

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 32/04; Case 11.556
Session: Hundred and Nineteenth Regular Session (23 February – 12 March 2004)
Title/Style of Cause: Corumbiara Massacre v. Brazil
Doc. Type: Report
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalos, Freddy Gutierrez, Florentin Melendez.
Commissioner Paulo Sergio Pinheiro, national of Brazil, did not take part of the consideration and determination of this case, in accordance to article 17(2)(a) of the Rules of Procedure of the IACHR.

Dated: 11 March 2004
Citation: Corumbiara Massacre v. Brazil, Case 11.556, Inter-Am. C.H.R., Report No. 32/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Represented by: APPLICANTS: the Human Rights Defense Center of Porto Velho Archdiocese, the Teotonio Vilela Commission, the Movement of Landless Rural Workers, the Center for Justice and International Law, and Human Rights Watch of the Americas

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I. SUMMARY

1. On October 6, 1995, the Human Rights Defense Center of Porto Velho Archdiocese, the Teotonio Vilela Commission, the Movement of Landless Rural Workers (MST), the Center for Justice and International Law (CEJIL), and Human Rights Watch of the Americas (hereinafter the “petitioning organizations” or the “petitioners”) lodged a complaint against the Federal Republic of Brazil (hereinafter “Brazil,” the “State,” or the “State of Brazil”) for acts related to the murder of persons committed by members of the military police, and the injuries inflicted on 53 other persons, also at the hands of the military police, while evicting rural workers who had invaded a farm in Corumbiara Municipality, Rondônia State, Brazil. The petitioners alleged that, as a result of the reported events, the State incurred international responsibility for violation of the rights to life, to humane treatment, and to protection for one’s honor and dignity, established in Articles 4, 5, and 11, respectively, of the American Convention on Human Rights (hereinafter “the Convention,” or “the American Convention”), and for breach of its obligation to respect the rights recognized in Article 1(1) of that instrument.

2. The State of Brazil alleged that domestic remedies had not been exhausted and reported on the status and results of those remedies.

3. The Commission had previously referred to the allegations of non-exhaustion of domestic remedies in its admissibility report for the present case.[FN2] In this opportunity, the Commission concludes that the State of Brazil is responsible for violating the right to life, to humane treatment, to judicial protection, and to a fair trial, established in Articles 4, 5, 25, and 8, respectively, of the American Convention, all in connection with the breach by Brazil of its obligation to respect and guarantee the rights recognized in Article 1(1) of the Convention. The Commission further concludes that Brazil violated Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. Finally, the IACHR submits relevant recommendations to the State.

[FN2] CIDH, Annual Report 1998, Report No. 77/98 – Corumbiara, Case 11.556 (Brazil)

II. PROCESSING BY THE COMMISSION

4. On December 18, 1995, the Commission opened the case, transmitted the pertinent parts of the complaint to the State of Brazil, and requested that it submit information within 90 days. The State, after requesting and obtaining an extension from the IACHR, replied on June 27, 1996. On 16 September, 1996, the petitioners submitted observations on the State's response.

5. Two hearings were held on October 7, 1996 and on February 24, 1997, in which the parties set forth their positions. At the first hearing, the Commission offered to initiate a friendly settlement process in this case, but it did not receive the State's agreement to it. At the second hearing, it repeated its offer, and received additional information from the petitioners, that was forwarded to the State.

6. On March 5, 2001, the Inter-American Commission adopted an admissibility report in the present case.[FN3]

[FN3] IACHR, 1998 Annual Report, Report N° 77/98 - Corumbiara, Case 11,556 (Brazil).

7. The petitioners filed additional briefs on January 12, 2000, November 10, 2000, and May 7, 2002, and the State did so on August 16, 1999, August 25, 1999, and September 21, 2000. In addition, on various occasions both parties submitted arguments and evidentiary documents, which were forwarded to the other party.

8. On March 8, 2002, another hearing was held in this case, in the course of the Inter-American Commission's 114th ordinary Period of Sessions.

III. POSITION OF THE PARTIES

A. Position of the petitioners

9. To put the case in context, they point out that it deals with one of the most serious human rights violations in Brazil, and is related to the problem of highly concentrated land ownership in the country, which leaves a large part of the rural population without access to a parcel. They add that this situation has been the main source of a series of social conflicts that have led to the practice of violations of various human rights of male and female farm workers, who do not have access to decent living conditions.

10. They indicate that on July 15, 1995, a group of families of male and female rural workers, including children as well (hereinafter designated by the general term “occupying workers,” or “rural workers”), made up of around 500 families, invaded and set up a camp on a small part of the Santa Elina ranch, a piece of property covering 7,517 alqueires[FN4], located in the vicinity of the city of Colorado del Oeste, Corumbiara Municipality, Rondônia State, in the northern part of Brazil.

[FN4] Area measurement whose dimensions vary from one state to the next in Brazil.

11. They report that the workers decided to invade the Santa Elina ranch on July 15, 1995, and that they were part of a group of extremely poor families without access to employment, credit, or land, who were living in the northern part of Brazil. They add that the encroachment on the farm was done for the purposes of pressuring the State to guarantee them access to a parcel of land, and that the trespassers were entire families, consisting of extremely poor persons, for whom ownership of a small parcel of land represented one of their few hopes for surviving in dignity, far from the poverty of urban areas and from the abusive exploitation of cheap labor by the large landowners in rural areas.

12. They argue that the delay by the federal government in resolving the land issue in the region led to the invasion of the Santa Elina ranch and the events that occurred subsequently.

13. They point out that on July 17, 1995, the owner of the Santa Elina ranch, Helio Pereira de Moraes, filed a petition for defense of possession [ação de manutenção de posse] with the courts of the city of Colorado del Oeste, and requested eviction of the workers. They further explain that on the following day, the substitute judge for civil matters, Roberto Gil de Oliveira, granted a precautionary measure and ordered the eviction of the occupying workers.

14. They report that on July 19, 1995, a court officer, accompanied by a group of military policemen under the command of Captain Mena Mendes, went to the camp set up by the occupying workers on Santa Elina ranch and attempted to execute the eviction order.

15. They report that in endeavoring to execute the court order, a confrontation between the occupying workers and the police began, and they add that the way in which the attempt to execute the court order was made is a matter of controversy. They report that according to the military police version, the workers began the confrontation, by throwing rocks, sticks, and homemade bombs, and even firing shots at the policemen and the court officer.

16. They say that the workers admitted to resisting the eviction order by tossing sticks and stones, and by lighting flares, but they deny that they had shot at the police. They claim that the police began firing against the group of men, women, and children, putting the lives of all of them at risk. They report that this first eviction attempt left one injured worker, Adão Mateus da Silva, who was shot.

17. They report that on July 20, 1995, Judge Roberto Gil decided that Captain Mena Mendes should have a larger number of police agents to carry out the eviction. He added that it should be carried out with moderation and a great deal of caution, so that it would not end up in tragedy, as usually happens in such cases.

18. They report that in view of the large number of families who would be evicted, the presence of many women and children, and the intention of the male and female workers to resist the court order, various state and local officials decided to try to solve the matter by peaceful, negotiated means, as they anticipated that forced compliance with the eviction order would most likely result in violence.[FN5]

[FN5] In support of these allegations, the petitioners included a copy of the minutes of the 17th Session of the Municipal Council of Corumbiara, Rondônia State, on August 1, 1995, and a copy of the report of the Committee of External Representation of the Federal Chamber of Deputies, dated August 16, 1995.

19. They say that a peaceful, negotiated solution was not in the interest of many landholders in the region, including the owner of Santa Elina ranch, Helio Pereira de Moraes, and the owner of the neighboring farm known as “São Judas Tadeu,” Antenor Duarte do Valle. They contend that as a result, those persons began pressuring executive and judicial officials of Rondônia State to remove the families by force from Santa Elina ranch. They add that the landholders in the region also hired private gunmen who surrounded the camp of the occupying workers.

20. They report that on August 8, 1995, the military police went to Colorado del Oeste, and set up their base on a soccer field close to the camp of the families of workers. They add that the operation was conducted in a highly irregular manner, and that “a series of factors indicate that the State agents had prepared for an act of war against the families of workers, that they had taken pains to make it difficult to identify the agents and gunmen afterwards, they had put journalists off the track, they had conducted the operation illegally, at dawn, with the use of masks and with their faces painted, in addition to the use of private firearms.”

21. They say that the landholders in the region offered financing and logistical support for the police operation on Santa Elina ranch, and that its owner had rewarded the military commanding officer in charge of the eviction operation with an automobile.

22. They report that at about 3:00 a.m. on August 9, 1995, while it was still dark,[FN6] the police began their eviction operation at Santa Elina farm. They add that based on the evidence

gathered in the domestic proceedings, there was no doubt regarding the participation of landholders, and of their employees and armed gunmen during the various stages of the police operation, including three policemen who were on vacation and who offered their personal services to the owner of Santa Elina to assist in the eviction.[FN7]

[FN6] The petitioners reported that the eviction in the early morning hours was in violation of Brazilian laws in effect, since pursuant to Article 172 of the Brazilian Civil Code, procedures are supposed to be conducted on working days, between 6:00 a.m. and 8:00 p.m.

[FN7] Among other documents, the petitioners included and transcribed the testimony of the commander of the operation himself, Major Ventura Pereira, given during the domestic court proceedings: “(...) asked the witness if he himself had noticed the presence of armed persons bearing 12-caliber rifles and carbines, and he replied yes, and that it had even been decided that Captain Mena Mendes would take steps against these persons, and that Captain Mena Mendes said that he had told those persons that they should withdraw with their weapons, because they could be arrested, and that among those persons, who numbered about ten, was one person who had a kerchief over his face during the entire time he was in the camp, and that the witness learned from the police who were in contact with those persons that they worked on Mr. Antenor Duarte’s ranch.”

23. They allege that some of the military policemen and gunmen who participated in the eviction had their faces covered by hoods and paint, and this was clearly demonstrated in the records of the domestic proceedings, through statements by various persons, including some of the policemen themselves. They add that the domestic proceedings also showed that the military police used private arms, and even arms confiscated at the time by the police.

24. They report that the eviction operation began when the police arrived at dawn, throwing tear gas bombs and firing their arms into the camp, terrorizing the families and endangering the life of everyone. They indicate that the farm workers had formed a group of armed guards, in the event that it was necessary to repel attacks by gunmen hired by the ranchers or landowners. They go on to say that when the police surrounded and attacked the camp, the workers who were armed to serve as guards reacted, and that a confrontation began between them and the police.

25. They mention that the police asserted that they had been surprised by an ambush prepared by the armed workers, who began to shoot at them, and that they were forced to react. They explain that:

Under the circumstances, it is very difficult to know what really happened, since only the police and the workers were present, and the statements by the two groups are contradictory. However, even in view of the stated intention of the workers to resist, because of the fact that the police had been at the camp the day before, and the workers knew that there was a large number of armed police and even hired gunmen among them, it is difficult to believe that they would employ a suicide strategy by attacking the police with their work implements, hunting weapons, and a few revolvers. It is more likely that they fired their weapons to defend themselves, and the

shots reached the police, since they had carefully mounted a defense strategy against attacks by the gunmen.

26. They say that as a result of the initial confrontation between the military police and the farm workers, two policemen died and eleven received bullet wounds. They add that on the side of the workers, a seven-year old girl and three workers died, and at least 15 workers were shot and wounded.

27. In this regard, they point out that during the initial confrontation, two policemen-- Lieutenant Rubens Fidelis Miranda and Ronaldo de Souza - were hit by bullets that caused their death, while 11 other military policemen received bullet wounds. They indicate that according to testimony given during the domestic proceedings, the shots came from a hill where there was a shed or hut in which several people with guns were located.

28. As for the persons who died during the initial confrontation, on the side of the workers, they report that one of the victims of the Corumbiara killing was a 7 year-old girl, Vanessa dos Santos Silva, who was hit by a bullet in the back, while she and her mother were fleeing the camp. According to the statement by the child's mother, Maria dos Santos Silva, during the domestic proceedings, she was shot right after the indiscriminate attack on the camp by the police started.[FN8]

[FN8] According to this testimony on September 14, 1995, "the witness was at the camp (...) together with her husband (...) and two children (...) at around 3:30 in the morning, when military police arrived and began to throw tear gas bombs inside the camp (...) that in an attempt to escape to the hill with her two children, she ran out towards the hill when her daughter, Vanessa, screamed because she had been hit, and that Vanessa died 10 minutes later (...)".

29. They mention that throughout the domestic proceedings, the authorities tried to blame the death of the girl on shots fired by the workers themselves. They add that the bullet that killed Vanessa was never found, so a ballistics test to compare the bullet with the arms seized could not be conducted.

30. They say that to gain control over two workers-- José Marcondes da Silva and Ercílio Oliveira de Campos, who were resisting by shooting from the top of an elevated area--the police violently forced several women, including adolescents, to walk in front of them, as a shield, endangering the lives of the unarmed women. They allege that this was how the police captured those workers, who were subsequently executed. The petitioners submitted various statements made during the domestic proceedings on the events, which include testimony by the police as well.

31. They report that José Marcondes da Silva, 50 years old, was savagely murdered by a group of military policemen while he was surrendering with his hands on his head. They explain that, together with Ercílio Oliveira de Campos, he had resisted the police attack by firing on the police and hitting several of them. They say that according to the forensic examination on

August 10, 1995, he had bullet wounds in the head from shots fired at close range, as well as other bullet wounds in the abdomen, back, and chest. They add that six bullets were taken from his body, two of which were identified as having been fired by the weapon belonging to MP soldier, José Emilio da Silva Evangelista.

32. As for Ercílio Oliveira Campos, 41 years of age, who accompanied José Marcondes da Silva in the armed resistance against the police assault, they report that his face was disfigured by shots fired at him at close range, and they explain that according to the forensic examination, he was shot 16 times at close range, in the head, shoulder, and arm, and many of the wounds were surrounded by discoloration.

33. They allege that the results of the forensic reports on José Marcondes da Silva and Ercílio Oliveira Campos confirmed the workers' version that those persons had surrendered and were murdered in cold blood.

34. With regard to another worker, Enio Rocha Borges, who died in a different situation, they allege that during the initial confrontation, that worker was hit by gunfire in circumstances that were not explained. They indicate that he was taken to the hospital while still alive, and he died there at 8:20 p.m. on the same day of August 9, 1995. They point out that the forensic examination performed was highly defective, and did not describe the wounds that caused his death or the trajectory of the bullets.[FN9] They add that the girlfriend of Enio Rocha Borges, Tereza Pereira Dos Santos, testified during the domestic proceedings that she was there when her companion was hit by shots fired by the police.[FN10]

[FN9] The petitioners state that the expert only established: "Wounded by a bullet from a firearm, with the entry wound at the base of the left hemithorax (...) Aside from the pulmonary perforation, there was a 0.5 perforation of the intestines (duodenum), (...) a perforation of the transversal colon (...)" They add that "there was a bullet in the abdomen of Enio, as verified in the attached x-ray and autopsy report. This bullet, however, was not sent for a comparative ballistic test. It was therefore impossible to identify the weapon that caused his death."

[FN10] That statement on September 14, 1995 indicated that "the companion of the witness, named Enio Rocha Borges, was also killed by a shot fired by the police at a distance of six meters, and at the time he was unarmed; further, Enio, as a result of that shot, died in the regional hospital of Vilhena/RO".

35. They say that on the side of the workers, there is proof that at least 15 of them received bullet wounds at the time of the initial confrontation.

36. They allege that once the initial confrontation was over, the military police and the armed gunmen took full control of the situation, and were in absolute, complete control over all the occupying workers. In this context, they go on to say that all the workers were taken prisoner, tied up and lying on the ground, either at the camp or at the military police base located on the soccer field of Santa Elina ranch.

