Commission considers that the requirement of exhaustion of remedies under domestic law has been fulfilled.

26. Regarding the allegations of the petitioner on the ineffectiveness of domestic remedies, it should be noted that the expert report, requested by the CDDPH of the Public Prosecutor's Office and completed in 1995, shows that there were serious irregularities during the investigations by the military police and recommends the discovery of additional technical evidence. Thus, in view of the allegations of possible dereliction of duty on the part of the Brazilian State in discovery of the new technical evidence indicated in the expert report, its importance for the progress of the investigations into the circumstances surrounding the death of Diniz Bento da Silva, and, consequently, the possible ineffectiveness of domestic remedies, the

Commission considers that the exhaustion of domestic remedies is related to the effectiveness of such remedies, bringing it to the question of merit, wherefore it has decided to review both points jointly.[FN3]

[FN3] "For that reason, when some exceptions to the rule of non-exhaustion of domestic remedies are evoked, such as the ineffectiveness of such remedies, or the non-existence of due process, it is alleged that the petitioner is not required to pursue such remedies and the State is indirectly implicated in another violation of obligations assumed under the Convention. In such circumstances, the question of domestic remedies can be equated with the substance of the case." Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, par. 91. Fairén Garbi and Solis Corrales case, Preliminary Objections, Judgment of June 26, 1987, par. 90. "Under no circumstances should the rule of prior exhaustion of domestic remedies defer or delay to the point of futility international action in support of defenseless victims. This is the reason why Article 46.2 establishes exemptions to the requirement to use domestic remedies before resorting to international protection, precisely in situations where, for various reasons, these remedies are not effective. Naturally, if the State's intervention is timely, this exception should be considered and settled, but the relationship between the judgment on applicability of the rule and the need for timely international action in the absence of effective domestic remedies may frequently advise consideration of questions regarding that rule together with the substance of the claim, to prevent preliminary objection procedures from delaying the process unnecessarily." Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, par. 93. Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, par. 92.

C. Deadline for submission of the petition

27. In light of the undue delay in the pursuit of domestic remedies and the corresponding application of Article 46(2)(c) of the Convention and Article 37(2)(c) of the Rules of Procedure, the Commission considers that the petition, which was lodged 15 months after the date of the alleged violation of rights, was submitted within a reasonable period of time, pursuant to Article 38(2).

D. Duplication of procedures

28. The Commission has no knowledge that the subject matter of the petition is pending in any other international forum, or that it is a duplication of a petition already examined by this or another international organization. Thus, the Commission rules that the requirements of Articles 46(1)(c) and 47(d) have been fulfilled.

V. ANALYSIS OF THE MERITS

Right to life (Article 4)

29. Article 4 of the Convention provides that no one may be deprived of the right to life arbitrarily. The Commission deems that the case in question requires detailed analysis of the facts surrounding the death of Diniz Bento da Silva and the evidence attached to the case, to determine whether the State is liable for violation of said article.

30. First, Diniz Bento da Silva, leader of the "landless" workers, was wanted by the police because he had been charged with the homicide of military police during a clash over occupied land between rural workers and police on an estate in Paraná state, five days prior to his death. The petitioners allege that the death of Diniz da Silva was in retaliation for the death of the military police officers and, therefore, that it was an extrajudicial execution. The State, in its response in October 1998, states:

It is true that there are reports of the police complicity to avenge the deaths of three members of the military police of Paraná state and that the military police inquiry supported that complicity. Furthermore, police brutalities, police who kill to avenge the deaths of other police, and the complicity of military justice, all have precedents. That being so, reports of a massive plot must be backed by objective evidence through legal means and instruments. The recent decision to reopen the case presents a good opportunity to determine whether there are grounds for such assertions.

31. Secondly, the public statements by the Labor Secretary of the Government of Paraná at the time of the incident, Joni Varisco, claiming that the death of Diniz Bento da Silva was not the result of "conduct strictly in the line of legal duty, but was indeed an execution authorized by the Governor of the Paraná state to the Commander of the 6th Battalion of the Military Police,"[FN4] led to the reopening of the policy inquiry, as described by the judge:

[FN4] Copy of the opinion of Public Prosecutor Eduardo Augusto Cabrini of the Public Prosecutor's Office of Paraná State, dated March 3, 1998 in appeal case 14/97.

