

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 9/08; Petition 12.332
Session:	Hundred Thirty-First Regular Session (3 – 14 March 2008)
Title/Style of Cause:	Margarida Maria Alves v. Brazil
Doc. Type:	Decision
Decided by:	Chairman: Paolo Carozza; First Vice-Chairwoman: Luz Patricia Mejia Guerrero; Second Vice-Chairman: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Florentin Melendez, Victor E. Abramovich. Commission member Paulo Sergio Pinheiro, a Brazilian national, did not take part in the deliberations and vote on this report, in keeping with Article 17(2)(a) of the Commission's Rules of Procedure.
Dated:	5 March 2008
Citation:	Maria Alves v. Brazil, Petition 12.332, Inter-Am. C.H.R., Report No. 9/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by:	APPLICANTS: the Gabinete de Assessoria Juridica as Organizacoes Populares, the Center for Justice and International Law, the Movimento Nacional de Direitos Humanos, the Comissao Pastoral da Terra and the Fundacao de Defesa dos Direitos Humanos Margarida Maria Alves
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## I. SUMMARY

1. On October 17, 2000, the Gabinete de Assessoria Jurídica às Organizações Populares (GAJOP) [Office of Legal Counsel to Grassroots Organizations], the Center for Justice and International Law (CEJIL), the Movimento Nacional de Direitos Humanos (MNDH) [National Human Rights Movement], the Comissão Pastoral da Terra (CPT) [the Pastoral Land Commission], and the Fundação de Defesa dos Direitos Humanos Margarida Maria Alves (FDDH-MMA) [Margarida Maria Alves Foundation for the Defense of Human Rights] (hereinafter “the petitioners”) lodged a petition with the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”) against the Federative Republic of Brazil (hereinafter “the State” or “Brazil”). The petition alleged violation of the right to life protected by Article I of the American Declaration of the Rights and Duties of Man (hereinafter “the Declaration” or “the American Declaration”), the rights to a fair trial and to judicial protection, protected by Articles 8 and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), and thus violation of the State’s general obligation to respect rights, set forth in Article 1(1) of the Convention, to the detriment of Margarida Maria Alves (hereinafter “the alleged victim”).

2. The petition denounces the assassination of the alleged victim, then president of the Alagoa Grande Rural Workers Union in the state of Paraíba, on August 12, 1983. According to the petitioners, the motive for the crime was Margarida Alves' activism in the struggle to protect the rights of rural workers in the region. The petitioners further allege that neither the crime nor those responsible for it have ever been punished.

3. The State did not present substantive arguments on the complaint, despite having been duly and legally notified of the petition and invited to submit a response.

4. After examining the positions of the parties as a function of the admissibility requirements set forth in articles 46 and 47 of the American Convention, the Commission decides to declare the case admissible with respect to Article I of the American Declaration and Articles 8(1) and 25 of the American Convention, as well as the general obligation set forth in Article 1(1) thereof. By virtue of the principle of *jura novit curia*, the Commission also decides to declare the case admissible with respect to articles XVIII (right to a fair trial) and XXII (right of association) of the American Declaration, in connection with the events that occurred prior to September 25, 1992, the date on which Brazil ratified the American Convention. The Commission decides to so notify the parties and to publish the present report and include it in the Commission's Annual Report.

## II. PROCEEDINGS BEFORE THE COMMISSION

5. On October 17, 2000, the Commission received a complaint lodged by the Gabinete de Assessoria Jurídica às Organizações Populares (GAJOP) [Office of Legal Counsel to Grassroots Organizations], the Center for Justice and International Law (CEJIL), the Movimento Nacional de Direitos Humanos (MNDH) [National Human Rights Movement], the Comissão Pastoral da Terra (CPT) [the Pastoral Land Commission], and the Fundação de Defesa dos Direitos Humanos Margarida Maria Alves (FDDH-MMA) [Margarida Maria Alves Foundation for the Defense of Human Rights]. On October 26 of that year, the Commission acknowledged receipt of the petition and forwarded the relevant parts thereof to the State, inviting it to present its response within 90 days.