37. They report that once they had taken full control of the situation, the police and armed gunmen began to commit a series of grave abuses, including extrajudicial execution of some workers, shooting at defenseless persons, and beating and humiliating them.

38. In addition to the aforesaid workers who died, the petitioners allege that there were other cases of extrajudicial executions which are listed below. As far as these cases are concerned, the petitioners indicate that according to the results of the different examinations and tests, these workers died from bullets fired at close range, which contradicts the allegation of the police that the victims died during the confrontation.

39. They contend that Nelci Ferreira, 24 years old, died from shots to the back of his head, which hit him as he was helping a wounded companion, on the bank of a stream. The forensic examination indicated that “the wounds are consistent with shots fired at close range.” They indicate that two bullets were extracted and sent to an expert, but that they did not identify the weapons from which they were fired. They refer to the testimony of Ana Paula Alves, the girlfriend of Nelci Ferreira, on November 17, 1995, who described the moment of his death in the following terms:

The witness was in the area of the camp in the company of Nelci Ferreira (...), and, upon spotting one of the workers who had been shot, Nelci tried to help him get away from there, when he was shot in the head (...); the witness dragged her companion to the pharmacy, where other wounded persons were already congregated, and there the military police found them; (...) she could see inside the pharmacy where the police were violently beating the wounded, including her companion, who received a cut on the left brow.

40. They allege that Alcindo Correia da Silva, 52 years old, died at the camp from a single shot that entered near his ear and followed a downwards trajectory to his hip. They said that according to the forensic examination, “the presence of the burns and the exit hole show that the shot was fired at close range.” They say that although the bullet was extracted and sent for testing, the weapon from which it was fired was never identified.

41. They report that the children of Alcindo Correia da Silva, Vilmar Caetano, 14 years old, and Valdir Caetano, 11 years old, and his niece, Cenira Lopes Correa, testified during the domestic proceedings that they had witnessed that summary execution:

From that point, [the witness] was watching when a policeman, dressed in a dark blue uniform and a hood that covered his face, fired a shot from close up at [his] father, who was lying on the ground; [his] father got up, close to the policeman, when the officer fired his gun at the head of the victim;[FN11]

[He] was there when a policeman shot his father, who was on his knees; his father was on his knees when the policeman shot him;[FN12]

From that position she could see her uncle, Alcindo Correa da Silva, lying face down on the ground; at one point, her uncle raised his head, and he was shot at the base of his ear;[FN13]

[FN11] Statement by Vilmar Caetano on November 7, 1995.

[FN12] Statement by Valdir Caetano on November 7, 1995.

[FN13] Statement by Cenira Lopes Correa on November 13, 1995.

42. They contend that Odilon Feliciano was shot in the back of the head while still at the camp, and died at the Colorado do Oeste hospital. They state that according to the forensic examination, there were indications of a summary execution, as it determined that “based on the foregoing, the bullet was possibly fired at close range, from the back to the front, entering the back of the skull.” They explain that because the bullet was lost, it was impossible to identify who fired the shots.

43. They further state that a boy, Lucídio Cabral de Oliveira, 11 years old, testified during the domestic proceedings that he had witnessed the execution of Odilon Feliciano, and he described it as follows: “he was there when a policeman, in a blue uniform and with his face painted black, fired a shot into the neck of his friend, Odilon Feliciano.”

44. They allege that Ari Pinheiro dos Santos, 33 years of age, was brutally murdered by the military police. He was shot 11 times, and at least 6 of those shots were fired at close range. As a result, his face and head were destroyed. They indicate that according to the forensic examination, there were:

Fractures of the frontal bone, the temporal bones, the parietal bones, the lower maxilla, to the right, the bones of the right eye socket, with destruction of the right eyeball (...). The upper and lower incisors were destroyed.

(...)

The bullet causing wounds 1 and 2 was possibly fired at close range. (...) The bullet causing wounds 3 and 4 was possibly fired at close range (...) . The bullet causing wounds 5 and 6 was possibly fired at close range (...).

45. They indicate that five bullets were taken from the body of Ari Pinheiro dos Santos, and one of them was identified as having been shot by the weapon belonging to military police soldier Luiz Carlos de Almeida.

46. They allege that Sergio Rodrigues Gomes, 24 years old, was detained together with other workers and taken to the soccer field where a military police base had been set up. They say that he was subsequently removed from that base, while still alive, and taken in a Toyota van to an unknown place. His body appeared days later, on August 24, 1995, floating in the Tanaru River. They said that the forensic report described signs of three shots in the head and multiple fractures of the skull and the face:

(...) the fractures referred to in the external examination extended over virtually all parts of the face and skull, and primarily at the base of the skull, where the bones were all fractured and some of them were splintered.

47. They refer to statements made during the domestic proceedings by various persons who saw Sergio while alive and a prisoner, along with other workers, at the military police base on the soccer field. These statements include the following ones:

Marcelo Girelli: "That at around 3:00 p.m., a fellow worker, Sergio Rodrigues Gomes, was placed on the ground next to the witness, and from time to time, a military policeman would approach him and ask Sergio if 'he had anything to say' and, when he said no, he would be beaten violently; (...) he observed when Sergio was taken away from the group, beaten violently, and did not return, and he added that the person who took him away wore a military police uniform."

Arnaldo Carlos Teco da Silva, Mayor of Corumbiara: "That when he was walking by a certain place on the soccer field he saw a policeman wearing a hood kick the victim, Sergio; that Sergio wanted to talk to Percílio, a town councilor, but the policeman ordered him to be quiet and kicked him."

Osias Labajo Garate, a journalist: "that he could observe and photograph a COE policeman who was walking with a hood over his head, who was making the rounds of the prisoners and gave a violent kick to one prisoner, an outsider, and later he learned that his name was Sergio Rodrigues Gomes, who was found dead on August 24, 1995, in the Tanaru River, in Chupianga".

José Carlos Moreira: he was there when a military policeman who was wearing a black hood said that Sergio Rodrigues Gomes, an outsider who was detained with the others, had shot at them; that, at that time, Sergio was covered with blood and had also been shot and violently beaten; that the police in question, whom he could not identify because of the hood, put Sergio in a blue Toyota and left, to return forty minutes later, without Sergio.

48. They say that Sergio Rodrigues Gomes had been identified as one of the workers who was part of the security group and who had shot at the police.

49. They report that among the dead victims was a man who was not identified, who became known as "H-5" , and who possibly died in the stream. None of the workers recognized the victim, who had been shot once fatally in the right eye, at close range, which, they allege showed that he too was executed. They explain that the bullet was extracted from his body and submitted to a ballistics test, but that the relevant weapon was not identified. They added, in support of this statement, that the forensic expert's report read as follows:

Contusion and perforation wound, in a discolored area on the upper eyelid above the right eye, with partial enucleation of the eyeball (...). The presence of discoloration on the upper eyelid points to the possibility that the shot was fired at close range.

50. They point out that once in control of the situation, the armed gunmen and police began to beat and humiliate the prisoners, who were tied up and lying down on the ground, as stated above, and to subject them to inhuman and degrading treatment. They add that the workers were again beaten at the Colorado do Oeste police station, where they were taken prisoner and forced to make statements despite the fact that many of them were wounded.

51. They further allege that Darci Nunes do Nascimento, according to his statements during the domestic proceedings, was shot behind the ear, that it is not known who shot him and that it was at the time that he and the other 400 persons were lying face down on the ground.[FN14]

[FN14] The petitioners have appended the statement of this alleged victim, made on July 11, 1997.

52. They allege that Antonio Ferreira da Silva, on the basis of his statements during the domestic proceedings, was shot three times in sequence, with two shots hitting him in the arm and one in the chest, on the right side, causing him to fall to the ground, where he was found by a policeman who forced him to drag himself next to two other prisoners, where he was then beaten until he lost consciousness. That he was taken to the gymnasium and that it was not until one day later that he was discovered by the Human Rights Committee/OAB, and then taken to the hospital, since he was still wounded.[FN15]

[FN15] The petitioners have appended the statement of this alleged victim, made on November 23, 1995

53. They report that Agostinho Feliciano Neto, according to his statements during domestic proceedings, was inside the hut on the day of the events, and on leaving it, he was shot once in the chest and once in the right foot.[FN16]

[FN16]The petitioners have appended the statement of this alleged victim, made on June 18, 1996.

54. They state that, in accordance with statements at the domestic proceedings, Alzira Augusto Monteiro was beaten, was struck in the mouth by an elbow, breaking his teeth, and was forced to walk on top of various persons who had been brought under control and were lying on the ground.[FN17]

[FN17] The petitioners have appended the statement of this alleged victim, made on September 14, 1995.

55. They explain that the blow to Alzira Augusto Monteiro was witnessed, according to statements during domestic proceedings, by José Carlos Moreira, who was himself a victim of beating by the military policemen, one of whom, wearing a hood, pierced his foot with a nail.

56. They allege that according to his statement in the domestic proceedings, Claudionor Paula was detained near the canteen or cafeteria, where he was forced to lie face down, while the police walked and jumped on his back; after the interrogation, he was once again assaulted by the military police, who punched and hit him.[FN18]

[FN18] The petitioners have appended the statement of this alleged victim, made on November 17, 1995.

57. They transcribed statements during the domestic proceedings made by Ana Paula Alves, indicating that a military policeman hit her twice in the head with the butt of a pistol, leaving her stunned. She further testified that she could see that the police were violently beating the wounded inside the pharmacy.[FN19]

[FN19] The petitioners have appended the statement of this alleged victim, made on November 17, 1995.

58. They report that according to statements made during the domestic proceedings, military policemen assaulted Jair Nunes de Moraes, kicking him and hitting him on the head with their clubs, leaving him semi-conscious for various hours.[FN20]

[FN20] The petitioners have appended the statement of this alleged victim, made on November 17, 1995..

59. They allege that upon arresting Edimar Silírio Dias, based on statements made during the domestic proceedings, military policemen hit him at the base of the ear, stunning him and causing him to fall down, whereupon the police began beating him hard, kicking him and striking him with their clubs, truncheons, and fists, until he lost consciousness.[FN21]

[FN21] The petitioners have appended the statement of this alleged victim, made on November 17, 1995..

60. They allege that according to statements during the domestic proceedings, Eilvo Hilário Schneider was violently beaten at the time of his arrest, until he lost consciousness, and was

taken first to the hospital and then to the police station, where he was once again beaten and ended up with a fractured finger, a dislocated rib, and various injuries to his head.[FN22]

[FN22] The petitioners have appended the statement of this alleged victim, made on September 17, 1995.

61. They allege that, according to his statements during the domestic proceedings, Arivaldo Neckel de Almeida received a surface bullet wound on the head and was then detained; that once he was captured, he received a blow that presumably came from a pistol butt right on top of the previous wound, which caused substantial hemorrhaging, but did not stop the police from kicking him and beating him with their clubs while he was lying on the ground, bleeding. He was then taken to the back of the police station where he was tortured, and information was obtained. During that time, they pressed his right hand in a car door, twisted a finger of his right hand, and broke his thumb by pushing it backwards, and they kicked him in the genitals and in the back, and they kicked him and hit him hard in both ears at the same time, which caused nasal hemorrhaging. Later on, he was taken to the gymnasium where once again he was beaten violently by military policemen to the point that his wound, which had stopped bleeding, was reopened by a hard blow to the head, causing renewed, intense hemorrhaging, after which a policeman requested a vehicle and the witness was taken to the hospital, where the wound was finally sutured.[FN23]

[FN23] The petitioners have appended the statement of this alleged victim, made on September 17, 1995.

62. They contend that, according to testimony during domestic proceedings, Zildo Gomes Cunha was kicked in the face, and managed to see his aggressor, who was a policeman dressed in blue and wearing a hood, and that, from time to time, he would be beaten in the back and the head.[FN24]

[FN24] The petitioners have appended the statement of this alleged victim, made on November 22, 1995.

63. They allege that Valtair Alves da Silva, according to his statement during domestic proceedings, was beaten on the back and thrown to the ground, where he was beaten violently until he lost consciousness.

64. They indicate that Geraldo Francisco Clara, according to his statements during domestic proceedings, was struck by a truncheon and repeatedly kicked in the ribs, and left the place by being dragged out.[FN25]

[FN25] The petitioners have appended the statement of this alleged victim, made on August 12, 1995.

65. They contend that the worker Claudemir Pereira was also brutally beaten by the police.[FN26] They indicate that he was considered to be one of the leaders of the camp, and thus he was later tried and convicted of the deaths of the policemen that occurred during the confrontation. They add that the injuries suffered by Claudemir Pereira as a result of violent beating were recorded in the forensic examination.[FN27]

[FN26] The petitioners appended the statement of this alleged victim, in addition to statements by military police soldier Adriano Davi de Araujo, who said that “he could see that somebody was beaten up very hard, and he later learned that it was a person known as “Pantera”.

[FN27] The petitioners appended this forensic examination as evidence..

66. They report that based on his statements during domestic proceedings, Paulo Correia da Silva, a worker, was forced to eat pieces of the brain of one of his companions, whose skull had been destroyed by the police by shooting at close range.[FN28]

[FN28]The petitioners appended the statement by the alleged victim on August 12, 1995. They also appended a statement by a witness, Carlos Nunes de Moraes, on November 14, 1995, to the effect that he had seen the military police forcing Paulo Correia da Silva to eat pieces of the brain of a dead companion.

67. They allege that Moacir Camargo Ferreira was hit by machinegun fire from MP Corporal Geraldo Joao Rodrigues, while he was in a truck with other captured workers, to be transferred to Colorado del Oeste. They add that during the domestic proceedings, the police said that the shooting was accidental, but that the victim and another witness said the opposite.[FN29] They point out that there was no police investigation to determine whether or not Moacir Camargo Ferreira was shot intentionally, and that it was not until much later that the Public Prosecutor’s Office intervened to order an investigation into the event by the military police.

[FN29] The petitioners transcribed the statement by witnesses at the domestic proceeding, including the statement by José Ferreira da Rocha, on November 16, 1995, to the effect that “he does not believe that the shot was accidental, because of the situation in which it occurred, the manner in which his companion was hit, and the reaction of the policeman, who simply jumped out of the truck after the shot was fired”.

68. They indicate that some of the marks from the brutal beatings and attacks of various persons were recorded in the expert reports on the bodies of some of them, even though the examinations were not performed the same day of the events and were extremely deficient in describing the wounds. They add that photos of some of the wounded workers also showed the violence of the beating. In addition, statements by various persons, including some of the military police, also indicated the practice of severe beating of the workers. In this regard, the petitioners cite the following statements made during domestic proceedings, among others:

Osias Labajos Garate, a journalist, who stated that he had observed a military policeman walking back and forth on the backs of the workers who had been captured and were lying down.[FN30]

Percílio Antonio de Andrade, town councilman, stated that there were quite a few wounded people on the soccer field, and that he saw many people tied up with rope, and that he saw a uniformed policeman kicking a person who was sitting down and tied up.

Military Police Major José Ventura Pereira stated that after rounding up all the workers, he made a move, with the help of Captain César and Captain Mena Mendes, to control some of the policemen, who were walking on the persons who were lying down on the ground.[FN31]

[FN30] The petitioners appended his statement dated September 11, 1995.

[FN31] The petitioners appended his statement, dated November 1, 1995.

69. The petitioners further allege that deaths occurred as a result of wounds received on the day of the events, that one person disappeared, and that skeletal remains were found, but that there was never a proper investigation to determine their identity.