Mr. Joni Varisco made statements to the newspapers, copies of which were entered into the record on folios 19/25, reporting that the leader of the "landless" was executed by order of the Governor of the state at that time, contrary to the determination of the police inquiry, subject to possible reopening.

(…)

In light of the foregoing, the decision was taken to reopen the police inquiry, which was the subject of this appeal on the basis of Article 18 of the Code of Criminal Procedure, to continue investigations into the death of Diniz Bento da Silva, commonly known as "Teixeirinha".[FN5]

[FN5] Copy of the decision by Judge Cristiane Santos Leite of the District of Guaraniaçu-PR, Single Criminal Bench, dated March 9, 1998 in case 14/97.

---

32. Thirdly, the victim's son, Marcos Antonio da Silva, sent a statement to the Commission confirming the statements made earlier to the police authorities and the Public Prosecutor's Office indicating that "his father could not have had a confrontation with the PM (military police), because he was handcuffed and unarmed."

33. Lastly, the expert report provided at the request of the Public Prosecutor's Office, proved that there were serious irregularities in the conduct of the inquiry by the military police, which may have profoundly changed the course of the investigations. Yet, even though it was aware of the irregularities, there is no proof that the State took any action to reopen the inquiry or to correct the irregularities, which constitutes concealment of the facts by the State.

34. The Inter-American Court of Human Rights previously ruled on the international liability of the State in human rights violations:

To establish whether there was a violation of rights enshrined in the Convention, does not require determination of the guilt of the perpetrators or their intention, as in criminal law, nor is it necessary to individually identify the perpetrators of the violations. It is sufficient to demonstrate that the authorities encouraged or tolerated the violation of the rights recognized in the Convention. The State incurs liability when it does not take the necessary action, in accordance with its law, to identify and, where applicable, punish the perpetrators of these violations.[FN6]

[FN6] Inter-American Court of Human Rights, Paniagua Morales et al. Case. Judgment of March 8, 1998.

---

35. In this case, the State's liability goes far beyond tolerating and encouraging the violation of the right to life, as it was officers of the State, under the aegis of the authorities and bearing the emblems that represent them--weapons, uniforms, etc.—who decided, planned, and executed the assassination of Diniz Bento da Silva, then covered up the facts through an irregular and inefficient investigation within the military justice system.

36. The Commission considers that, in view of the above analysis and the assessment of the circumstances surrounding the death of Diniz Bento da Silva, which was not an isolated case because, as the State itself said, there is a precedent of cases of police brutality, there was not sufficient evidence to establish that the officers of the Brazilian State extrajudicially executed Mr. Diniz Bento da Silva. In addition, the Brazilian State did not adopt measures to prevent the practice of extrajudicial executions, nor did it punish the perpetrators of the violation.[FN7] Consequently, the Commission found that the State had violated the right to life enshrined in Article 4 of the American Convention.

[FN7] Regarding the situation of conflicts between rural workers and the military police, the report monitoring compliance with the recommendations of the IACHR found in the Report on the Situation of Human Rights in Brazil - 1997, published in 1999 indicates: "(…) However,

there is still a lack of serious measures to alleviate the problem of clashes over land occupation and distribution, as well as the impunity of police officers or individuals that make attempts on the lives and personal security of workers and defenders of the human rights of rural workers."

Right to physical integrity (Article 5) and right to honor and dignity (Article 11)

37. The Commission finds that there is insufficient evidence in the file to prove that the victim was tortured or cruelly treated or that there were acts or campaigns to denigrate or slander the victim before his death. Consequently, the Commission finds insufficient evidence to charge Brazil with violations of Articles 5 and 11 of the Convention.