6. On June 8, 2001, the Commission received additional information from the petitioners on the course of the criminal proceedings being prosecuted against the alleged intellectual author of the crime committed against Margarida Alves. That communication was sent to the State on June 12, 2001, with the request that it provide its own information and observations. By note dated September 17, 2001, the State made its statement on the petition, in which it simply provided an update on the aforementioned judicial proceedings. The Commission forwarded that information to the petitioners on October 3, 2001, inviting them to present their observations within 45 days.

7. On October 10, 2006, the Inter-American Commission asked the petitioners and the State to update the information regarding the petition, which was to be sent within one month. On October 20, 2006, the petitioners reported that they had only received the communication that day, making the case that the one-month time period should therefore close on November 20, 2006. On November 3, 2006, the Commission sent the petitioners confirmation of the time

period they had indicated. The petitioners forwarded the requested information on November 17, 2006.

8. On the very same day, the State requested a 30-day extension in order to present its information. The Commission agreed to that request on December 6, 2006. However, to date no communication from the State on this matter has been received.

### III. POSITIONS OF THE PARTIES

#### A. Position of the Petitioners

9. The petitioners allege that Margarida Maria Alves was president of the Alagoa Grande Rural Workers Union (Sindicato dos Trabalhadores Rurais de Alagoa Grande, hereinafter “the Union”) in the state of Paraíba. The alleged victim played an essential role in representing sugar cane workers in that state as she encouraged them to demand their rights under Brazilian labor law. Thanks to the alleged victim’s efforts, the workers ultimately went to the labor courts to demand their rights; at least 73 labor actions (Reclamações Trabalhistas) were brought against the sugar mills and rural cane estates, called engenhos.

10. The alleged victim was said to have received threats instructing her to desist from her activities in the union. Margarida Alves made these threats public and answered them while organizing for the union and in the media.[FN2] The alleged victim blamed the threats made against her on the group known as “Grupo da Várzea,” a political group composed of mill owners, state and federal deputies, mayors and others, and headed by Aguinaldo Veloso Borges, owner of the only mill in the municipality of Alagoa Grande and said to wield enormous political power in the state of Paraíba.

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[FN2] Articles from the newspapers “O Norte” and “Correio da Paraíba” and the “Informativo CCDH/AEP” published by the Centro de Defensa de los Derechos Humanos y Asesoría y Educación Popular. Communication from the petitioners, October 17, 2000, annexes 2 and 4.  
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11. The petitioners allege that Margarida Alves was assassinated at her home on August 12, 1983, shot at close range. They assert that the crime was committed in the presence of members of the alleged victim’s family and her neighbors. The material author of the crime made no attempt to hide his face, the intention being intimidation and a show of power. Although summoned to the murder scene immediately, it was two hours before the police arrived. Their response was impaired by an unexpected loss of power, with the result that the murderers escaped the scene without a trace.

12. The petitioners observe that police investigation (Inquérito Policial) IP No. 023/83 was launched, but initially turned up nothing because witnesses to the crime were being threatened and harassed and therefore denied any knowledge of the facts or changed their statements during the course of the investigation. The only thing the investigation was able to prove was that the person who had fired the shots escaped in a red GM Opala vehicle, with three accomplices.

According to the petitioners, the investigation was unproductive, despite various complaints from national and international organizations about the alleged victim's death. The petitioners contend that the police did not seriously pursue a line of investigation premised on the fact that the motive for the crime had been the alleged victim's role in defending the rights of rural workers.

13. On December 8, 1983, which was four months after the assassination, the report on the police investigation (Relatório Policial) concluded by naming three persons as the material authors of the crime: Amauri José do Rego, Amaro José do Rego and a third person named "Toinho." All three were fugitives from justice. The report also named as a co-author of the crime Antonio Carlos Coutinho Regis, son of a local landowner and a member of the Grupo da Várzea, who had reportedly had the material authors at his hacienda. The Police Chief ordered the suspects taken into preventive custody, except for Antonio Carlos Coutinho Regis, as he had an established domicile and was a first-time offender.