70. In this context, they allege that Jesus Ribeiro de Souza, 46 years old, was detained with other workers and later submitted to a forensic examination, but that no visible wounds were found at that time. They further state that Mr. Ribeiro de Souza nonetheless contended that he had been in considerable pain since the conflict, and he died about four months later. They alleged that the death certificate stated as the cause of death only: "conflict of the landless with the MP," and that his next of kin said that he died from consequences of the beating he received at the camp. They alleged that there was no detailed examination to investigate the cause of his death, despite suspicions that he was one more fatal victim of the conflict.

71. They indicate that according to family members, Oliveira Ignácio Dutra, 71 years of age, was beaten during the events, and died subsequently as a result of the wounds he received. They explain that the hospital medical report, which they describe as highly deficient, states that Mr. Dutra had died of a stroke. They add that in his case as well, there was no examination and no investigation to determine the cause of death and its possible relationship to the conflict.

72. They allege that after the killing, there were various rumors to the effect that the bodies of the workers and gunmen were cremated, and that these rumors were never investigated seriously. They say that at least one worker, Darci Martins Pereira, disappeared, and that his

family had reported on many occasions that he never returned home after the killing. However, the petitioners allege, no serious attempts were ever made to clarify his disappearance.

73. They allege that there are at least strong indications that the rumors regarding cremation of the bodies of workers and gunmen at Santa Elina ranch could be true. They explain on this point that on August 12, 1995, three days after the conflict, Roman Catholic Bishop Gerard Jean Paul Roger Verdier went to the former camp of the workers, accompanied by church representatives, and, in the presence of witnesses, gathered samplings of burned bones and ashes.

74. They say that the Bishop took the samples with him to the Diplomata Hotel in the town of Vilhena, where authorities from the region were meeting with State Governor Valdir Raupp. There the samples were photographed and filmed by journalists. The Bishop, in front of witnesses, took nine pieces of bones out of the different samplings, at random, and gave the remainder of the materials to the Public Security Secretary to take the necessary steps.

75. They say that the Bishop gave the pieces that he had randomly selected to Jacques Borjois, president of the Missionary Association in Paris, France, in the presence of witnesses. Mr. Borjois, for his part, took the remains of the bones to the West Paris School of Medicine (Department of Forensic Medicine/Pathology, Cytology, and Anatomy), where Professor Michel Durigon, a national expert and head of the Department, analyzed them.

76. They add that eleven days later, the other remaining samples were transferred by the Brazilian authorities to Campinas University-UNICAMP, for analysis by Professor Fortunato Badan Palhares, who, according to the petitioners, is a controversial professional in Brazil, whose forensic medical opinions have been requested in cases with national repercussion, and who generally issues reports in defense of the persons accused of serious human rights violations. The petitioners report that the number of controversial cases in which that person has participated, "has given rise to unsubstantiated suspicions that he would sell his reports or obtain political or economic advantages through them." As a result, he has absolutely no credibility in the country.

77. They say that the reports by the Paris School of Medicine and UNICAMP differed. The Paris report indicated that "two of the samples examined are certain to be of human origin," while the forensic medical report prepared by Professor Badan Palhares' team concluded that the bone samples examined belonged to animals. They add that the samples sent to Paris were then returned to Brazil, and sent to UNICAMP for comparison. That comparison, however, was never made, nor were the samples submitted to a third laboratory, that could help verify the differences between the two reports. In this way, they maintain, the State failed to comply with its legal obligation to clarify the possibility that other deaths had occurred.

78. As regards the effectiveness of domestic remedies for the reported acts, they contend that the case of Corumbiara is emblematic of the situation in many other cases of violations of the human rights of male and female farm workers in Brazil. They allege that in most cases, the government authorities in rural areas have proven incapable of bringing justice to workers, because of their complicity with the local landowners. They argue that violations are rarely

investigated impartially, and that punishment of the guilty parties is even more difficult, despite compelling evidence against public officials and landowners.

79. They further allege that, in the case in point, three investigations were initiated into the events: one by the civil police of Rondônia State; one by the military police; and another by the federal police, at the request of the Ministry of Justice. They point out that the investigations were conducted from the outset to conceal as much as possible the guilt of the landowners and the public officials. Yet, they contend that countless documents were gathered to incriminate the workers. As a result, they say, it came as no surprise to anyone that in the end, only three policemen were convicted for the death of three victims who were executed, whereas two workers were also convicted for their indirect participation in the death of two policemen.

80. They allege that during the domestic proceedings, the close relationship between the landowners and the military police responsible for the violations was clearly demonstrated, and that there was also evidence, they assert, that the landholders were in contact with the Governor as well, the highest authority of the state of Rondônia. They further contend that there was also evidence of how the landowners pressured judges and policemen to evict the workers, despite the attempted peaceful negotiations.

81. They make a series of allegations focusing on indications and evidence to the effect that in various stages of the domestic proceedings in this case, there was a tendency to incriminate the workers who were victims of the massacre and to absolve from guilt or completely fail to investigate the persons responsible for the violations committed against the workers, as is summarized below.

82. They allege that the first irregularities which considerably hampered efforts to uncover the truth and identify the responsible individuals occurred at the site of the events, when the military police destroyed the camp and set fire to whatever remained.

83. They report that on the basis of the evidence provided by the expert examination of the crime scene, appended as evidence, the bodies of the victims were taken from the place where they died before the expert arrived, and that the investigation of the site of the events was highly deficient. They allege that proof of this is the fact that Bishop Gerard Verdier was able to find fragments of bones and remains of calcinated material that had neither been gathered nor registered for the expert report.

84. They contend that the police inquiries that were initiated to investigate the events demonstrated a clear bias against the workers, and that despite enormous pressure from national and international entities to conduct serious and impartial investigations, the results show that this did not happen.

85. They say that on August 9, 1995, police investigation No. 098/95 was opened by the police chief of Colorado do Oeste. Nevertheless, they maintain, that investigation was not opened to investigate the violations committed against the rural workers, but to investigate the crimes of disobedience and resistance by the workers.

86. They add that consequently the first act of the investigation was annexation of the arrest warrant for 355 workers, who had been captured the previous day, despite the fact that many of them were injured. They say that the workers were the first to testify in the investigation, not as victims, but as the accused. They point out that the reading of the criminal complaints and the interrogation showed that the police were looking for information on the leaders of the invasion.

87. They allege that the police chief who presided over the investigation asked for the expert reports on the injured police to be appended to the case records, but did not request the same for the injured workers. They add that on August 11, 1995, the Public Prosecutor's Office requested expert examination of the workers, after receiving a letter from the Brazilian Bar Association requesting that it be done.

88. They contend that 23 days after the events, 121 workers had made statements in police investigation 098/95 conducted by the civil police station in Colorado do Oeste, and that 74 of them had been charged with crimes of disobedience and resistance. They add that when they testified at the trial, many workers stated that they had given statements at the police station under pressure, after being tortured and violently beaten.

89. They say that at the same time, on August 16, 1995, a military police investigation was opened to investigate the crimes committed by the military police, but that it actually began on August 30, 1995, nearly a month after the events.

90. They allege that on various occasions, the persons who were responsible for the investigations argued that they did not have the resources needed to completely conduct all the technical tests. They say that state and federal officials were fully aware of that fact, and yet they did not provide the support needed for the investigations, and that this considerably delayed or prevented production of important evidence. They transcribed statements by the heads of both the civil and military police investigations made during the meeting of the Human Rights Defense Council in Brasilia.[FN32]

[FN32] According to these statements, "most of the technical tests, such as the expert examination of the site, were not carried out for various reasons, such as the distance of the place itself and the lack of equipment of the Corumbiara police." (...) "The factor that most hampered completion of the investigations was the lack of resources, to the point that he himself had to cover the expenses on some occasions." (...) "That the site was not kept intact, the personal weapons of military officials and police were not seized (...) Finally, the speaker insisted that there were not material resources to conduct the investigation."

91. They report that on various occasions, the Promotor de Justiça [public advocate or defender] designated to supervise the investigation contacted state officials to ask for their indispensable support to carry out the work, but failed to receive their full cooperation.

92. They allege that the ballistics tests could not be completed, because the personal weapons of the military police who participated in the operation and the weapons of the gunmen who were

working for the landowner, Antenor Duarte, were not collected immediately,[FN33] and because the bullet shells of the weapons collected were never submitted, or were not sent in sufficient numbers.

[FN33] They stated that “this elementary measure was not taken until after a public complaint appearing in a national newspaper.”

93. They say that this last fact was officially reported to the state authorities by the Promotor in charge of supervising the investigations,[FN34] but in spite of this, new expert examinations were not undertaken. They highlight the importance of this omission, in view of the circumstances in which the events occurred, with agents with their faces painted and wearing hoods, which made it particularly important to conduct a careful, detailed examination of the bullets found in the bodies and at the sites of the executions and to compare them with the weapons seized, in order to identify the persons that were responsible for these acts.

[FN34] In this regard, the petitioners appended Official Letter No. 168/96, of July 4, 1996, sent by Promotor de Justiça Marcos Ranulfo Ferreira to the Rondônia State Prosecutor, in which he indicated that “only two typical bullets per arm were sent, and this small number was not enough to duly get to the truth of the events. The experts alleged that (...) new evidence could be found if a new expert operation were to be performed.”

94. They allege that once the civil and military police investigations were concluded, their results were sent to Judge Glodner Luiz Pauletto, who received them on September 26, 1996. They add that this was the judge who had ordered immediate execution of the order to evict the workers that was at the root of the massacre. They point out that during the criminal proceedings, few workers were called to testify, and that the police version of the events therefore prevailed.

95. They say that some important pieces of evidence were produced against some policemen, but that those officers were absolved or were not even prosecuted for the deaths of workers. As an example, they referred to the fact that the ballistic tests had shown that one of the shots that killed José Marcondes had been fired from the weapon used by soldier José Emilio da Silva Evangelista. They go on to explain that throughout the proceedings, soldier Evangelista denied having shot at the worker, arguing that he had loaned his weapon to another soldier, Cilas Frauzino. That soldier in turn denied having fired the weapon identified, although he admitted that it had been in his possession for several minutes. After the ballistics comparison, the petitioners add, the investigator’s analysis was that soldier José Emilio da Silva Evangelista appeared “composed, lucid, and coherent,” whereas soldier Cilas Frauzino appeared nervous during the testimony, and afterwards he had to undergo intensive psychiatric treatment for emotional disturbances.

96. They report that, nonetheless, and inexplicably, charges were not filed against soldier Cilas Frauzinho, while soldier Evangelista was acquitted. Consequently, the petitioners allege,

despite identification of the weapon from which some of the bullets were fired at close range, destroying the head of José Marcondes, and despite identification of the policemen who carried that weapon, none of them was held accountable.

97. They maintain that the same thing occurred in relation to the shot that killed “Ari”. They say that the ballistics report identified the firearm from which the bullet was fired, and that the soldier who carried that firearm, Luis Carlos de Almeida, alleged that he had given it to another policeman. Thus neither one was brought to trial.

98. They contend that no efforts at all were made to examine the manner of death of the workers who appeared to have been executed, or to investigate the deaths of the other workers and the possible guilty parties. On the other hand, the petitioners assert, the deaths of the policemen were thoroughly investigated. They say that on the pretext of determining whether use of bullet-proof vests had saved the lives of policemen, they conducted detailed expert tests and reconstructed their deaths, while there was no attempt to examine the brutal deaths of the workers.

99. They allege that the landowner, Antenor Duarte, his manager, José de Paula, and his armed employees, were not brought to trial, despite countless pieces of evidence against them. They add that no official was even investigated in response to the order that gave rise to the criminal execution of the court order.

100. They argue that the Public Prosecutor’s Office requested the acquittal of many policemen, when it should have pressed charges against them. They explain that out of a contingent of 194 military policemen who directly participated in the operation, the authorities gathered sufficient evidence against only a few of them.

101. They report that the trial for the Corumbiara massacre was held on August 14, 21, 23, 25, 29, and 31, and on September 4 and 6 of that year. In summary, of the five military police officers that were prosecuted, only one was convicted for the death of the workers José Marcondes da Silva, Ercílio Oliveira Campos, and unidentified worker, “H-5”. They add that of the six soldiers who were brought to trial, only two were convicted also for the death of the workers José Marcondes da Silva, Ercílio Oliveira Campos, and the unidentified worker, “H5”.

102. They allege that as a result, neither military policemen, nor any other authorities, nor the landowners involved, nor their gunmen were convicted for the death of the girl, Vanessa dos Santos Silva, or for the death of the other workers who died during the events.

103. They point out that the State did not report on the status of criminal proceedings to investigate responsibility for the wounds of 53 workers and for the “countless acts of torture” to which they were submitted.

104. They allege that, nonetheless, “Claudemir and Cícero”, the two workers who were regarded as the leaders of the invasion, were convicted for the death of two policemen during the confrontation, and were also tried for crimes of cárcere privado [prison where persons are held by private individuals under no legal right], disobedience, and criminal association. They

maintain that the only evidence they had against “Claudemir” was the statement by a policeman to the effect that he had seen him armed, shooting at the police, from a tree. They add that the same policeman said that the wounds substantiated by the forensic examination of Claudemir probably occurred when he fell out of that tree.

105. They report that this was how the workers were convicted for the death of two policemen who were confirmed to have died during the confrontation, while the police who summarily executed the workers continue to go unpunished.

B. Position of the State

106. In its first response on June 27, 1996, the State alleges that the Civil Police Station in Colorado do Oeste, Rondônia State, initiated police investigation No. 098/95, “for the purpose of investigating the legality of the action by members of the Rondônia military police in an operation which took place August 9, 1995, at the Santa Elina Ranch, near the Prefecture of Corumbiara, which resulted in the death of twelve farm workers and the capture of three hundred fifty-three persons. A military police investigation was also opened for the same purpose.”

107. It adds that because of the results of the action taken to remove the workers from Santa Elina Ranch, the Governor of Rondônia State had dismissed the Public Security Secretary and the Military Police Commander of Corumbiara, who were “identified as the parties that were mainly responsible for the operation.” It further indicates that an agreement was concluded between the Rondônia Government and the Prefecture of Colorado do Oeste in the amount of twenty-five thousand reais, to cover the cost of handling the workers involved in the “accident” who were still camped on land belonging to that prefecture, where they were receiving medical care.

108. It points out that the Human Rights Defense Council, a Brazilian government agency, set up a committee in charge of investigating the incident, and that it produced a report on the status of the investigations and on other steps taken, and took statements from the Rondônia Public Security Secretary and other officials.

109. It states that on May 17, 1996, the head of the police investigation reported to the Human Rights Defense Council that it had completed the “ballistics comparison” tests conducted by the Criminology Institute of Paraná State. It adds that the civil police investigation was in its final stage, and that the investigation into the new complaint by the Landless Movement, to the effect that three more workers had died as a result of the wounds suffered during the conflict, was still pending.

110. It argues that, as a result, the remedies of domestic jurisdiction have not been exhausted and that the guilty parties would be convicted and punished, pursuant to applicable domestic law.

111. It reported in a letter dated August 16, 1999 on the status of the domestic proceedings related to the investigation of the events of this case, noting that the trial was scheduled for the second half of 1999, and that it was determined not to allow these crimes to go unpunished.

112. In a letter dated September 18, 2000, it reported on the results of the trial in this case, which was held in regular criminal courts in the city of Porto Velho, Rondônia State, between August 14 and September 6, 2000.

113. It states that during that trial, divided into eight groups of hearing with juries, 12 military policemen were tried for the murders of landless farm workers, and two farm workers were tried for the murder of two policemen. It adds that the results of that trial were that three military policemen were convicted, and the two landless farm workers were convicted.