Judicial guarantees (Article 8(1)) and judicial protection (Article 25(1))

38. Article 8(1) provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature

39. The Commission finds that the military justice system in Brazil, by the nature and structure of its activities, does not meet the requirements of independence and impartiality established in Article 8 of the Convention, to investigate and try crimes related to human rights violations.[FN8] The inefficiency of military justice in determining the crimes committed by military police was already an issue for discussion in Brazil and resulted in the promulgation of Law 9.299 of August 7, 1996, which transfers to the jurisdiction of the ordinary courts intentional crimes against life committed by the military police against civilians.[FN9] The fact that the first part of the investigations subject to this complaint were conducted within the military justice system and before the aforementioned law was passed denied Diniz Bento da Silva's family a right guaranteed by Article 8 of the Convention, namely the right to an independent and impartial tribunal to determine the crime committed against the victim of a human rights violation.

[FN8] IACHR, Report on Human Rights Situation in Brazil – 1997, Chapter III:"77. Military court cases are often delayed on for years, due to the heavy workload, the scarcity of judges and prosecutors, excessive red tape, delays, etc. The Commission has found that the courts tend to be indulgent with police accused of human rights abuses and other criminal offenses, thereby allowing the guilty to go unpunished". '78. In this climate of impunity, which breeds violence by the military police corps, the police officers involved in this type of activity are encouraged to participate in extrajudicial executions, to abuse detainees, and to engage in other types of criminal activity. The violence has even spread to the prosecutors who, when they insist on continuing investigations into the crimes committed by the military police, have been threatened and even subjected to death threats. It is also not uncommon for witnesses summoned to testify against police officers on trial to receive intimidating threats." 79. "In a letter addressed to the Commission in 1996, the Santo Dias Center stated, in this regard: In military investigations (inquiries), officially carried out by the organs of military justice, the bias in favor of

incriminated police officers in most cases is so flagrant that it turns the victims into criminals. It is also very common to intimidate witnesses, whose court depositions are taken in the presence of the accused police officers. Under such conditions, it is not surprising that so many investigations are dismissed on grounds of insufficient evidence.... If this stage is completed and charges actually filed or admitted, new difficulties arise in the proceedings, which are deliberately slow and plagued with delays: deferred establishment of the councils, repeated postponements for minor procedural problems, etc. Thus, it is not surprising to find proceedings dragging on for four or five years or indefinitely, allowing enough time for the events to be forgotten by the press and the public. After such a long time, the victims' families lose hope, witnesses move away, and the evidence disappears." In view of these facts, the IACHR gave the following advice to the Brazilian Government: "Conferring on the ordinary justice system the authority to judge all crimes committed by members of the state military police." (par. 95.9). Recommendations made to the Brazilian Government in the IACHR Annual Report for 1997: "Military justice […] can only be used to try Armed Forces personnel in active service for misdemeanors or offences pertaining to their function. In any case, this special jurisdiction must exclude the crimes against humanity and human rights violations" (Recommendation Nº 1, Chapter VII, Recommendations of the Inter-American Commission on Human Rights). See also IACHR Annual Report 1999, Report Nº 34/00, Case 11.291- Carandirú (Brazil), par. 80. Similarly, for the Inter-American Commission on Human Rights, see IACHR Annual Report 1999, Report 7/00, Case 10.337 (Colombia); par. 53-58; IACHR, Third Report on the Situation of Human Rights in Colombia (1999), p. 175 [of Spanish version]. The UN Commission on Human Rights also judged that military justice was inappropriate in its final observations on the First Periodic Report submitted by the Brazilian Government to that body in 1996. The Committee expressed its concern about the practice in the Brazilian system of administration of justice of trying military police accused of human rights violations in military courts and found it regrettable that jurisdiction in these cases had not yet been transferred to the civil courts. In the same vein, the report prepared by Mr. Joinet for the Sub-commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights, in establishing the principles of administration of justice, stated that, in order to prevent military courts in those countries where they have not yet been abolished from perpetuating impunity owing to their lack of independence from the chain of command to which all its members are subject, their jurisdiction should be limited specifically to military offenses committed by members of the armed forces, and should exclude human rights violations, which constitute serious crimes under international law, which should be under the jurisdiction of the ordinary courts or, where necessary, the international courts" (Report Nº E/CN.4/Sub.2/1997/20, June 26, 1997, principle Nº 34).