14. On December 22, 1983, the Office of the Public Prosecutor, in charge of prosecuting the criminal case, filed the indictment (Denúncia)[FN3] against the three suspects named in the police report and specified the crimes being charged, thereby initiating Criminal Case No. 183/83.[FN4] According to the indictment, the crime was committed at the behest of local landowners -the intermediary being Antonio Carlos Regis- and was carried out by the brothers Amauri and Amaro Rego. However, the local landowners who put out the contract on the alleged victim's life were not investigated. In bringing the charges, the Prosecutor on the case requested that the suspects be taken into preventive custody, although that never happened.

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[FN3] Article 41 of Brazilian Code of Criminal Procedure makes provision for the indictment.

[FN4] Indictment from the Public Prosecutor's Office. The petitioners' original communication, dated October 17, 2000, annex 6.  
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15. On December 17, 1985, the Criminal Court Judge issued the order binding the suspects over for trial (Pronúncia)[FN5] by jury (Tribunal do Júri).[FN6] However, criminal proceedings were suspended with respect to the two fugitive defendants and the only suspect actually brought to trial was Antonio Carlos Regis, who was acquitted on July 5, 1988 by a simple majority of the members of the jury. According to the petitioners, this was the expected verdict, since during the examining phase testimony was taken from eight witnesses for the defense, but only four for the prosecution. Some of the prosecution's witnesses were alleged to have been threatened and harassed. In the order binding the suspects over for trial, the judge entered into the record the fact that suspect Antonio Carlos Regis was alleged to have supplied logistical support and information to the material authors. However, in that same document, the magistrate asserts that "unfortunately, despite enormous effort that is a matter of record, the police investigation did not succeed in identifying the "persons who put out the contract or ordered the killing." [FN7]

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[FN5] In the case of crimes prosecuted in trial by jury, once the pretrial phase is completed the judge must examine the evidence from the criminal case to determine whether an intentional

crime against life can likely be shown, and the respective authorship of that crime identified. Thus, the examining magistrate prepares the order binding the accused over for trial. In it he states that there is evidence indicating the materiality and authorship of the crime and the legal provision that the defendant is accused of having violated. The decision binding the accused over for trial determines the issues of the indictment, which consists on the charges that the members of the jury will consider. For the question of the Pronuncia, or order binding the accused over for trial, see Article 408 of Brazil's Code of Criminal Procedure.

[FN6] Under Article 5, paragraph XXXVIII of the 1998 Federal Constitution, a jury is competent to try intentional crimes committed against life.

[FN7] Original communication from the petitioners, *supra* note 2, p. 6.

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16. The Public Prosecutor's Office filed an appeal (Recurso de Apelação)[FN8] to challenge the jury's decision, alleging that the verdict did not fit the evidence entered into the record. Nevertheless, the acquittal was upheld.

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[FN8] Code of Criminal Procedure of the Federative Republic of Brazil, Article 593(III)(d) establishes that the jury's decision can be appealed if the verdict is manifestly contrary to the proofs of the procedure's files.

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17. In August 1986, Mrs. Maria do Socorro Neves gave a deposition in the presence of a notary public in which she clarified some aspects of the case and confirmed the Grupo da Várzea's involvement in the alleged victim's death. Maria do Socorro Neves de Araújo was the widow of Severino Carneiro de Araújo (alias Bio de Genésio) who, according to the deponent, was involved in the crime committed against the union leader and was himself killed on January 13, 1986, for having revealed details of the assassination while inebriated.

18. According to the deposition in question, a few days before Margarida Alves' assassination, Severino Carneiro de Araújo, accompanied by rancher Edmar Paes de Araújo (alias Mazinho), military police officer Betâneo Carneiro and a third unidentified person, used a red Opal car –as recounted in the Police Report- to show police officer Carneiro the location of the alleged victim's residence. According to statements made by various witnesses, Mazinho was a confidante of the leader of the Grupo da Várzea, Aguinaldo Veloso.

19. The Grupo da Várzea's involvement in the assassination was confirmed by the bishop of the city of Guarabira, Don Marcelo Pinto Cavalhera, friend and confidante of Margarida Alves. She had told the bishop that the persons threatening her were members of that group of landowners, who were referred to as the "potentates of Alagoa Grande".