114. It specifies that during the first group of hearings initiated on August 14, 2000, three military policemen were tried for the deaths of workers Ercílio Oliveira Campos, José Marcondes Alves, and one worker identified as "H-5". It adds that military policeman Daniel da Silva Furtado was convicted to 16 years of confinement in a closed regime for two homicides, and that military policeman Airton Ramos de Moraes was convicted to 18 years of confinement in a closed regime for three homicides, while military policeman José Emilio da Silva Evangelista was acquitted. It adds that the two convicted defendants were allowed to remain free until the sentence became *res judicata*.

115. It indicates that on August 21, 2000, the second group of hearings began its work, which involved the trial of José Helio Cysneiros Pachá and Mauro Ronaldo Flores Corrêa, military police officers accused of being accessories in the murder of workers Ercílio de Oliveira Campos, José Marcondes da Silva, and the worker identified as "H-5". In accordance with the request by the Promotores de Justiça, these persons were absolved by the jury.

116. It indicates that the work of the third group of hearings began on August 23, 2000, with the trial of Geraldo João Rodrigues, a military police corporal accused of the attempted homicide of Moacir Camargo Ferreira. It adds that the Jury decided that the accused had not committed the crime of attempted homicide, and that continuation of criminal proceedings for possible bodily injuries would be up to the representatives of the victim.

117. It indicates that on August 25, 2000, the fourth group of hearings began, to try landless workers Cícero Pereira Leite Neto and Claudemir Gilberto Ramos, charged with the deaths of military policemen Ronaldo de Souza and Rubens Fidelis Miranda, and with the crimes of *cárcere privado*, criminal association, and resistance. It adds that Cícero Pereira was convicted to six years of confinement and two months of detention for participation in a homicide and for committing the crime of resistance, and that it was decided that his sentence could be served in a semi-open regime. It adds that Claudemir Ramos was convicted to eight and a half years of confinement, in a closed regime, plus two months of detention, for participating in two homicides and for committing the offenses of *cárcere privado* and resistance.

118. It states that on August 29, 2000, the fifth group of hearings began to try Claudenilson Alves, a military police sergeant accused of the homicide of farm workers Ercílio Oliveira Campos, José Marcondes da Silva, and the worker identified as "H-5". It adds that the Promotores de Justiça requested acquittal of the defendant, on the grounds of insufficient evidence, and he was absolved.

119. It reports that on August 31, 2000, the sixth group of hearings began to try Luiz Carlos Fernandes, Moisés Oliveira Lima, and Vilson Luiz Pedon, military police soldiers. It explains that the three were accused of being accessories in the homicide of workers José Marcondes da Silva, Ercílio Oliveira Campos, and the one identified as “H-5.” It added that the Promotor requested acquittal of the defendants on the grounds of insufficient evidence, and they were absolved.

120. It reports that the work of the seventh group of hearings began on September 4, 2000, with the trial of Vitório Regis Mena Mendes, a military police captain, who was charged with the homicide of workers Ercílio Oliveira Campos, José Marcondes Alves, and the victim identified as “H-5.” It added that the Jury accepted the arguments in the indictment and convicted the defendant to nineteen and a half years of confinement, to be served in a closed regime. It further specified that the defendant was permitted to remain in freedom until the judgment became *res judicata*.

121. It reports that on September 6, 2000, the work of the eighth group of hearings was initiated with the trial of José Ventura Pereira, a military police colonel, who was accused of having permitted the victim Sérgio Rodriguez, who was later found dead, to be taken by a third party while still alive, from the military police base set up in the soccer field, during the eviction proceedings at Santa Elina ranch. It adds that the Jury acquitted the defendant.

IV. ANALYSIS OF THE MERITS

122. The Commission will now proceed to determine the established facts of this case, and decide on the international responsibility of the State of Brazil in relation to those facts.

A. Introduction

123. Prior to analyzing the merits of this case, the Commission is compelled to point out that the subject of this case goes beyond the troubling issues of land distribution in Brazil in general, and the specific situation of the landless male and female workers who, with their families, invaded Santa Elina ranch in August 1995. The Commission has given its views on the general problem on several occasions, and has stated, for instance, that:

Brazil covers a widespread expanse of land with a huge capacity for production and social settlement. But for historical reasons, the way the land is distributed has been extremely uneven, and as a result, conditions propitious to social confrontation and violations of human rights are created.[FN35]

[FN35] IACHR, Report on the Situation of Human Rights in Brazil, 1997, Chap. VII, para. 1.

124. The Inter-American Commission initiates its deliberations on the merits on the basis of an analysis of the way in which the court order for eviction of Santa Elina ranch was carried out, since it is beyond the scope of this case to examine the economic, social, historic, and other

reasons that might have led the occupying workers to make the decision to invade Santa Elina ranch in July 1995 and set up a camp there.

125. The Inter-American Commission observes that the petitioners alleged a series of facts that were not disputed by the State. In fact, the IACHR transmitted the pertinent parts of the complaint to the State on December 18, 1995, and requested it to provide information on the reported events. Brazil replied on June 27, 1996, and limited its response to taking issue with the exhaustion of domestic remedies.

126. In other submissions in this case, the State did not question the facts alleged by the petitioners, but rather limited its statements to reporting first on the status of internal remedies and then on the results of those remedies.

127. In this regard, the Commission notes that Article 42 of its Rules of Procedure in force up to April 30, 2001, establishes as follows: “the facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the maximum period set by the Commission under the provisions of Article 34, paragraph 5, as long as other evidence does not lead to a different conclusion.” The contents of that article are the same as Article 39 of the present Rules of Procedure of the Commission.

128. The Article transcribed above implies that if the State does not contest the alleged facts and there is no other evidence that could lead to a different conclusion, the Commission may presume that the alleged facts are true. On this point, the Inter-American Court has ruled as follows:

The manner in which the Government conducted its defense would have sufficed to prove many of the Commission's allegations by virtue of the principle that the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law. This result would not hold under criminal law, which does not apply in the instant case.[FN36]

[FN36] Inter-American Court, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 138.

129. Hence, although the burden of proof in the proceeding before the Inter-American Commission belongs in principle to the petitioners or complainants, the lack of contradiction by the State produces a reversal of the burden of proof in actual practice, according to which the State must provide evidence contrary to the alleged facts. If the State does not contest the substantive facts or produce evidence that would call them into question, the Commission may presume that the alleged facts are true, as long as there is no other evidence that could lead to a different conclusion.

130. The Commission is authorized to request information from the parties, to conduct on-site investigations into matters that have been submitted to it, and to gather evidence it deems relevant. The State for its part, in addition to the burden of proving the facts on which its defense relies, has the obligation to cooperate, which includes providing the information requested by the Commission and providing all the facilities required for any investigations the Commission may decide to conduct.[FN37] The Inter-American Court of Human Rights has determined that in proceedings pertaining to human rights violations, “in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation. The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.”[FN38]

[FN37] On the point, see Article 48(a)(d) and (e) of the American Convention.

[FN38] Inter-American Court, Case of Velásquez Rodríguez, judgment of July 29, 1988, paras. 135 and 136.

131. Taking into account the rules on the burden of proof and production of evidence, including the reversal of those rules caused by the failure of the State to contest the substantive facts, and the evidence submitted by the two parties, in addition to the evidence gathered by the Commission, a body of evidence is formed and is evaluated by the Commission as the grounds for its decision.

132. In evaluating the evidence, the Commission considers the criteria referred to by the Inter-American Court of Human Rights. In this regard, the Court has stated, for instance that:

The standards of proof are less formal in an international legal proceeding than in a domestic one. The latter recognize different burdens of proof, depending upon the nature, character and seriousness of the case. The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, *indicia*, and presumptions may be considered, so long as they lead to conclusions consistent with the facts.[FN39]

[FN39] Inter-American Court, Case of Velásquez Rodríguez, *ob. cit.*, paras. 128 and 130.

133. Based on the foregoing, and on the allegations of the petitioners, the fact that Brazil did not specifically contest the alleged events, and on the copies of the court documents and other evidence appearing in the case records, in addition to the absence of other compelling evidence that could have led the IACHR to conclude otherwise, the Commission will now place on record its determination regarding the established facts in this case.

134. First, taking into account the decision by the State of Brazil in this case not to respond to the facts, but to submit the results of the domestic proceedings instead, the Inter-American Commission is compelled to point to a fundamental difference between the purpose of domestic remedies and the purpose of international proceedings in the inter-American system.

135. The purpose of domestic proceedings is to determine individual liability for violations of fundamental rights either by government agents or by other persons, while the purpose of an international proceeding is to determine whether the State has incurred international responsibility for violating human rights recognized in treaties and other international instruments. While domestic procedures are essential to determine the perpetrators of the violations so that they may be convicted, the international procedure is not essential to determine the identity of the government agent that committed the human rights violation. It is enough just to determine that it was an agent of the State that committed the violation, even without establishing the agent's identity, for the state to incur international liability.[FN40] Moreover, even if the individual perpetrator of the violation is not determined, the state is obligated to compensate the victim or his next of kin, whenever the violation was committed by an agent of the State.

[FN40] This, notwithstanding other assumptions, whereby the State may incur liability even if the violation is not committed by a State agent, such as the case in which a private individual commits the violation, and the State incurs international responsibility for failing to investigate and to punish the guilty party, if applicable.

136. It should also be noted that it is not within the purview of the IACHR to determine international liability of the state for the deaths of policemen that occurred in this case, or for injuries caused to others. That is a power and duty of the state, which is responsible for investigating such acts and punishing the guilty parties.

137. Having set out these preliminary considerations, the Inter-American Commission will now proceed to determine what it regards as the established or proven facts in this case, in accordance with the stated criteria on burden of proof and evaluation of evidence.

B. Established facts

138. On July 15, 1995, a group of families of male and female farm workers, made up of around 500 extremely poor families, invaded Santa Elina ranch and set up a camp on part of that property, located in the vicinity of the city of Colorado del Oeste, Corumbiara Municipality, Rondônia State, in the northern part of Brazil.

139. On July 17, 1995, the owner of Santa Elina ranch, Helio Pereira de Moraes, filed a claim for protection of possession [ação de manutenção de posse], and requested eviction of the workers. The next day the judge granted a precautionary measure and ordered their eviction.

140. On July 19, 1995, a court officer, accompanied by a group of military policemen, went to the camp set up by the workers occupying Santa Elina ranch and tried to execute the eviction order. On that occasion, there was a confrontation between the farm workers and the police, which left one victim with bullet wounds, Adão Mateus da Silva, a worker.

141. On July 20, 1995, a judge decided that the military police should have a larger contingent of agents to carry out the precautionary measure for eviction, and added that it should be carried out with moderation and a great deal of caution, so that it would not result in tragedy.

142. Prior to the forced execution of the court order of eviction, there was an attempt to seek a negotiated settlement of the situation, which proved fruitless.

143. On August 8, 1995, the military police went to Santa Elina ranch and set up a base on a soccer field near the camp of the workers and their families.

144. In the early hours of August 9, 1995, at approximately 3:00 a.m., the police began the eviction operation at Santa Elina ranch. That operation was carried out by the military police, wearing masks and with painted faces, who used both their official and personal weapons.

145. The military police were actively assisted by landowners, by armed gunmen hired by the landowners, and by three military policemen who were on vacation but provided their services on a personal basis to the owner of Santa Elina ranch, for the eviction operation.

146. The eviction operation began when the police arrived at the camp at dawn. From the arguments and the evidence of this case, the Commission does not have conclusive evidence that would enable it to determine the precise details of the eviction operation. However, it can be established that the military police mounted a sort of military attack on the camp of the occupying workers at dawn, in which it used tear gas bombs, and deployed and used firearms, and had their faces covered or painted. In addition, they were assisted by armed gunmen hired by landowners in the area.

147. It is further established that some of the workers resisted the eviction, and that some of them even used firearms against the military police.

148. As a result of the initial confrontation between the military police and the farm workers, two policemen--Lieutenant Rubens Fidelis Miranda and Ronaldo de Souza—died, and eleven were wounded by gunfire. On the side of the workers, there were also deaths and dozens of wounded. In view of the fact that there are questions as to the time at which the deaths of the workers occurred, these facts are analyzed on a case by case basis, *infra*.

149. From the facts of the case, the exact duration of the eviction operation is not clear. The attack by the military police began at around 3:00 a.m., and it was at approximately noon on that same day, August 9, 1995, that the military police had the situation entirely under control, with the surviving occupying workers completely immobilized, and with 355 of them detained.

150. It is also apparent that the armed resistance to the military police's eviction operation on the part of some occupying workers had been totally crushed by the military police by about 7:00 a.m. on August 9, 1995, and that from that time on, the military police, aided by the armed gunmen, focused on torturing and assaulting the occupying workers, and on humiliating them and subjecting them to excessive, abusive, and unnecessary use of force.

151. Once the initial confrontation was over, the military police and the armed gunmen took complete control of the situation, with absolute and full domination of all the workers, who were immobilized and under the physical control of the police, either in the area of the camp that had been set up by the workers or at the military police base located on the soccer field.

152. As regards the facts of this case, the civil police of Rondônia State initiated an investigation to determine the criminal liability of the workers for the death of the two policemen who perished during the events. That police investigation, known as No. 098/95, was initiated on August 9, 1995, by the chief of police of Colorado do Oeste, for the purpose of investigating Valtar da Silva and other occupying workers for the alleged crimes of disobedience and resistance, stipulated in Articles 329 and 330 of the Brazilian Criminal Code.

153. However, it was not until August 16, 1995, or in other words seven days after the events, that the military police opened an investigation of the military police who had participated in the operation, for the crimes committed by them against the occupying workers, and it was not until August 30, 1995, almost a month after the events had occurred, that they began their work.

154. There were irregularities in the investigation that hampered clarification of the events and identification of individual liability. The first difficulty had to do with the fact that the military police began the attack at dawn, with painted faces and masks, in violation of domestic legislation. This hampered later efforts to identify the military police. Then, at the site of the events, the military police destroyed the camp and set fire to what remained.

155. Subsequently, during the investigative stage, the persons that were responsible for both investigations, i.e., the civil and the military police investigations alleged that they did not have the necessary resources to conduct all the required technical tests. The comparative ballistics tests could not be fully conducted, because the personal weapons of the military police who participated in the operation and the weapons of the gunmen who participated in the events were not gathered right away. Moreover, the typical bullets and shells were not submitted for all the firearms collected, while some of them were sent in insufficient numbers.

156. During court proceedings, there were statements and evidence against some policemen, but they were either acquitted or never even brought to trial for the deaths of the workers. For instance, despite the fact that comparative ballistics tests indicated that one of the shots that killed the worker José Marcones came from the weapon used by soldier José Emilio da Silva Evangelista, neither he nor the other soldier named Cilas Frauzinho, who admitted to having carried the gun during the operation, were brought to trial.

157. There was never an exhaustive investigation into the manner of death of most of the workers who perished during the events. Not a single authority was investigated in relation to

these events, and neither the landowners nor their employees and gunmen who assisted them in the events were brought to trial. An example of this is the fact that despite well-founded evidence linking him to and making him responsible for the events, the landowner Antenor Duarte was not prosecuted.

158. Once the investigations were concluded, the Public Prosecutor's Office requested the acquittal of many of the police under investigation.

159. The trial on the Corumbiara massacre was held on August 14, 21, 23, 25, 29, and 31 and September 4 and 6, 2000. Only twelve policemen were brought to trial, ten of whom were being tried for the death of workers José Marcondes da Silva, Ercílio Oliveira Campos, and the worker known as "H-5", and three of them were convicted. The military policeman tried for attempted homicide against Moacir Camargo Ferreira was acquitted. Nobody was tried for the deaths of Vanessa dos Santos Silva, Enio Rocha Borges, Odilon Feliciano, Nelci Ferreira, Alcindo Correia da Silva, and Ari Pinheiro dos Santos.