[FN9] IACHR Report on the Human Rights Situation in Brazil, 1997, Chapter III: "82. Military police violence and impunity have given rise to several congressional initiatives designed to suppress the special military jurisdiction for judging the crimes committed by military police in the performance of their public order functions. […]." 83. […] The President enacted the substitute bill on August 7, 1996 (law 9299 of August 7, 1996). Law 9299 amends Article 9 of the Military Penal Code (decree-law 1001) defining military crimes. The new "sole paragraph" of this provision establishes: The ordinary justice system shall have jurisdiction in the crimes discussed in this article, when they constitute criminal attempts on life committed against civilians." (Underlining by the Commission).

---

40. The Commission points out some examples of the inadequacy of Brazilian military justice procedures in this case.

41. As indicated above, Article 8 of the Convention makes reference to a reasonable period of time for settlement of a case of human rights violations and the inter-American human rights protection system establishes specific criteria. The Inter-American Court and the European Court of Human Rights, as well as the Human Rights Commission established a series of criteria for determining, in specific cases, reasonable time periods for the administration of justice. The criteria are a) the complexity of the matter; b) the action taken by the damaged party in terms of the process; and c) the conduct of the judicial authorities.

42. Regarding the complexity of the case and the conduct of the police authorities, the Commission understands that an objective analysis of the nature of the facts and the persons involved should have been made, and the specific case is simple enough, involving the homicide of a single victim. In addition to this, the earlier expert report concluded that there were irregularities in the conduct of the military police inquiry and determined which additional technical evidence was necessary to solve the crime. Still, there is no evidence of discovery by the State of the additional evidence to determine the irregularities. This was compounded by the fact that the civil police inquiry was still incomplete two years after the case was reopened and seven years after the victim's death.

43. Regarding the action of the damaged party, the Commission, upon examination of the documents filed by the petitioners, finds that the legal representatives of Diniz Bento da Silva made every effort within their power to reopen the police inquiry as a criminal matter, submitting new data and filing the request for reopening twice, in addition to filing a civil suit for damages.

44. Article 25(1) of the Convention provides that 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 the Convention, even though such violation may have been committed by persons acting in the course of their official duties.

45. The Inter-American Court found that Article 25(1) of the American Convention incorporates the principle of effective or efficient due process for guaranteeing the rights protected thereunder. Thus, the absence of domestic remedies leaves the victim of human rights violations defenseless and, therefore, justifies international protection.[FN10]

[FN10] See also Note 2. Furthermore, the Inter-American Commission considers that the jurisprudence of the Inter-American Court of Human Rights in this regard refers as well to cases of forced disappearance, and is also applicable to cases of extrajudicial execution (IACHR, Annual Report 1999, Report Nº 37/00, Monsignor Oscar Arnulfo Romero y Galdámez, Case 11.481, (El Salvador), note 80.

---

46. Pursuant to the above-cited article, Diniz Bento da Silva's family had the right to a judicial investigation by a court, to establish and punish the perpetrators of human rights violations. This right flows from the State's obligation to "seriously investigate, by any means available to it, the violations committed within the scope of its jurisdiction, with a view to identifying those responsible, imposing the pertinent sanctions, and ensuring adequate reparations for the victim."[FN11]

[FN11] Velásquez Rodríguez Case, Judgment of July 29, 1988, par.174. Godínez Cruz Case, Judgment of January 20, 1989, par. 184.

---

47. The Court commented earlier on the State's obligation to investigate acts in violation of the human rights protected by the Convention:

[the obligation to] investigate is, like that of prevention, an obligation of means and conduct, for which the mere fact that the investigation did not produce satisfactory results does not constitute noncompliance. On the contrary, an investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.[FN12]

[FN12] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, par.177.

---

48. The Commission has been applying the criteria established in the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions, adopted by Resolution 1989/65 of the United Nations Economic and Social Council,[FN13] and designed to determine whether a State complied with its obligation to conduct a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions of persons under its exclusive control. According to these principles, in such cases, the purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses.