20. However, despite the new statements taken, the authorities did not resume inquiries into the alleged victim's assassination. It was not until October 31, 1991, that the Chief of Police, pursuant to a decision by the Public Prosecutor's Office, undertook new inquiries into the facts. In its findings, the new police report (Relatório Policial), completed in December 1991, concluded that "there apparently was a meeting involving them, Aguinaldo Veloso Borges and

his son-in-law [José Buarque de Gusmão Neto, alias] Zito Buarque, where the decision to kill union leader Margarida Maria Alves was made.”[FN9]

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[FN9] Original communication from the petitioners, supra note 2, p. 9.

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21. Despite the new police report prepared in 1991, it was not until 1995 that the Public Prosecutor’s Office charged Aguinaldo Veloso Borges, Zito Buarque, Betâneo Carneiro and Mazinho, with the alleged victim’s murder. With that, a second Criminal Case, No. 372/1995, was instituted.

22. The procedural delay was highly prejudicial to the case. Of the four suspects named in the indictment (Denúncia) brought by the Public Prosecutor’s Office in 1995, only one was brought to trial. The accused Edgar Paes de Araújo (alias Mazinho) had been murdered in 1986. Aguinaldo Veloso Borges, who was accused of other crimes, had died in 1990. Betâneo Carneiro, also named in the indictment and alleged to be a member of an infamous death squad, was the beneficiary of the statute of limitations by virtue of Article 115 of the Brazilian Code of Criminal Procedure, which reduces sentences for those who were under the age of 21 at the time the crime with which they are charged was committed. Betâneo Carneiro’s name was thus dropped from the criminal case in 1997. Despite various warrants issued for his arrest in connection with other crimes, his whereabouts are still unknown.

23. The only one of those named in the indictment who was actually tried for the murder of Margarida Alves was Zito Buarque, who was in jail for three months during the examining phase. The order for his detention was revoked on grounds, inter alia, that he had a permanent job and an established residence. Once the order for his detention was revoked, Zito Buarque remained at liberty while on trial.

24. After the Public Prosecutor’s Office presented the indictment, the criminal case was paralyzed for over four years due to a request presented to excuse the judge of the Alagoa Grande district from the case, based on a possible conflict of interest of the mentioned judge. This was alleged to have delayed the examining phase of the case. The request was denied by the Superior Court of Justice (hereinafter the “STJ”), which determined that the magistrate in question would hear the case. When the magistrate resumed proceedings in the case in 1999, he asked to be excused from the case, citing personal reasons and underscoring the lack of progress made on the criminal case. With that, the case was referred to Alagoinha district.

25. Once the case was referred to Alagoinha district, it was stalled for more than a year. No pretrial proceedings were conducted during that time. By this time, the case record consisted of seven volumes; some of the documents had either been misplaced or stolen. On February 25, 2000, the Office of the Inspector General for Justice [Corregedoria Geral de Justiça][FN10] declared that the criminal action under analysis “was for a murder committed more than 12 (twelve) years ago that had had international repercussions; the case had not yet gone to trial by jury thanks to maneuvering and dodges that had tainted the image of the Judicial

Branch.”[FN11] The case was then sent to the district of João Pessoa, capital of the state of Paraíba.

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[FN10] This is an office in the State judicial branch, whose function is to control, inspect, guide and counsel the jurisdictional and administrative services in the courts of first instance. It processes complaints filed against the conduct of officials in the state’s judicial branch.

[FN11] Official Communication CGJ No. 301/2000 from the Office of the Inspector General [Corregedoria Geral Justiça] of the Paraíba State Court System. The petitioners’ original communication, supra note 2, annex 16.

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26. The trial of Zito Buarque, initially set for October 31, 2000, was postponed three times. Finally, on June 18, 2001, the defendant was tried and acquitted by a jury (Tribunal do Júri) in the district of João Pessoa.

27. The prosecutor on the case appealed the verdict with the Court of Justice of the State of Paraíba, on the grounds that the verdict was patently at odds with the evidence compiled in the case record. By a vote of 2 to 1, the Higher Court granted the appeal, and ordered that the case be retried. The new trial was deferred until May 28, 2002.

28. The defendant Zito Buarque, however, filed a petition of habeas corpus with the STJ to challenge the higher court’s ruling. He requested immediate protection and nullification of the order for a new trial, set for May 28, 2002. On May 21, 2002, the STJ granted the petition for immediate protection and ordered that the plans for a new jury trial be suspended until the merits of the petition of habeas corpus had been decided.