160. Hence as a result of the trial, only one military police officer and two military police soldiers were convicted, all for the death of workers José Marcondes da Silva, Ercílio Oliveira Campos, and the worker identified as "H-5". The persons convicted were Military Police Captain Vitório Regis Mena Mendes, who was sentenced to nineteen and a half years of confinement under a closed regime, the military policeman Daniel da Silva Furtado, who was convicted to sixteen years of confinement under a closed regime, and military policeman Airton Ramos de Moraes, who was convicted to eighteen years of confinement under a closed regime. The three convicted men were given the benefit of remaining free until the judgment became "res judicata." As of this date, the State has not informed the Commission as to the results of the appeals filed against the conviction judgments. Nor has it reported whether the convicted persons are serving their sentences.

161. No military policemen or any other authorities, and none of the landowners involved or their gunmen were ever prosecuted or convicted for the death of the girl, Vanessa dos Santos Silva, or for the death of the other workers who perished during the events.

162. Two workers who were regarded as the leaders of the invasion were convicted for the death of the two policemen that occurred during the confrontation, and for the crimes of cárcere privado, disobedience, and criminal association.

C. Legal analysis

163. On the basis of the facts established above, and the additional considerations set forth in this section, the Commission will determine the human rights violations alleged in this case.

1. Right to life

164. Article 4 of the American Convention on Human Rights establishes that "every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

165. The right to life is a fundamental human right, the basis for the exercise of the other human rights. The Inter-American Court of Human Rights has determined that enjoyment of the right to life

is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning. Owing to the fundamental nature of the right to life, restrictive approaches to it are inadmissible. In essence, the fundamental right to life includes not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.[FN41]

[FN41] Inter-American Court, Case of Villagrán Morales et al (Case of the “Street Children”), judgment of November 19, 1999, para. 144.

166. Article 1.1 of the American Convention establishes general obligations for States in the area of human rights. The first of them is to respect the rights recognized in the Convention, and the second is to guarantee the exercise of those rights. With regard to the right to life, the State’s obligation to “respect” that right implies, among other things, that the State must refrain from depriving persons of their life through its agents. The State’s obligation to “guarantee” the human right to life implies that it must prevent violations of that right, investigate violations of the right to life, punish the perpetrators, and make reparations to the victim’s next of kin, when the perpetrators are State agents.

167. Thus, the State not only incurs international responsibility for violation of the right to life whenever its agents deprive a person of that right,[FN42] but it also incurs responsibility even if it has not directly violated that right, but in the event that it fails to ensure that an independent, autonomous, and impartial organ conducts a serious investigation of the violation of the right to life committed either by its agents or by private persons.

[FN42] This is true even though there are certain exceptions, such as, in specific circumstances, the application of the death penalty.

168. The Commission will now analyze the facts specifically related to the deaths of the occupying workers reported in this case, and issue its opinion on violation of the right to life of which the State of Brazil is accused.

169. First, it is important to point out that the forced eviction of an invaded ranch, executed with the assistance of the forces of law and order and the rational use of force, in compliance with a court order, is not per se contrary to the American Convention on Human Rights, which includes the right to property as a protected right. The State has the duty and obligation to

enforce the Constitution, the law, and court judgments. However, State agents are not permitted to use unlimited discretion in performing their functions to enforce the law.

170. The jurisprudence of the Inter-American Court of Human Rights makes it clear that State agents have the right and the responsibility to enforce the law and to maintain order, even, in some cases, when death or bodily harm may result.[FN43] However, the Court has clearly held that the force used must not be excessive.[FN44] Whenever excessive force is used, the right to humane treatment is not respected, and any resulting deprivation of life is arbitrary.[FN45] Consequently, to determine the responsibility incurred by the State of Brazil in this case, the Commission must determine, on the basis of the allegations and evidence of the parties, whether the police agents who went to Santa Elina ranch to carry out the forced eviction ordered by the court used excessive force, which would give rise to violations of the right to life recognized in the American Convention, for noncompliance with the explicit obligation to respect the right to life. The Commission will also determine whether Brazil was in breach of its aforesaid obligation to guarantee the human right to life, for failing to duly investigate the deaths of the occupying workers.

[FN43]See: Inter-American Court of Human Rights, Case of Neira Alegria et al, Judgment of July 19, 1995, para. 61; Case of Velásquez Rodríguez, Judgment of July 29, 1988, paragraphs 54, 74. Unlike the European Convention on Human Rights, the American Convention does not specifically permit the use of necessary force, even if it should result in deaths, to control crime and violence. See the European Convention on Human Rights, Article 2. Notwithstanding, jurisprudence of the American Convention appears to establish a similar parameter to the one appearing in the European Convention. State agents are obligated to respect the life and the personal integrity of persons and not to deprive anyone arbitrarily of his life. However, they may carry out acts of force, even acts that deprive one of his life or cause bodily harm, in order to achieve legitimate objectives, provided the force used is not excessive.

[FN44] See: Inter-American Court, Neira Alegría et al, Judgment of January 19, 1995, paragraphs 74-75.

[FN45] See, e.g., Report on the Human Rights Situation in Chile, OAS/Ser.L/V/11.66, doc. 17, 27 September 1985, pp. 67-68 (the Commission terms as “extrajudicial” deaths by execution caused by the disproportionate use of force by official agents to put down civil disturbances).

171. With regard to the State’s international responsibility for violating its obligation to respect the right to life of the occupying workers, the Commission should point out that in accordance with international guidelines referring to the use of force by law enforcement agents in the performance of their functions, use of force must be necessary and in proportion to the requirements of the situation and the objective sought.[FN46]

[FN46] See Code of Conduct for Law Enforcement Officers, adopted by the United Nations General Assembly, Resolution 34/169, of December 17, 1979, Article 3 [hereinafter “Code of Conduct”]; Basic Principles on the Use of Force and Firearms by Law Enforcement Officers, adopted by the Eighth Congress of the United Nations for Crime Prevention and Treatment of

Criminals, Havana, Cuba, August 27 to September 7, 1990, Articles 4-5 [hereinafter "Basic Principles"].

172. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that:

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment (...).

173. The United Nations Code of Conduct for Law Enforcement Officials specifically establishes that "the use of firearms is considered an extreme measure,"[FN47] while Article 9 of the Basic Principles states that they must not use firearms against persons, unless their lives are in danger:

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.[FN48]

[FN47] Code of Conduct, Article 3.

[FN48] Basic Principles, Article 9.

174. The legitimate use of force implies, among other factors, that it be both necessary and proportionate to the situation, or in other words, that it be exercised with moderation and in proportion to the legitimate objective pursued, and in an effort to reduce to a minimum any personal injury and loss of human lives.

175. When the use of force has caused injuries or death, the State, pursuant to its obligation to guarantee the human rights explained above, has the international obligation to determine, through independent and impartial judicial organs, whether the force used was excessive, and, in that case, to punish the material and intellectual perpetrators, and to indemnify the victims or their next of kin. On this point, Article 1(1) of the American Convention establishes that "the States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion,

political or other opinion, national or social origin, economic status, birth, or any other social condition.” The Inter-American Court has explained that this obligation to guarantee the free and full exercise of human rights referred to in the Article transcribed above:

implies the duty of 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.

Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State (...).[FN49]

[FN49] Inter-American Court, Case of Velázquez Rodríguez, Judgment of July 29, 1988, paragraphs 166 and 172.

176. The European Court of Human Rights when considering Article 2 of the European Convention on Human Rights, concerning the right to life, pointed out, in considerations that the Commission shares and believes that can contribute in the conceptual delimitation of the reach of the obligations that the joint reading of Articles 4 and 1(1) of the American Convention establishes for the Member States, that

the obligation to protect life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention “to secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force.[FN50]

[FN50] European Court of Human Rights, Case Timurtas v. Turkey. Judgment of 13 June 2000, para 87. See, *mutatis mutandis*, McCann and Others v. the United Kingdom, judgment of 27 September 1995, para. 161, and Kaya v. Turkey, judgment of 19 February 1998, para 105.

177. Therefore, when the use of force has caused death, or injuries, the State has the international obligation to determine, through independent and impartial judicial organs, if the used force was excessive and, if that is the case, to sanction the material and intellectual responsables, and also pay indemnization to the victims or their family. In case an investigation in such terms is not accomplished, the State incurs in international responsibility concerning its obligation to ensure the human rights recognised in the American Convention.

178. On the basis of these explanations, the Commission observes that in the events surrounding the eviction at Santa Elina ranch with which this case is concerned, from the allegations and evidence in the case files, two factual situations can be determined: the first comprises the time running from the arrival of the police forces at the camp set up by the workers on that property, from approximately 3:00 a.m. on August 9, 1995, to the time that the police forces were in complete control of the situation, at approximately 7:00 a.m. on that same day; and, the second situation comprises the events that occurred after the time that the police gained absolute control over the situation.

179. With regard to the first stage, the Commission finds that there is no record in the judicial files of the exact number of police officers that took part in the operation nor the number of workers that resisted the eviction with arms. Neither are there records of the use of illegal guns by the police. The fact that it was initiated at dawn, in violation of the provisions of Brazilian legislation, is not enough for the IACHR to determine that the use of force to enforce judicial order of eviction was unnecessary or disproportionate.

180. The Commission, based on the allegations and evidence in the case file, considers that during the first stage of the conflict, members of the police forces might have had well-founded reasons to believe that their lives were in danger, due to some of the workers' armed resistance facing the compulsive eviction and that, in principle, the lethal force used during such stage could, in certain circumstances, have been proportional to the existing danger, given the circumstances.

181. On the other hand, and regarding the second stage of the conflict, i.e. when the police forces already had the situation under absolute control, the Commission must point out that the State had, at this moment, the supreme duty to respect life, physical integrity and other human rights of all workers and their families and there was no more circumstance that could legitimize the use of force.

182. The Commission proceeds to analyse the specific facts related to the deaths of the occupying workers denounced in the present case and to comment on the violation of the right to life attributed to the Brazilian State. In this respect the Commission underlines that the lack of a due investigation of the facts by the State, besides the lack of response of the State to the merits of the facts alleged by the petitioners in the present case and the State omission to appoint evidence against the facts alleged by the petitioners create a grave presumption against the State in respect to the death and injuries of the workers, as the following case by case analysis will show.

Violations of the obligation to respect the right to life

183. The Commission proceeds to analyse the international responsibility of the Brazilian State regarding the obligation to respect the right to life. As explained above, such obligation implies that the State must abstain from taking the lives of people through its agents. In the case under study, such obligation specifically implied that during the armed conflict between workers and military police officers, the Brazilian State should try to avoid the death of the workers, except if the use of force was legitimate, proportional and necessary. Thus, the death of workers

produced by the illegitimate, disproportional and unnecessary use of force create international responsibility to the State for the violation of its obligation to respect the right to life, recognised in Article 4 of the American Convention.

184. Accordingly, the death of workers which happened after the cease fire and when the workers had already been subjugated by the military police, constitute extrajudicial executions that also generate international responsibility for the Brazilian State for the violation of the obligation to respect the right to life, recognised in Article 4 of the American Convention.

185. Alcindo Correia da Silva. The Commission considers it to be an established fact that Mr. Correia da Silva was killed by a shot fired by a military policeman at close range, which hit him near his ear and continued on a downward trajectory to the hip. Although the bullet was taken and sent for testing, the firearm from which it was shot was not identified.

186. According to consistent testimony given during the domestic proceedings by the children of Alcindo Correia da Silva, Vilmar Caetano, 14 years old, and Valdir Caetano, 11 years old, and by his niece, Cenira Lopes Correa, the Commission regards as proven that the death of Mr. Correia da Silva occurred when he was either lying down or on his knees, at the moment when he raised his head and was shot near the ear by a military policeman, which caused his death.

187. The Commission considers, in the context of the circumstances of the case, that these acts indicate that Mr. Correia da Silva either died as a result of the illegitimate and lethal use of force, or was extrajudicially executed. In either of these hypotheses, the State of Brazil incurred international responsibility for his death.

188. The precise circumstances surrounding the death of Mr. Correia da Silva were not fully specified in this case. However, the Commission notes, the fact that Mr. Correia da Silva was either lying on the ground or on his knees, with a military policeman very close by, indicates that Mr. Correia probably did not represent a danger for the police that would justify the use of lethal force against him, even if the act occurred during crossfire between the police and the occupying workers.

189. The Commission recognizes that even though Mr. Correia da Silva was, in principle under the control of the policeman next to him, the policeman might have felt that he was in danger from the movement made by Mr. Correia, if the conflict was still going on. However, there was no information in the allegations and evidence of the parties that would lead the Commission to conclude that this was a death resulting from the legitimate and proportionate use of force.

190. Based on the evidence in the case file and on the possibility of presuming as true any facts not contested by the State, the Commission concludes that Alcindo Correia da Silva was killed illegitimately by agents of the State of Brazil, in violation of Brazil's obligation to respect the right to life established in Article 4 of the Inter-American Convention of Human Rights.

191. Odilon Feliciano. The Commission considers it an established fact that he was hit by a shot in the back of the head, and died subsequently in the hospital at Colorado do Oeste. As

regards the circumstances of his death, based on the allegations and evidence of the parties, including the forensic examination, the Commission concludes that Odilon Feliciano was killed by a shot in the neck, fired at close range, by a military policeman.

192. The Commission considers that these facts, in the context of the circumstances of the case, indicate that Mr. Feliciano was killed by the lethal, illegitimate use of force, or extrajudicially executed. In either case, the State of Brazil incurs international liability as a result of his death.

193. The precise circumstances surrounding the death of Odilon Feliciano are not fully specified in this case either. However, the fact that Mr. Feliciano received a shot in the neck from behind, at close range, indicates that Mr. Feliciano did not represent a danger to the policeman that might justify the lethal force used against him, even if it had occurred during the crossfire between the police and the occupying workers.

194. Based on the evidence in the case files and on the possibility of presuming as true any facts not contested by the State, the Commission concludes that Odilon Feliciano was killed illegitimately by agents of the State of Brazil, in violation of Brazil's obligation to respect the right to life established in Article 4 of the Inter-American Convention of Human Rights.

195. Nelci Ferreira. The Commission regards as an established fact that he died as the result of two shots to the back of the head, as he was helping a wounded companion, on the bank of a stream. According to the forensic examination of August 10, 1995, the two bullets were taken out and sent for testing. However, there is no indication that the weapons from which the shots were fired were identified. According to testimony by Ana Paula Alves, the death of Nelci Ferreira occurred when he was trying to assist and move the other worker to another place. Ms. Alves took Nelci Ferreira inside the pharmacy, where she could see that the police were violently beating various wounded people, including Nelci Ferreira himself, who received a cut on the left brow.

196. The allegations and accompanying evidence produce doubts as to the circumstances of the death of Nelci Ferreira. However, the forensic examination indicated that "the injuries are compatible with shots from a firearm at close range." This, together with the strong presumption against the State based on the illegitimacy of the eviction operation, and on its tacit admission of the facts alleged by the petitioners, as a result of the State's failure to contest them, lead the Commission to conclude that Nelci Ferreira was illegitimately killed by agents of the State of Brazil, in violation of Brazil's obligation to respect the right to life established in Article 4 of the Inter-American Convention on Human Rights.

197. Ari Pinheiro dos Santos. From the allegations and evidence in the case records, the Commission concludes that Mr. Pinheiro Dos Santos was killed by military policemen, who shot him eleven times, at least five of which were at close range, destroying his face and his skull. There is proof that at least one of the shots was fired by a military police soldier.