[FN13] Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions, Economic and Social Council, resolution 1989/65 of May 24, 1989, United Nations.

---

49. The Commission has also been implementing the recommendations in the Manual on Effective Prevention and Investigation of Extrajudicial, Arbitrary, or Summary Executions,

which states that the main objective of an investigation is to discover the truth about the events that caused the victim's death. The following are the salient criteria of the manual:

(a) The area around the body should be closed off. Only investigators and their staff should be allowed entry into the area;
(b) Color photographs of the victim should be taken since these—as compared with black-and-white—may reveal in more detail the nature and circumstances of the victim's death;
(c) Photographs should be taken of the scene (interior and exterior) and of any other physical evidence;
(…)
(j) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. When applicable, tests for gunshot residue and trace metal detection should be performed.

50. In the case in question, the investigations to determine the circumstances of the death of Diniz Bento da Silva were first conducted by the military police and followed up by CDDPH in the Public Prosecutor's Office, which visited the crime scene a few days after the incident. Subsequently, the Deputy Attorney General of the Republic and Rapporteur of the Proceedings to determine the circumstances of the death of Diniz Bento da Silva, pursuant to Resolution 002, of March 18, 1993 of the Public Prosecutor's office, ruled in favor of an expert report, which latter was completed on August 7, 1995 and which confirms a number of serious irregularities, as reflected in the copy of that report attached to the file:

V. – EXAMINATION OF THE CRIME SCENE

(…)

It is essential to preserve the site to be examined in order to maintain the original conditions intact and enable the expert to gather samples for examination and photographical documentation.

In the case under review, it was found that the site was not preserved and there was no expert report. Two days after the incident, Mr. Ives Consentino Cordeiro was able to remove material evidence from the site, which had not been reported by the official experts.

(…)

VI. – THE AUTOPSY

The autopsy report follows the model for the vast majority of Brazilian states, but faces technical challenges as a result of the authorities' neglect of forensic agencies, which lack the most elementary equipment and do not perform other critical examinations, such as x-rays. We also observed that only one forensic medicine expert signed all the autopsy reports, which point to the lack of human resources in the Institute of Forensic Medicine.

Despite the fact that the report submitted was satisfactory from a descriptive point of view, it gave no indication of the path, direction, trajectory, and distance of the shots fired that killed Diniz, which constitutes a grave omission in the document and makes it impossible to properly reconstruct the dynamics of the incident.

In addition to this shortcoming, it should also be noted that no residue was collected from the victim's hands to perform the examination that would have clarified his alleged reaction at the time he was captured.

Also regrettable is the lack of photographs and pictures illustrating the report which, even though they are not required from Institutes of Forensic Medicine, would have been called for in the case under review because of its national and international resonance.

(…)

VII. – CRIMINAL EVIDENCE

The technical evidence was damaged by the failure to make any effort to preserve and collect it. This allowed persons other than the experts to collect remains from the site.

Necessary evidence includes the residue test and complete photographic documentation of the scene.

Other physical evidence subject to expert evaluation is the videotape provided by a television station, which may undergo a sound test of the gunshots to determine how many and which weapons were involved in the shoot-out.

Another important document not examined was the ballistic and descriptive report on the weapons involved, particularly the one referring to the 7.65 firearm supposedly taken from Mr. Diniz.

VIII. – TESTIMONY BY WITNESSES

The statements made by the group linked to the police diverged radically from those of the group of laborers. There is striking uniformity in the depositions of the laborers, which recount in detail Mr. Diniz's last moments before his death.

All the statements must be compared and used to establish a technical version of the events to be used as the basis for their reconstruction.