29. On November 12, 2002, the Fifth Chamber (5ª Turma) of the STJ ruled on the side of the arguments made in the petition and decided to reinstate the June 2001 jury verdict acquitting Zito Buarque. On March 13, 2003, the Federal Prosecutor’s Office filed an extraordinary appeal to challenge the STJ’s ruling. The STJ, however, declared the extraordinary appeal to be inadmissible. With that, the verdict acquitting defendant Zito Buarque became final; there was no remaining remedy by which to challenge that decision.

30. Summarizing, the petitioners are alleging that the alleged victim’s right to life was violated, the motive being her active participation in representing the rights of rural workers. They also point out that although the facts were reported to the juridical authorities, no one has been punished for the crime nor has the alleged victim’s next of kin been awarded civil damages, thereby violating their rights to due process and access to justice.

31. As for the admissibility requirements, in their original communication, received on October 17, 2000, the petitioners allege an unwarranted delay in the proceedings in the domestic courts, since in the more than 17 years that had by then passed since the death of the union leader, the investigations and criminal proceedings had failed to punish those responsible for the crime. The delay in the proceedings in the domestic legal system was alleged to be the result of the conduct of the State, which failed to carry out a prompt, serious and effective investigation.

They argue that the exception allowed under Article 46(2)(c) of the American Convention would therefore apply to this case. They also claim to have presented their petition within a reasonable period of time.

B. Position of the State

32. The State offered no substantive arguments regarding the complaint, despite having been requested, in a timely and lawful manner, on October 26, 2000, to supply information on the case within 90 days.

33. The only communication received from the State containing information relevant to this case is dated September 17, 2001. In that note, the Commission was informed that on June 18, 2001, one of the alleged intellectual authors, José Buarque de Gusmão Neto (alias Zito Buarque), was acquitted of the charges against him in the murder of the alleged victim, as the jury found that the evidence presented in the criminal case was weak. The note also states that the Paraíba State Public Prosecutor's Office was considering the possibility of challenging that verdict.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

34. Under Article 44 of the American Convention and Article 23 of the Commission's Rules of Procedure, the petitioners, as legally recognized nongovernmental organizations, have standing to file petitions with the IACHR alleging violations of the American Convention. The Commission observes that Brazil, as a member state of the Organization of American States,[FN12] has the obligations and duties set forth in the American Declaration; it is also a State party to the American Convention, having ratified it on September 25, 1992. The Commission finds that the alleged victim named in the petition is Margarida Maria Alves, a person whose rights under the Declaration and the American Convention the Brazilian State undertook to respect and guarantee. The Commission therefore has competence *ratione personae* to examine this petition.

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[FN12] Brazil is a founding member of the Organization of American States, having signed the OAS Charter in 1948 and having deposited the instrument of its ratification in 1950.

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35. Under articles 1(2)(b) and 20 of its Statute, the Commission has competence *ratione temporis* to examine possible violations of human rights protected by the Declaration and the Convention. The fact that Brazil ratified the Convention on September 25, 1992, does not exempt it from responsibility for violations that occurred prior to the date it ratified the Convention if those rights are also protected by the Declaration, which is a source of binding obligations under international law.[FN13] The Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") explicitly recognized the binding force of the American Declaration when it wrote that "Articles 1(2)(b) and 20 of the Commission's

Statute define the competence of that body with respect to the human rights enunciated in the Declaration, with the result that to this extent the American Declaration is for these States a source of international obligations related to the Charter of the Organization.”[FN14]

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[FN13] IACHR, Report No. 19/98, Case 11,516, Ovelário Tames, Brazil, February 21,1998, para. 15; Report No. 33/01, Case 11,552, Guerrilla de Araguaia, Julia Gomes Lund et al, Brazil, March 6, 2001, para. 38; Report No. 17/98, Cases 11,407 Clarival Xavier Coutrim, 11,406, Celso Bonfim de Lima, 11,416, Marcos Almeida Ferreira, 11,413, Delton Gomes da Mota, 11,417, Marcos de Assis Ruben, 11,412, Wanderley Galati, 11,414, Ozeas Antônio dos Santos, 11,415, Carlos Eduardo Gomes Ribeiro, 11,286, Aluísio Cavalcanti Júnior and Cláudio Aparecido de Moraes, Brazil, February 21, 1998, para. 163.