198. The precise circumstances surrounding the death of Mr. Pinheiro Dos Santos were not determined with absolute certainty in this case. The victim received eleven shots, of which at

least five were fired at close range. This, together with the strong presumption referred to earlier that the eviction operation was carried out illegitimately, and the tacit admission by the State of the facts alleged by the petitioners, as a result of its failure to contest them, all lead the Commission to conclude that Mr. Ari Pinheiro dos Santos was murdered illegitimately by Brazilian State agents, in violation of Brazil's obligation to respect the right to life recognized in Article 4 of the Inter-American Convention on Human Rights.

199. Sergio Rodrigues Gomes. From the allegations and evidence in the case files, the Commission considers it to be an established fact that Rodrigues Gomes was detained together with other workers and transferred to the soccer field, where the military police had set up a base. Subsequently, he was taken alive from that base to an unknown place in a Toyota van. His body appeared days later, on August 24, 1995, floating in the Tanuro River. The forensic examiner's opinion indicated that there were three shots in the head and multiple fractures of the skull and the face.

200. According to consistent testimony by various persons, including statements given during domestic proceedings by witnesses Marcelo Girelli, Arnaldo Carlos Teco da Silva, Osias Labajo Garate, and José Carlos Moreira, Sergio Rodrigues Gomes was beaten and injured, after the military police dominated the situation, and was among the workers who were detained by the military police on the soccer field of Santa Elina ranch.

201. Although there is no evidence as to the time at which Sergio Rodrigues Gomes was murdered, the Commission considers that the fact that he was in the custody of the military police, and in the presence of various witnesses was taken from the place, only to appear dead from bullet wounds, is sufficient to determine the international responsibility of the State of Brazil for violation of the right to life of Sergio Rodrigues Gomes.

202. The Commission concludes that the agents of the State of Brazil who detained Sergio Rodrigues Gomes, instead of guaranteeing his right to life, proceeded to murder him and throw his body in the river. The IACHR thus concludes that Sergio Rodriguez Gomes was extrajudicially executed by State agents, thereby generating international liability for the State of Brazil, for failure to comply with its obligation to respect the right to life recognized in Article 4 of the American Convention on Human Rights.

Violation to the obligation to ensure the rights to life

203. The Commission proceeds with the analysis of the international responsibility of the Brazilian State in regard to the obligation to ensure the right to life. As explained above, such State obligation implies that the State is obliged to prevent violations to the referred right, to investigate the violations to the right to life, to sanction the responsables and to give reparations to the families of the victims, when the responsables were State agents.

204. Vanessa dos Santos Silva. The Commission considers as proven that the girl, Vanessa dos Santos Silva, 7 years of age, died at Santa Elina ranch, at a time just after the conflict began, while she was fleeing the camp and the exchange of gunfire with her mother and two brothers. At that moment, Vanessa was the victim of a shot fired into her back, and she died on the spot.[FN51] The bullet that killed Vanessa was not found, thus preventing a ballistics analysis

and comparison with the seized weapons, and during the domestic proceedings individual responsibility for her death was not determined.

[FN51] See the forensic examination and the statement by the girl's mother, Maria dos Santos Silva, made during the domestic proceedings on September 14, 1995, according to which "the witness was at the camp (...) together with her husband (...) and two sons (...) at around 3:30 a.m., when the military police arrived and began throwing tear gas bombs inside the camp (...) and in an attempt to escape to the hill together with her two children, she began fleeing to the hill, when Vanessa, her daughter, screamed because a bullet hit her; Vanessa died 10 minutes later (...)"

205. Upon analyzing the general circumstances of the case and the allegations and evidence of the parties, the Commission does not have enough information to conclude that the State of Brazil was liable for violation of its obligation to respect the right to life, in connection with the death of the girl Vanessa dos Santos. This is because her death occurred during the initial stage of the aforesaid conflict, during an exchange of gunfire at dawn, between the military police and some of the workers. In these circumstances, the police, making legitimate use of force, fired at the workers, and the workers fired at the police. In the midst of the shooting and the confusion, a bullet unfortunately hit the girl, Vanessa, but it was not determined whether the weapon used to shoot her was fired by a government agent, or where the bullet came from, or any other circumstance that would enable the Commission to establish accurately the circumstances of her death.

206. The Commission considers it important to point out that the United Nations Code of Conduct for Law Enforcement Officers specifically states that special efforts must be made to avoid the use of firearms against children.[FN52] In the case records, the police forces acknowledged that there were girls and boys among the occupying workers, yet there is no evidence that they used any special measures to avoid firing against them. This circumstance, however, is not sufficient to determine whether it was a State agent who killed the girl, Vanessa.

[FN52] See Code of Conduct, Article 3, com.c.

207. The Commission notes, nonetheless, that with the death of the girl, Vanessa dos Santos Silva, the State of Brazil violated its obligation to ensure the human right to life, since a serious investigation by an autonomous, independent, and impartial organ into the circumstances of her death was not conducted. As explained below, the investigation conducted by the military police did not fulfill these requirements per se. Moreover, as indicated earlier, the investigation into the events of this case was fraught with other important irregularities that took away any legitimacy it may have had.

208. Therefore, the Commission is of the opinion that the State of Brazil failed to comply with its international obligation to investigate and punish the perpetrators of the death of the girl,

Vanessa dos Santos Silva, and thereby violated its obligation to guarantee the right to life established in Article 4 of the American Convention, interpreted together with Article 1(1) of that treaty.

209. Enio Rocha Borges. The Commission regards as an established fact that this worker died as a result of the initial confrontation, from shots by firearms in circumstances that were not clear. He was taken, still alive, to the hospital, where he died that same day, August 9, 1995. The forensic examination conducted did not indicate either the characteristics of the injuries that caused his death or the trajectory of the bullets.

210. However, the Commission, on the basis of the available evidence and allegations, does not find that the aforesaid facts necessarily show that Enio Rocha Borges died by the lethal and illegitimate use of force, or that he was extrajudicially executed. Although Tereza Pereira dos Santos, a witness in the domestic proceedings, stated that she was there when her companion was shot by the police, the specific circumstances surrounding the death of Enio Rocha Borges were not determined in this case.

211. The Commission notes, however, that, with respect to the death of Enio Rocha Borges, the State of Brazil violated its obligation to ensure the human right to life, since it failed to conduct a serious investigation, by an autonomous, independent, and impartial organ, into the circumstances of his death. As explained below, the investigation carried out by the military police did not meet these requirements per se. Moreover, as stated previously, the investigation into the events of this case was fraught by major irregularities and defects that take away its legitimacy.

212. Consequently, the Commission is of the opinion that the State of Brazil failed to comply with its international obligation to investigate and punish the persons responsible for the death of Enio Rocha Borges, and that it thereby violated its obligation to ensure the right to life, established in Article 4 of the American Convention, interpreted in accordance with Article 1(1) of that instrument.

213. Jesus Ribeiro de Souza. The Commission regards as an established fact that Mr. Jesus Ribeiro was detained with the other workers, and later submitted to a forensic examination as there was no visible injury ascertained at that time. Mr. Ribeiro de Souza contends that he suffered from a great deal of pain after the conflict, and he died about four months later.

214. In this case, the Commission does not consider as proven that this worker died as a result of the events of this case. Even though his wife declared on the death certificate that the cause of death was the conflict with the military police, and his next of kin asserted that he died from the consequences of the beating he received in the camp, based on the allegations and available evidence, the Commission does not find that the aforesaid facts necessarily prove that Jesus Ribeiro de Souza died as a result of the injuries he received during the events under consideration.

215. Nevertheless, the Commission notes that, with respect to the death of Jesus Ribeiro de Souza, the State of Brazil also violated its obligation to ensure the human right to life, since it

failed to guarantee that a serious investigation was conducted by an autonomous, independent, and impartial organ, into the circumstances of his death. As explained earlier, the investigation carried out by the military police did not per se fulfill these requirements. In addition, as stated below, the investigation into the facts of this case was fraught by important irregularities that deprived it of any legitimacy.

216. Consequently, the Commission is of the opinion that the State of Brazil failed to comply with its international obligation to investigate and punish the persons responsible for the death of Jesus Ribeiro de Souza, and thereby violated its obligation to ensure the right to life established in Article 4 of the American Convention, interpreted in accordance with Article 1(1) of that instrument.

217. José Marcondes da Silva, Ercílio Oliveira Campos, and H5 (unidentified worker). The Commission regards as an established fact that these three workers mounted active, armed resistance to the military police, and that they were located at a high place, from where they were firing at the police. It is also evident from the case documents that the police, using women as human shields, managed to get to the place from where these workers were shooting, whereupon the workers surrendered and were under the absolute control of the police.

218. The Commission also regards as an established fact that once the police forced these three workers to surrender, they proceeded to summarily execute them, by shooting them many times in various parts of their bodies. During the domestic proceedings, it was determined that some of the bullets found in the body of José Marcondes da Silva were shot by weapons belonging to the military police.

219. With regard to the death of these three workers, the Commission would note that during the domestic proceedings, one officer and two soldiers were convicted of these deaths. Therefore, the Commission holds that the State partially complied with its international obligation to investigate and punish the perpetrators of these three summary executions. However, it points out that this does not absolve the State of Brazil for violation of its obligation to ensure the right to life established in Article 4 of the American Convention, interpreted in accordance with Article 1(1) of that instrument, since the families of those workers were not indemnified for the human rights violations committed by its agents.

220. Oliveira Ignácio Dutra. The Commission regards as an established fact that Oliveira Ignácio Dutra, 71 years of age, was beaten during the events, and died months later, although there was no investigation into the cause of his death.

221. In his death certificate, it states that he died from a “cerebral vascular accident”. The Commission does not consider that it was proven the existence of a causal effect between the fact of the present case and the death of Oliveira Ignácio Dutra, that would lead to determine the responsibility of the Brazilian State of a violation of its obligation to investigate the circumstances in which such death was produced.

222. The Commission concludes that the international responsibility of the Brazilian State for the alleged violation of the right to life of Oliveira Ignácio Dutra is not established.

223. On these grounds, the Commission determines that as a result of the events that occurred at Santa Elina ranch on August 9, 1995, the State of Brazil violated Article 4 of the American Convention on Human Rights, to the detriment of the following victims: Alcindo Correia da Silva, Odilon Feliciano, Sérgio Rodrigues Gomes, Nelci Ferreira, Ari Pinheiro dos Santos, Vanessa dos Santos Silva, Enio Rocha Borges, Jesus Ribeiro de Souza, José Marcondes da Silva, Ercílio Oliveira Campos and the unidentified worker known as “H-5”.

2. Right to Humane Treatment (Article 5 of the American Convention)

224. In order to determine the international responsibility of the State of Brazil for violation of the right to humane treatment in the case in point, the Commission would like to point out that, as explained earlier, state agents may in certain circumstances make legitimate use of force to enforce the law, provided that such legitimate use is necessary and in proportion to the circumstances. This could mean that in extreme cases, State agents could act to the detriment of personal integrity, in which case, as stated earlier, they must endeavor to ensure that the damage caused is as little as possible.

225. In the case in point, the Commission is aware that at the start of the conflict, when there was an exchange of gunfire between the military police and the workers, it might have been necessary to bring the workers under control by force, and possibly even to cause harm to their personal integrity.

226. However, in the present case, there are well-founded allegations to the effect that the police used excessive, unnecessary, and disproportionate force against the workers, thereby injuring over fifty of them. There is also evidence that after bringing the situation entirely under control, the State agents submitted the workers to beatings, humiliation, and inhuman and degrading treatment.

227. In addition, it is apparent in this case that the State of Brazil neither investigated the injuries inflicted on the workers, nor punished the guilty parties. Consequently, the Commission has no way of determining whether some of the injuries inflicted on the workers were produced as a result of the legitimate, necessary, and proportionate use of force or not.

228. In view of this, and of the allegations and evidence of the parties, the fact that the State of Brazil did not contest the facts, and the absence of a judicial investigation into the injuries, torture, and abusive treatment inflicted on the workers, the Commission concludes that the State of Brazil used excessive and disproportionate force against the workers during the first stage of the conflict, and that it then tortured the workers once it had gained full control of the situation, causing damage of different types to their personal integrity.

229. Further to the aforesaid general finding, the Commission will now give its views on the specific violations of the right to humane treatment reported in the present case.

230. Darci Nunes do Nascimento. The Commission considers as established that he was shot behind the ear when he was immobilized, lying face down on the ground, next to other workers.

231. Antonio Ferreira da Silva. The Commission considers as established that after being wounded by three shots, he was beaten until he lost consciousness by the military police, and was not taken to the hospital until the following day, August 10, 1995.

232. Alzira Augusto Monteiro. The Commission considers as an established fact that she was beaten by the military police, that she was elbowed in the mouth, breaking her teeth, and that she was forced to walk on top of the persons who had been brought under control and were lying on the ground.

233. José Carlos Moreira. The Commission considers as an established fact that he was beaten by the military police, and that one of them perforated his foot with a nail.

234. Claudionor Paula. The Commission considers as an established fact that, after he was detained, he was forced to lie on the ground face down, while the military police jumped and walked back and forth on his back.

235. Ana Paula Alves. The Commission considers as an established fact that a military policeman struck her on the head two times with the butt of his pistol.

236. Jair Nunes de Morais. The Commission considers as an established fact that he was beaten by the military police, who repeatedly kicked him and hit him on the head with a club, leaving him semi-conscious for several hours.

237. Edimar Silício Dias. The Commission considers as an established fact that the military police hit him at the base of the ear, leaving him stunned, and then beat him hard, kicking him and hitting him with their clubs and truncheons and fists, until he lost consciousness.

238. Eilvo Hilário Schneider. The Commission considers as an established fact that he was violently beaten at the time he was detained, until he lost consciousness. He was later beaten again at the police station, resulting in a fractured finger, a dislocated rib, and various head injuries.[FN53]

[FN53] The petitioners appended a statement by this alleged victim made on September 17, 1995.

239. Arivaldo Neckel de Almeida. The Commission considers as an established fact that after receiving a surface wound on the head and being detained, the military police hit him right on top of the previous wound, which caused major hemorrhaging. After he had fallen down bleeding, he was attacked and kicked and beaten with clubs. He was then taken to the back the police station, where they squeezed his right hand in the door of a car, twisted a finger of his right hand, and broke his thumb by pulling it back. The kicked him in the genitals and in the back, and kicked him and hit him violently in both ears at the same time, which caused nasal hemorrhaging. He was later taken to the gymnasium, where he was again beaten violently by the

military police, to the point that his wound, which had stopped bleeding, was reopened by a hard blow to the head, causing new, intensive hemorrhaging, after which a policeman requested a vehicle and took him to the hospital, where the wound was finally stitched up.[FN54]

[FN54] The petitioners appended a statement by this alleged victim made on September 17, 1995.

240. Zildo Gomes Cunha. The Commission considers as an established that he was kicked in the face by a military policeman, and was hit numerous times on the back and the head.[FN55]

[FN55] The petitioners appended a statement by this alleged victim made on November 22, 1995.

241. Valtair Alves da Silva. The Commission considers as an established fact that he was beaten on the back and thrown to the ground, where he was violently beaten by the military police, until he lost consciousness.

242. Geraldo Francisco Clara. The Commission considers as an established fact that he was struck by a club and repeatedly kicked in the ribs.

243. Claudemir Pereira. The Commission considers as an established fact that he was severely beaten by the military police, and that the injuries they inflicted on him were recorded in the forensic report.

244. Paulo Correia da Silva. The Commission considers as an established fact that he was forced to eat pieces of the brain of one of his companions, whose skull had been destroyed by firing at it at close range.