51. The report also recommends the gathering of additional technical evidence:

X. – CONCLUSION

In light of the foregoing, we suggest that, in order to dispel any doubts about the facts involved in the death of Mr. Diniz, the following technical evidence must be gathered:

a) exhuming of the body to determine the trajectory, path, and direction of the projectiles from the firearms that struck Mr. Diniz;
b) examination of the videotapes for sound tests of the gunshots fired;
c) detailed expert analysis of the 7.65 caliber pistol found with Mr. Diniz;
d) comparison of all the eye witness evidence;
f) reconstruction of the facts;
g) establishment of the forensic dynamics of the shots.

52. However, it should be noted that the Brazilian State found irregularities in the military police inquiry[FN14] before the reopening of said inquiry on March 9, 1998, but took no action thereon. The irregularities reported by the petitioners, through the findings of the official report, were not refuted by the State, which provided no information with regard to the correction of the irregularities in the first investigations or the production of new technical evidence.

[FN14] Report on the Human Rights Situation in Brazil, IACHR, 1997, par. 79: “In a letter addressed to the Commission in 1996, the Santo Dias Center stated, in this regard: In military investigations (inquiries), officially carried out by the organs of military justice, the bias in favor of incriminated police officers in most cases is so flagrant that it turns the victims into criminals. It is also very common to intimidate witnesses, whose court depositions are taken in the presence of the accused police officers. Under such conditions, it is not surprising that so many investigations are dismissed on grounds of insufficient evidence.... If this stage is completed and charges actually filed or admitted, new difficulties arise in the proceedings, which are deliberately slow and plagued with delays: deferred establishment of the councils, repeated postponements for minor procedural problems, etc." (Underlining by the Commission). "Thus, it is not surprising to find proceedings dragging on for four or five years or indefinitely, allowing enough time for the events to be forgotten by the press and the public. After such a long time, the victims' families lose hope, witnesses move away, and the evidence disappears.”

---

53. On June 11, 1999, namely one year after the reopening of the investigations by the civil police, the Office of the Public Prosecutor of Paraná declared the need to determine any possible link between the ex-governor of Paraná state and the death of the victim, and pointed to the unjustified delay in the investigations by the civil police, as reflected in his opinion:

Let us not forget that it is essential to elucidate any possible involvement of the former governor Roberto Requião in the facts now under investigation. We are also aware that the crime occurred in 1993, which makes it very difficult to collect evidence, and find that there is no justifiable reason why these investigations, which started on May 18, 1998, never attempted to clarify the manner in which DINIZ BENTO DA SILVA, “Teixeirinha” was assassinated or whether or not the military police were acquitted of criminal liability. So, I call upon Mr. JULIO CESAR DOS REIS, the police authority in charge of this case, to order the Internal Investigation Office of the Civil Police of Paraná state [Corregidora Geral da Policía Civil do Estado do Paraná] to appoint a new special delegate to exclusively move forward with the investigations.

54. Despite the fact that two years have passed since the reopening of the police inquiry and seven years since the crime took place, the inquiry has not been completed, thereby depriving the victim's family of their right to seek justice within a reasonable period of time by means of simple and rapid remedies. These factors lead the Commission to conclude that the investigations were not conducted seriously and effectively as required in Articles 8(1) and 25(1) of the Convention, and consequently to find that the Brazilian State violated those articles.

Duty of the State to guarantee and respect rights (Article 1(1))

55. Article 1(1) of the Convention clearly establishes the State's obligation to respect the rights and freedoms recognized in the Convention and to guarantee their free and full exercise by all persons under its jurisdiction, so that any violation of rights recognized in the Convention, which could be attributed, in accordance with the rules of international law, to the action or omission of any public authority, constitute an act for which the State is liable, as follows:

On the other hand, the State is required to investigate any situation in which the human rights protected under the Convention may have been violated. If the State apparatus acts in such a way that the violation remains unpunished and does not fully restore the victim's rights, to the extent possible, it could be charged with noncompliance with its duty to guarantee free exercise by persons under its jurisdiction.[FN15]

[FN15] Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 174. Godínez Cruz Case, Judgment of January 20, 1989, par. 187.

---

56. Wherefore, the Commission finds that the Brazilian State did not undertake a serious and exhaustive investigation, resulting in impunity of the crime, combined with failure to compensate the victim and thereby violated Article 1(1) of the Convention.