[FN14] I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89, July 14, 1989, Series A, para. 45.  
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36. The facts described in the petition began in 1983, at a time when the State had not yet ratified the American Convention. The Commission has competence *ratione temporis* to determine whether, in the period prior to September 25, 1992, the date on which the State ratified the American Convention, there was any violation of the rights protected by the American Declaration. Likewise, the Commission has competence *ratione temporis* with regard to alleged violations of rights and liberties protected by the Convention, with respect to events that transpired subsequent to the State’s ratification thereof.

37. The petition denounces violations of rights protected by the Declaration and the American Convention. The Commission therefore has competence *ratione materiae* to examine the petition.

38. Lastly, the Commission has competence *ratione loci* to take up this petition inasmuch as it alleges violations of rights protected by the Declaration and the American Convention, said to have occurred within the territory of a State party to those instruments.

## B. Admissibility of the Petition

### 1. Exhaustion of domestic remedies

39. Under Article 46(1) of the American Convention, the remedies under domestic law must have been pursued and exhausted in order for a petition to be admissible.

40. Under Article 46(2), the rule requiring exhaustion of the remedies under domestic law shall not apply when:

a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

41. In their original communication, dated October 17, 2000, the petitioners argued that more than 17 years after the alleged victim's murder, the criminal proceedings instituted to solve the crime had produced no result. According to the petitioners, this would constitute an unwarranted delay on the part of the domestic courts, which was solely the result of the State's failure to conduct an immediate, serious and effective investigation of the facts. The petitioners contend that the exception allowed under Article 46(2)(c) of the American Convention would thus apply, because there has been an unwarranted delay in rendering a final judgment under the remedies of domestic law.

42. The State, for its part, did not answer the petition, despite having been notified in legal and timely fashion, and therefore did not assert the objection for failure to exhaust the remedies under domestic law.

43. The Commission therefore reiterates that the rule requiring prior exhaustion of domestic remedies was established to ensure that the State has an opportunity to resolve disputes within its own legal system. The Inter-American Court has written that the respondent State may expressly or tacitly waive invocation of the rule requiring exhaustion of local remedies. Tacit waiver occurs when the State fails to file this objection with the Commission in a timely manner,[FN15] which is "in the State's first submission before the Commission." [FN16]

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[FN15] I/A Court H.R., In the Matter of Viviana Gallardo et al. Series A No. 101/81, para. 26; I/A Court H.R., Case of Nogueira de Carvalho et al. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, para. 51; I/A Court H.R., Case of Chaparro Álvarez and Lapo Iñiguez. Preliminary Objections, Merits and Reparations. Judgment of November 21, 2007. Series C No. 170, para. 17.

[FN16] I/A Court H.R., Case of the Saramaka People. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 43.

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44. The Commission observes that the petitioners presented the complaint on October 17, 2000, before the remedies under the domestic legal system had been exhausted. The case record also shows that on March 13, 2003, the Superior Court declared the remedy filed by the Public Prosecutor's Office inadmissible, and the jury trial's verdict acquitting defendant Zito Buarque became final (supra para. 29). The State made no objections. The Commission deduced that with this ruling, the remedies under the domestic legal system were exhausted, which is one of the admissibility requirements stipulated in Article 46 of the American Convention and Article 31 of the Commission's Rules of Procedure.

45. The Commission observes that the proper time to examine the exhaustion of domestic remedies in the instant case is when the decision is taken on the petition's admissibility, and

therefore finds that those remedies were exhausted. The requirement established in Article 46(1) of the Convention has therefore been met.

## 2. Deadline for lodging a petition

46. Under the terms of Article 46(1)(b) of the Convention, a petition must be “lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.”

47. In the instant case, the Commission has determined that internal remedies were exhausted in March of 2003. And while the petitioners lodged their petition on October 17, 2000, before the ruling was delivered that exhausted the remedies under domestic law, the analysis of the petition’s admissibility is done when this report is up for approval. Hence, the Commission concludes that the requirement set forth in Article 46(1)(b) of the American Convention has been met in the case under examination.