245. Moacir Camargo Ferreira. The Commission considers as an established fact that he was hit by machinegun fire from a military policeman, while he was in a truck with other detained workers, who were to be transferred to Colorado del Oeste.

246. Agostinho Feliciano Neto. The Commission considers as an established fact that upon leaving his hut on the day of the events, he was shot in the chest and in the right foot. However, in this specific situation, the Commission does not have sufficient evidence to determine the international responsibility of the State of Brazil in relation to its obligation to respect the right to humane treatment, since it has not been established whether these acts occurred at the time of the confrontation, during the crossfire at the beginning, or afterwards, or where the shots came from, or any other circumstances surrounding this specific incident.

247. Nevertheless, the Commission considers that the State of Brazil failed to comply with its international obligation to investigate and punish the parties responsible for the injuries to

Agostinho Feliciano Neto, and that it thereby violated its obligation to guarantee the right to humane treatment recognized in Article 4 of the American Convention, interpreted in accordance with Article 1(1) of that instrument.

248. For the aforesaid reasons, the Commission determines with respect to the events that occurred at Santa Elina ranch on August 9, 1995, that the State of Brazil violated Article 5 of the American Convention on Human Rights, to the detriment of the workers occupying that ranch, by using excessive and disproportionate force against the workers during the initial stage of the conflict, and that it tortured the workers and subjected them to cruel, inhuman and degrading treatment after it had gained control of the situation, and that it failed to duly investigate these events. The specific victims covered by this finding are as follows: Darci Nunes do Nascimento, Antonio Ferreira da Silva, Alzira Augusto Monteiro, José Carlos Moreira, Claudionor Paula, Ana Paula Alves, Jair Nunes de Moraes, Edimar Silfrio Dias, Eilvo Hilário Schneider, Arivaldo Neckel de Almeida, Zildo Gomes Cunha, Valtair Alves da Silva, Geraldo Francisco Clara, Claudemir Pereira, Paulo Correia da Silva, Moacir Camargo Ferreira, and Agostinho Feliciano Neto.

3. Obligation to investigate, right to effective recourse, and right to a fair trial (Articles 1.1, 25, and 8 of the American Convention, and Articles 1, 6, and 8 of the Convention to Prevent and Punish Torture)

249. Article 1(1) of the American Convention establishes that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of these rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

250. Article 25 of the American Convention in turn establishes that:

1. 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.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

251. In Article 8, the Convention stipulates that:

1. 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.

252. The States Parties to the inter-American system of human rights have the obligation to investigate and punish the persons responsible for human rights violations, and to compensate the victims of such violations, or their next of kin. Article 1 of the American Convention establishes the obligation of the State to guarantee to all persons under its jurisdiction the free and full exercise of the rights and freedoms recognized in that Convention. The Inter-American Court of Human Rights has explained that as a result of that obligation, States are required to “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.”[FN56] Along the same lines, the Honorable Court has stated that “it is clear from Article 1.1 that the State is obliged to investigate and punish any violation of the rights embodied in the Convention in order to guarantee such rights”[FN57]

[FN56] Inter-American Court, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para.166.

[FN57] Inter-American Court, Case of Villagrán Morales et al (Case of the “Street Children”), Judgment of November 19, 1999, para. 225.

253. In reference to the provisions of the Convention transcribed above, the Inter-American Court of Human Rights has also explained that:

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. As this Court has ruled, Article 25 “is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention” ... That article is closely linked to Article 8(1), which 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, for the determination of his rights, whatever their nature.

Consequently, it is the duty of the State to investigate human rights violations, prosecute those responsible and avoid impunity. The Court has defined impunity as the failure to investigate, prosecute, take into custody, try and convict those responsible for violations of rights protected by the American Convention and has further stated that “the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenseless of victims and their relatives.”[FN58]

[FN58] Inter-American Court, Case of Loayza Tamayo, Judgment of November 27, 1998, paras.169 and 170.

254. The state obligation to investigate and punish human rights violations must be seriously undertaken by states. The Inter-American Court has had the following to say in this regard:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends 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. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane. [FN59]

[FN59] Inter-American Court, Velásquez Rodríguez Case, ob. cit. para. 177.

255. The Inter-American Commission has also stated the following on the obligation of States to conduct a serious investigation:

[T]he fact that no one has been convicted in the case or that, despite the efforts made, it was impossible to establish the facts does not constitute a failure to fulfill the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.[FN60]

[FN60] IACHR, 1997 Annual Report, Report N° 55/97, Case N° 11,137 (Juan Carlos Abella and others), Argentina, para. 412. On this same point, also see: IACHR 1997 Annual Report, Report N° 52/97, Case N° 11,218 (Arges Sequeira Mangas), Nicaragua, paras. 96 and 97.

256. This obligation to investigate and punish any act that involves a violation of the rights recognized by the Convention requires punishment not only of the material authors of the act violating the human rights, but also of the intellectual authors of those acts.[FN61]

[FN61] The Inter-American Court has declared, for instance, that “The American Convention guarantees that all persons have access to justice to ensure the effective practice of their rights, and the States Parties have the duty to prevent, investigate, identify, and punish the intellectual authors and accomplices of human rights violations.” Inter-American Court of Human Rights, Case of the Constitutional Court, Judgment of September 29, 1999, Series C, No. 71, para. 123.

Also see Inter-American Court, Blake Case, Reparations, Judgment of January 22, 1999, Series C, No. 48, para. 65.

257. The State incurs international responsibility when its judicial organs fail to conduct a serious investigation and to punish, if appropriate, the material and intellectual authors of human rights violations.

258. The Inter-American Convention to Prevent and Punish Torture, which entered into force on February 28, 1987, and was ratified by Brazil on July 20, 1989, includes a series of specific provisions regarding the obligation of States to investigate acts of torture,[FN62] in the following terms:

Article 1

The States Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 6

In accordance with the terms of Article 1, the States parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-founded reason to believe that an act of torture has been committed within their jurisdiction, the States parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

[FN62] Article 2 of that Convention states that “for the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.”

259. Although in the admissibility report on this case, there was no decision as to possible violations of the Inter-American Convention to Prevent and Punish Torture, the Commission will determine, based on the principle of *iura novit curia*, whether the State of Brazil has committed violations of that Convention with respect to the events of this case.

260. For the purposes of determining violations of the obligation to investigate of which Brazil is accused in this case, the Commission notes that the State of Brazil initiated two investigations into the events that occurred at Santa Elina ranch on August 9, 1995. One was opened by the Civil Police of Rondônia to investigate the workers, and another was conducted by the military police, to investigate the military police action in relation to those same events.

261. A key characteristic of a serious investigation is that it be conducted by an independent, autonomous entity. The conventional basis for that is found by reading together Articles 1.1, 25 and 8 of the American Convention. It is Article 8 that refers to the competence, independence, and impartiality of courts as a fundamental element of due process.

262. In this regard, the Commission considers that the military police does not have the independence and autonomy required to investigate in an impartial manner the human rights violations presumably committed by the military police. The investigation of the alleged human rights violations by the military police thus entails a violation *per se* of the American Convention.

263. The IACHR has stated that “the problem of impunity is aggravated by the fact that most cases involving violations of human rights by members of the state’s forces of law and order are processed by the military criminal justice system.”[FN63] It has “repeatedly and consistently maintained that the military jurisdiction does not offer the guarantees of independence and impartiality required to try cases involving punishment of members of the military, and therefore impunity is ensured.”[FN64]

[FN63] IACHR, Second Report on the Human Rights Situation in Peru, June 2000, Chap. II, para. 209.

[FN64] IACHR, Third Report on Colombia, *ob. cit.*, paras. 17 ff.

264. The Commission has also explained that the problem of impunity in the military criminal courts is not limited solely to acquittal of the accused, but that, “the investigation of cases of

human rights violations by the military courts entails problems of access to effective and impartial judicial recourse.”[FN65] The Commission has further stated that:

The problem of impunity in the military justice system is not tied only to the acquittal of defendants. Even before the final decision stage, the criminal investigations carried out in the military justice system impede access to an effective and impartial judicial remedy. When the military justice system conducts the investigation of a case, the possibility of an objective and independent investigation by judicial authorities which do not form part of the military hierarchy is precluded. Investigations into the conduct of members of the State's security forces carried out by other members of those same security forces generally serve to conceal the truth rather than to reveal it. Thus, when an investigation is initiated in the military justice system, a conviction will probably be impossible even if the case is later transferred to the civil justice system. The military authorities will probably not have gathered the necessary evidence in an effective and timely manner. In those cases which remain in the military justice system, the investigation will frequently be conducted in such a manner as to prevent the case from reaching the final decision stage.[FN66]

The military criminal justice system has certain peculiar characteristics that impede access to an effective and impartial remedy in this jurisdiction. One of these is that the military jurisdiction cannot be considered a real judicial system, as it is not part of the Judicial branch, but is organized instead under the Executive. Another aspect is that the judges in the military judicial system are generally active-duty members of the Army, which means that they are in the position of sitting in judgment of their comrades-in-arms, rendering illusory the requirement of impartiality, since the members of the Army often feel compelled to protect those who fight alongside them in a difficult and dangerous context.[FN67]

[FN65] IACHR, Second Report on the Human Rights Situation in Peru, June 2000, Chap. II, para. 210.

[FN66] IACHR, Third Report on Colombia, ob.cit., para. 19.

[FN67] IACHR, Second Report on the Human Rights Situation in Peru, ob. cit., para. 211.

265. The Commission has insisted that only certain offenses having to do with military discipline and service can be judged by military courts in full respect of the guarantee of a fair trial:

Military courts should be used only to judge active members of the military for alleged in-service crimes in the strict sense of the term. Human rights violations must be investigated, judged, and punished pursuant to law, by regular criminal courts. Change of jurisdiction shall not be permitted in these cases, since it distorts judicial guarantees, on the false pretense of the effectiveness of military justice, with serious institutional consequences, which in fact cast doubts on the civilian courts and the effective rule of law.[FN68]

[FN68] Id. para. 214

266. In the specific case of Brazilian legislation, which grants military courts jurisdiction over human rights violations committed by the military police, the Commission analyzed Brazilian legislation on the subject in detail, and concluded that it entailed in actual practice a situation of impunity in Brazil. The IACHR examined the history of this legislation, and found that up to 1977, the prevailing criterion in Brazil was that crimes committed by military police in the exercise of their police functions were civil in nature, and therefore came under the jurisdiction of the common courts. However, the IACHR pointed out as follows:

Constitutional Amendment No. 7 of 1977--amending Article 144.1(d) of the Constitution--, known as the "April Package" under the military regime of that time, made it possible to establish special state military justice to try and judge "military" police officers for military crimes defined in the law. The Federal Supreme Court then changed the criteria and began to consider that the state military justice system did indeed have the jurisdiction to try the "military" police for crimes defined in the Penal Code, when committed by them in the line of duty. This fundamental change in the jurisprudence of the Federal Supreme Court resulted in an increase in the crimes committed by "military" police with impunity.[FN69]

[FN69] IACHR, Report on the Human Rights Situation in Brazil, September 1997, Chap.. III, paras. 66 and 67.

267. From that time on, the state's military courts have had competence to try and judge members of the military police accused of committing crimes, defined as military crimes, against the civilian population:

This jurisdiction is governed by military criminal law (Military Penal Code, CPM), exclusive to military personnel, which contains substantive penal standards and constitutes a set of legal provisions to ensure the accomplishment of the main purposes of military institutions, whose primary objective is the defense of the nation. "In this jurisdiction, rank and discipline prevail." It is also regulated by the Code of Military Penal Procedure (CPPM), which contains formal or procedural provisions. The new law 9299/96 places under ordinary penal jurisdiction cases of attempts on life with criminal intent, but maintains intact the rest of the jurisdiction of the military justice system with regard to the police.

This is a special legal system, with its own principles and guidelines, in which most of the provisions apply only to military personnel and civilians who commit crimes against military institutions, unlike the ordinary penal system, which is applicable to all citizens.[FN70]

[FN70] IACHR, Report on the Human Rights Situation in Brazil, September 1997, Chap.. III, paras. 60 and 61.

268. The Commission further explained that in Article 125, paragraph 4 of the Federal Constitution, it states that “state military courts are competent to try and judge military police and military firemen for military crimes defined by law ...,” and pointed out that the law containing this definition is the Military Criminal Code which, in its Article 9, II(f) states:

Article 9. The following are considered as military crimes in times of peace:

II. The crimes stipulated in this code, as long as they have the same definition as in common criminal law, when they are committed by:

f) members of the military who are in active service, or who, if not in service, are using weapons belonging to the military or any other warlike material under the custody, control, or management of the military, to engage in an illegal act.[FN71]

[FN71] Id, para. 63.

269. The Commission indicated that in accordance with the provision transcribed above, the “military” police forces, whether federal, state, or federal district, which are the state enterprises in charge of the preventive and ostensive police of civilians, are subject to military criminal legislation and to military courts, even if they commit crimes against civilians in the performance of their functions, or while using military weapons.[FN72]

[FN72] Id, para. 64.

270. This competence by the military courts to investigate and punish human rights violations leads to an extreme situation of impunity, which has triggered various initiatives in the Chamber of Deputies to eliminate the special military jurisdiction for prosecution of crimes committed by the military police in the performance of their public order duties. In this regard, Hélio Bicudo, who was a Federal Deputy at the time, submitted a bill which would return to the regular justice system the authority to prosecute crimes committed by or against state military police officers in the performance of their police duties. This proposed law, which would revoke Article 9(f) of the Military Criminal Code (Decree-Law No. 1,001 of October 21, 1969, would include the following “Single Paragraph”:

Military police officers and entities, in the performance of their police duties, shall not be considered as members of the military for criminal purposes. The common courts shall have jurisdiction to prosecute and judge crimes committed by or against them.

271. However, this bill was not approved in its entirety. An alternative text was adopted in its place, and this text became Law 9,299 of August 7, 1996. This law amended Article 9 of the Military Criminal Code (Decree Law 1,001), which defined military crimes and established a new “Single Paragraph,” along the following lines:

The crimes referred to in this Article, when they are crimes of intentional homicide committed against civilians, shall come under the jurisdiction of the common courts.

272. The final version of the law included another serious provision, which amended a section of Article 82 of the Code of Military Criminal Procedure, to establish as follows:

In the case of intentional homicide against civilians, the military justice system shall refer the records of the military police investigation to the common courts.[FN73]

[FN73] CPPM, Article 82, section 2.

273. The Commission has written in this regard that the new provisions mean that the military police will continue to be judged by special jurisdiction for crimes against humanity, such as criminal homicide, bodily injury, torture, kidnapping, illegal imprisonment, extortion, and battery.

Investigations (inquiries) will then be the responsibility of the military authority, even in cases of criminal attempts on life, despite the fact that, under the new law, these crimes would fall under the jurisdiction of the ordinary justice system. This new standard is in contradiction with Article 144.4 of the Constitution, which assigns judicial police functions and the investigation of criminal offenses, other than military offenses, to the civil police. Indeed, if criminal attempts on life cease to be military offenses under the new law, the criminal investigation should be handled by the civil police who, pursuant to Article 144.4 of the Constitution, have “the functions of judicial police and the investigation of criminal offenses.” By leaving the initial investigation in the hands of the “military” police, the latter are given the authority to decide, from the outset, whether or not there is criminal intent. This means that law 9299 of the Republic is incapable of significantly reducing impunity.[FN74]

[FN74] IACHR, Report on the Human Rights Situation in Brazil, ob. cit., paras. 84 and 86. Underlining added.