VI. ACTION SUBSEQUENT TO THE APPROVAL OF REPORT 75/00, PURSUANT TO ARTICLE 50 OF THE CONVENTION

57. On February 20, 2001, the Commission approved Report 38/01, pursuant to Article 50 of the American Convention on Human Rights, at its meeting Nº 1053 during the 110th regular session. In this report, the Commission found that it had jurisdiction to hear the case and that the petition was admissible under Articles 46(2)(c) and 47 of the American Convention. In the same report, it concluded that the Federative Republic of Brazil is responsible for violating the right to life (Article 4) of Mr. Diniz Bento da Silva, in Paraná State on March 8, 1993, and for violating the right to judicial guarantees (Article 8), the right to judicial protection (Article 25), and the obligation to guarantee and respect the rights listed in the Convention (Article 1(1)). In addition, it advised the Government to: 1) Conduct an impartial and effective investigation in the ordinary courts to bring to trial and punish those responsible for the death of Diniz Bento da Silva; punish those responsible for the irregularities noted in the investigation by the military police; and punish those responsible for the unjustified delay in conducting the civil investigation, under Brazilian law; 2) Take the necessary steps to ensure that the victim's family receives adequate

compensation for the violations established herein; 3) Take the necessary steps to prevent such incidents from occurring in future, in particular, measures to prevent confrontations with rural workers in conflicts over land, negotiation and peaceful settlement of such disputes. Thus, the case should continue to be processed, pursuant to Article 51 of the American Convention. Report 38/01, produced in accordance with Article 50 of the Convention, was duly transmitted to the Government on March 12, 2001, requesting that it inform the Commission, within six months, of the measures adopted to comply with the recommendations made. To date, the Government has not responded to the communication.

VII. CONCLUSIONS

58. Taking into account the facts and analysis given above, and by the powers vested in it through Article 51 of the American Convention, the Inter-American Commission on Human Rights finds:

59. That it has jurisdiction to hear the case and that the petition is admissible under Articles 46(2)(c) and 47 of the American Convention.

60. That the Federative Republic of Brazil is responsible for violating the right to life (Article 4) of Mr. Diniz Bento da Silva in Paraná State on March 8, 1993, and for violating the right to judicial guarantees (Article 8), the right to judicial protection (Article 25), and the right to guarantee and respect the rights listed in the Convention
(Article 1(1)).

VIII. RECOMMENDATIONS

61. Based on the preceding analysis and findings, the Inter-American Commission on Human Rights reiterates the following recommendations to Brazil:

1. Conduct a serious, effective, and impartial investigation through the ordinary justice system to determine and punish those responsible for the death of Diniz Bento da Silva, punish those responsible for the irregularities in the investigation by the military police, as well as those responsible for the unjustifiable delay in conducting the civil investigation, in accordance with Brazilian law.
2. Take the necessary steps to ensure that the victim's family receives adequate compensation for the violations established herein.
3. Take steps to prevent a repetition of such events and, in particular, to prevent confrontations with rural workers over land disputes, and to negotiate the peaceful settlement of these disputes.

IX. PUBLICATION

62. The Commission approved Report Nº 111/01 pertaining to this case on October 15, 2001 pursuant to Article 51 of the American Convention. On November 28, 2001 the Commission transmitted this report to the Brazilian State and to the petitioners, in conformity with Article 51(1) of the American Convention 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 regarding the said recommendations, for which reason the Commission is of the view that they have not been complied with.

63. Pursuant to the foregoing considerations, and in conformity with Articles 51(3) of the American Convention and 45 of its Regulations, the Commission decides to reiterate the precedent recommendations in paragraphs 58, 59, 60 and 61, to make this report public, and to include it in its Annual Report to the General Assembly of the OAS. The Commission, pursuant to its mandate, shall continue evaluating the measures taken by the Brazilian State with respect to the recommendations at issue, until they have been fully fulfilled.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, Washington, D.C., on February, 28, 2002. (Signed) Juan Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Robert Goldman, Julio Prado Vallejo and Clare Roberts, Commissioners.