274. Based on these considerations, the Commission stated that “the impunity of crimes committed by state military or civil police breeds violence, establishes perverse chains of loyalty between police officers out of complicity or false solidarity (...).”[FN75] It recommended that the State of Brazil:

Confer[] on the ordinary justice system the authority to judge all crimes committed by members of the state military police;

Transfer[] to the jurisdiction of the federal justice system the trial of crimes involving human rights violations, with the federal government assuming direct responsibility for initiating action and due process for such crimes.[FN76]

[FN75] Id, para. 94.

[FN76] Ibid, para. 95, “I” and “j”.

275. In accordance with the foregoing, the Brazilian legislation referred to entails a violation per se of Articles 1.1, 25, and 8 of the American Convention on Human Rights, since the competence granted to the military police to investigate alleged human rights violations committed by its agents prevents an independent, autonomous and impartial entity from conducting such investigations.

276. This conclusion is not altered by the fact that the military police is in charge only of the initial investigation, and that the authority to try cases has been assigned to courts in the regular criminal justice system. This is true because investigation of a case by the Brazilian military police precludes the possibility of an objective and independent investigation by judicial authorities not linked to the hierarchical command of the forces of law and order. The fact that investigation of a case has been initiated by the Brazilian military police may make it impossible to obtain a conviction, even if the case is subsequently transferred to the regular courts. This is due to the lack of independence and impartiality of the Brazilian military police in investigating their own agents, and to the fact that it is likely that the initial investigation and gathering of evidence are carried out for the purpose of hindering prosecution, in an effort to guarantee impunity for the persons responsible for the human rights violations.

277. Consequently, by having the military police investigate the events that occurred at Santa Elina ranch on August 9, 1995, the State of Brazil violated Articles 25 and 8 of the American Convention, as well as the general obligation contained in Article 1.1 of that Convention, to the detriment of the victims.

278. The Commission further notes that in the investigation into the events, a series of irregularities were committed, which hampered clarification of the events and identification of the responsible individuals. As established earlier, the military police destroyed the camp and set fire to what remained at the site of the events.

279. On this point, the United Nations Model Protocol for Investigation of Extrajudicial, Arbitrary, or Summary Executions establishes that the officers in charge of the investigation must:

b) Recover and preserve pieces of evidence related to death in order to assist in any possible legal action brought against the perpetrators.[FN77]

[FN77] United Nations, Document ST/CSDHA/12.

280. This Protocol also establishes that in an investigation of the evidence, it “must be gathered, analyzed, packaged, labeled, and appropriately placed in a safe place to prevent contamination or loss.”[FN78]

[FN78] Id.

281. Contrary to these guidelines, the military police, far from recovering and preserving the evidence needed for an adequate investigation into the events of this case, instead destroyed the camp and set fire to what remained, which certainly hampered an appropriate investigation.

282. The Commission further notes that the ballistics comparison tests could not be completed in their entirety, because the private arms of the military police who participated in the operation and the arms of the gunmen who assisted in it were not immediately gathered. Moreover, the typical bullets were not submitted for all the arms gathered, while they were sent in insufficient numbers for some arms.

283. In addition, there was not an exhaustive investigation into the way in which the workers died during the events. None of the authorities was investigated in conjunction with these events, and none of the landowners or their employees and gunmen was brought to trial, even though many persons testified that they had participated actively in the events.

284. Nor was there a due investigation of the alleged cremation of bodies, or of the reported disappearance of worker Darci Martins Pereira. During the trial, there were reports and evidence against some of the military policemen, but they were either acquitted, or were never even brought to trial for the deaths of the workers.

285. Consequently, the State of Brazil did not comply with its obligation to conduct a serious investigation into the events in Corumbiara, and so it deprived both the victims and their next of kin of effective recourse with respect to these events, since it failed to take the minimum steps required to adequately establish all the facts and determine the criminal liability of all the perpetrators.

286. The Commission further notes that the lack of an investigation into the torture inflicted on the workers also constitutes a violation by the State of Brazil of the obligations it assumed under the provisions of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

287. The Commission concludes that the lack of independence, autonomy, and impartiality on the part of the military police that investigated the events, together with the other irregularities that characterized the investigations and that certainly had a decisive effect on the results of the court proceedings, constitute a violation by the State of Brazil of the obligations contained in Articles 25 and 8 of the American Convention, together with the provisions of Article 1(1) of

that instrument. The IACHR further concludes that the State of Brazil violated Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

4. Violation of Article 2 of the American Convention: Obligation of the State to adopt measures of domestic law

288. Article 2 of the American Convention states as follows:

... where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

289. The Inter-American Court has had this to say in reference to this article:

Regarding people's law, a customary rule prescribes that a State, which has entered into an international agreement, must introduce in its national law the necessary assumed modifications to ensure the execution of obligations assumed. This rule is universally valid and has been considered by the jurisprudence as an evident principle ("principe allant de soi"; *Echange des populations grecques et turques, avis consultatif, 1925, C.P.J.I., Series B. No. 10, p. 20*). In this sequence of ideas, the American Convention states the obligation of every State Party to adapt its national law to dispositions of said Convention, to guarantee the rights recognized therein. [FN79]

[FN79] Inter-American Court, Case of Durand y Ugarte, judgment of August 16, 2000, para. 136.

293. The Inter-American Court has further stated that:

the general duty set forth in Article 2 of the American Convention implies the adoption of measures on two fronts. On the one hand, the suppression of rules and practices of any kind that entail the violation of the guarantees set forth in the Convention. On the other, the issuance of rules and the development of practices leading to the effective observance of said guarantees.[FN80]

A State may violate an international treaty and, specifically, the Convention, in many ways. It may do so in the latter case, for example, by failing to establish the norms required by Article 2. Likewise, it may adopt provisions which do not conform to its obligations under the Convention. Whether those norms have been adopted in conformity with the internal juridical order makes no difference for these purposes.[FN81]

[FN80] Inter-American Court, Case of Cantoral Benavides, judgment of August 18, 2000, para. 178.

[FN81] Inter-American Court, Certain functions of the Inter-American Commission on Human Rights (Arts. 41, 42, 46, 47, 50 and 51 of the American Convention on Human Rights), Advisory Opinion OC-13/93 of July 16, 1993. Series A N° 13, para. 26.

291. In the present case, the failure by the State of Brazil to abolish from its legislation the provisions that grant the military police competence to investigate human rights violations committed by the military police constitutes a violation of Article 2 of the American Convention, since it means that Brazil has not adopted the legislative measures necessary to give effect to the rights and freedoms recognized in that treaty.

292. In fact, as explained earlier, Article 125, paragraph 4 of the Federal Brazilian Constitution of 1988 establishes that “the state military justice system has competence to try and judge the military police and firemen for military crimes defined by law...”. The definition of military crimes appears in the 1969 Military Criminal Code, which establishes in its Article 9, paragraph II(f) that: “Military crimes in times of peace are considered to be: (iii) II. The crimes stipulated in this code, provided they have the same definition in common criminal law, when committed by: (...) (f) members of the military who are on active duty or, if not in service, who are using weapons belonging to the military or any warlike material in military custody or under military control or management, to engage in an illegal act.”

293. These were the provisions in force when Brazil ratified the American Convention on Human Rights on September 25, 1992. Upon ratification, pursuant to Article 2 of the American Convention, the State of Brazil assumed the obligation to adapt that legislation to the parameters of the American Convention, which meant both to revoke the competence of the military police to investigate human rights violations committed by its agents, as well as to do revoke the competence of the military courts to judge said crimes.

294. This was required by virtue of the fact that these provisions, as explained above, entail a violation by the State of Brazil of the right to effective recourse and to a fair trial, and prevent it from adequately fulfilling its obligation to duly investigate human rights violations committed by its agents, which implies a breach of Articles 25, 8, and 1(1) of the American Convention in every proceeding in which the military police is responsible for investigating human rights violations committed by its agents.

295. However, by Law 9,299 of August 7, 1996, Brazil amended Article 9 of the Military Criminal Code, and established a new “Single Paragraph,” pursuant to which “the crimes referred to in this article, whenever they are intentional crimes committed against the life of a civilian, shall come under the jurisdiction of the common courts.”

296. This law also amends a section of Article 82 of the Code of Military Criminal Procedure, by establishing that “in intentional crimes committed against the life of civilians, the military courts shall refer the case files from the military police investigation to the common courts.”

297. Therefore, with the partial amendment of that legislation, the State of Brazil complied in part with its obligations arising from Article 2 of the Convention, since it abolished the

competence of military courts to try cases involving some human rights violations committed by members of the military police. However, its failure to annul the competence granted to the military police to investigate those crimes means that the State of Brazil is in violation of said Article 2 of the American Convention.

298. In accordance with these considerations, the Commission concludes that Article 9, paragraph II(f) of the Military Criminal Code (with the exception of the single paragraph added to it by Law 9,299 of August 7, 1996), and Article 82 of the Code of Military Criminal Procedure imply that the State of Brazil has not adopted adequate measures of domestic legislation to give effect to the rights recognized in the Convention, thereby contravening its general obligation under Article 2 of the American Convention.

5. Violation of Article 1(1) of the Convention: Obligation of the State to respect and ensure individual rights

299. The foregoing analysis demonstrates that Brazil has not complied with its obligation to respect the rights and freedoms of individuals under its jurisdiction, as stipulated in Article 1(1) of the American Convention, because it violated the rights referred to in Articles 4, 5, 25, and 8 of that Convention.

300. As the Inter-American Court has determined that, “according to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention.”[FN82]

[FN82] Inter-American Court, Case of Velásquez Rodríguez, Judgment of July 29, 1988, Series C N° 4, para. 169.

301. The second obligation stipulated in Article 1(1) is that of ensuring the free and full exercise of the rights and freedoms recognized in the Convention. The Commission concludes that by violating the right to life, the right to humane treatment, the right to judicial protection, and the right to a fair trial, to the detriment of the victims referred to in this report, the State of Brazil failed to comply with its obligation to ensure the free and full exercise of the rights of all persons subject to its jurisdiction.

V. ACTION TAKEN SUBSEQUENT TO REPORT N° 23/03

302. The Commission adopted report No. 22/03 on the merits of the present case on March 4, 2003, during its 117th session. That report, with the Commission’s recommendations, was transmitted to the State of Brazil on April 7, 2003, and the State was given two months, counting from the date the report was sent, to comply with the recommendations. This period of time has now lapsed, and the State has not reported to the IACHR regarding action taken to carry out the recommendations made by the Commission. Furthermore, the Commission notified the petitioners of the adoption of said report on the merits, and requested their opinion regarding the

possibility of submitting the case to the Inter-American Court of Human Rights. On May 21, 2003, the petitioners responded and requested the IACHR to refer the case to the Inter-American Court of Human Rights, based on the arguments presented in this matter.

303. In accordance with the provisions of Article 51(1) of the Convention, the Commission must determine at this stage in the proceedings whether or not the State has settled the matter. On this point, the IACHR notes that as of this date, the State of Brazil has not reported on any measures that it has taken to comply with the recommendations made by the IACHR in the report on the merits of this case. Since the Commission has not received information from other sources in this regard either, it therefore assumes that its recommendations have not been carried out.

304. Finally, the IACHR wishes to note in conclusion that in view of the specific circumstances of this case, which include the date on which the events occurred, the dates of the investigations, and the impact of the investigations on the ultimate results of the case, all of which are considered in relation to the date on which Brazil accepted the jurisdiction of the Inter-American Court of Human Rights, namely, December 10, 1998, the Inter-American Commission, in accordance with its Rules of Procedure, has decided not to refer this case to the Inter-American Court of Human Rights.

VI. CONCLUSIONS

305. On the grounds of the foregoing analysis, the Commission concludes that the State of Brazil is responsible for violating the right to life, to humane treatment, to judicial protection, and to a fair trial, established in Articles 4, 5, 25, and 8, respectively, of the American Convention, to the detriment of the landless workers identified in this report, as a result of the extrajudicial executions, inhumane treatment, and violations of the obligation to investigate, of the right to effective recourse, and of the right to a fair trial committed to their detriment. The Commission also finds that the State violated its duty to adopt measures of domestic law, pursuant to the terms of Article 2 of the American Convention, and further that it violated the obligation imposed under Article 1(1) to respect and ensure the rights recognized in the Convention. Moreover, the IACHR concludes that the State of Brazil violated Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

306. The Commission determines that the following persons were victims of violation of Article 4 of the Convention: Alcindo Correia da Silva, Odilon Feliciano, Sérgio Rodrigues Gomes, Nelci Ferreira, Ari Pinheiro dos Santos, Vanessa dos Santos Silva, Enio Rocha Borges, Jesus Ribeiro de Souza, José Marcondes da Silva, Ercílio Oliveira Campos and the unidentified worker known as "H-5". With regard to violation of Article 5 of the American Convention and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, the Commission determines that the victims include the following: Darci Nunes do Nascimento, Antonio Ferreira da Silva, Alzira Augusto Monteiro, José Carlos Moreira, Claudionor Paula, Ana Paula Alves, Jair Nunes de Morais, Edimar Silfrio Dias, Eilvo Hilário Schneider, Arivaldo Neckel de Almeida, Zildo Gomes Cunha, Valtair Alves da Silva, Geraldo Francisco Clara, Claudemir Pereira, Paulo Correia da Silva, Moacir Camargo Ferreira, and Agostinho Feliciano Neto.

VI. RECOMMENDATIONS

307. Based on the analysis and conclusions of this report, the Inter-American Commission on Human Rights reiterates the following recommendations to the Brazilian State:

1. Conduct a complete, impartial, and effective investigation into the events, by nonmilitary organs, to determine responsibility for the deaths, personal injuries, and other acts that occurred at Santa Elina ranch on August 9, 1995, and to punish all the material and intellectual authors, whether civilian or military.
2. Make adequate reparations to the victims specified in this report or to their next of kin, as appropriate, for the human rights violations determined in this report.
3. Adopt the necessary measures to prevent similar events from occurring in the future.
4. Amend Article 9 of the Military Criminal Code, Article 82 of the Code of Military Criminal Procedure, and any other domestic legal provisions that need to be amended in order to abolish the competence of the military police to investigate human rights violations committed by the military, and to transfer that competence to the civilian police.

VIII. PUBLICATION

308. On October 8, 2003, the Commission approved Report No. 41/03, which is presented above, in accordance to Article 50 of the American Convention. On October 14, 2003 during the 118th Ordinary Period of Sessions of the IACHR there was a working meeting between the IACHR and the concerning parts. In this working meeting the Brazilian Government, through the Prosecutor of the state of Rondônia informed the Commission that the indictment of the Public Ministry (“Ministério Público”) was based on a civil police investigation, which had used some information from the military investigation. The representative of the Government also indicated the existence of a state Law that authorizes the payment of a life pension to the next of kin of the fatal victims of the facts that took place in Santa Elina ranch. The Commission reiterates that the indemnization must be made in accordance to international standards on the subject.

309. On December 8, 2003, the Commission transmitted this report to the Brazilian State, in accordance with Article 51(1) of the American Convention and granted a month for the State to comply with the aforementioned recommendations. By the end of that deadline, the Commission had not received a reply from the State concerning such recommendations. Considering the absence of a reply and the information received during the working meeting the Commission finds that the State has not complied with the aforementioned recommendations.

310. Taking into account the preceding considerations and in accordance with Articles 51(3) of the Convention and 45 of its Rules of Procedure, the Commission decides to ratify the conclusions and reiterate the recommendations of paragraph 307, publish this report and include it in its Annual Report to be sent to the General Assembly of the OAS. The Commission, in order to fulfil its mandate, will continue to evaluate the measures taken by the Brazilian State regarding the aforesaid recommendations until they are completely complied with.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C. on the 11th day of the month of March, 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice -President; Commissioners Evelio Fernández Arévalos, Freddy Gutiérrez and Florentín Meléndez.