## 3. Duplication of proceedings and res judicata

48. Nothing in the case record suggests that the subject of the petition lodged with the Inter-American Commission is pending in another international proceeding for settlement or that the petition is substantially the same as one previously studied by the Commission or by another international organization, as stipulated in Articles 46(1)(d) and 47(d), respectively.

## 4. Characterization of the facts alleged

49. Article 47(b) of the Convention provides that the Commission shall declare any petition inadmissible if it “does not state facts that tend to establish a violation of the rights guaranteed by this Convention.” The standard for assessing admissibility is different from the one used to decide the merits of a petition. For admissibility, the Commission need only make a prima facie analysis to determine whether the complaint establishes the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation. In other words, the admissibility examination is a summary analysis that does not imply any prejudgment or preliminary opinion on the merits.

50. Based on the facts denounced and the legal remedies attempted within the domestic courts, and conscious of the alleged violations of due process and the unwarranted delay in rendering a final judgment under those remedies, -violations and delay that the Inspector General for Justice was cognizant of-, the Commission believes that the facts alleged could tend to establish violations of the rights protected by Articles 8 and 25 of the American Convention, in combination with Article 1(1) thereof, for events that transpired subsequent to the Convention’s ratification by Brazil. In exercise of the principle of *jura novit curia*, the Commission understands that the facts that occurred prior to September 25, 1992, could tend to establish a violation of Article XVIII (right to a fair trial) of the American Declaration.

51. Prima facie, the State’s possible lack of due diligence in effectively investigating the facts surrounding the death of Margarida Alves and in punishing those responsible for the crime, may

amount to a violation of Article I of the American Declaration. On the issue of the obligations incumbent upon States with regard to observance of the right to life, the Inter-American Court has written that observance of the right to life:

[...] not only assumes that no one shall be deprived of his life arbitrarily (negative obligation), but also, in light of the State's obligation to guarantee the full and free exercise of human rights, it requires States to adopt all the appropriate measures to protect and preserve the right to life (positive obligation),[FN17] pursuant to the right to guarantee the full and free exercise of the rights of all the people under its jurisdiction.[FN18]

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[FN17] I/A Court H.R., The "Street Children" Case (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 144; I/A Court H.R., Case of the Miguel Castro-Castro Prison. Judgment of November 25, 2006. Series C No. 160, para. 237, and I/A Court H.R., Case of Vargas Areco. Judgment of September 26, 2006. Series C No. 155, para. 75.

[FN18] I/A Court H.R., Case of the Pueblo Bello Massacre. Judgment of January 31, 2006. Series C No. 140, para. 120; I/A Court H.R., Case of the Miguel Castro-Castro Prison, supra note 17, para. 237, and I/A Court H.R., Case of Vargas Areco, supra note 17, para. 75.

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52. The Inter-American Court has also written that one of the conditions for effectively guaranteeing the right to life is compliance with the duty to investigate violations of that right.[FN19]

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[FN19] I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz, Judgment of July 10, 2007. Series C No. 167, para. 144. I/A Court H.R., Case of the Miguel Castro Castro Prison, supra note 17, para. 253; I/A Court H.R., Case of Servellón García et al. Judgment of September 21, 2006. Series C No. 152, para. 119; I/A Court H.R., Case of Ximenes Lopes. Judgment of July 4, 2006. Series C No. 149, para. 147; I/A Court H.R., Case of the Ituango Massacres. Judgment of July 1, 2006. Series C No. 148, para. 297.

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53. The petition alleges that the motive for the alleged victim's death was her activities as a union leader, and that her execution-style killing was for intimidation and a display of power. The Commission observes that a violation of a human rights defender's right to life has a particularly strong impact that extends well beyond the immediate victim.[FN20] Such acts instill fear in other human rights defenders, directly curtailing their chance of exercising the right to defend human rights.[FN21]

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[FN20] IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, Doc. 5 rev.1, March 7, 2006. para. 43.

[FN21] IACHR, Ibid.

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54. In similar cases the Inter-American Court has held that:

(...) freedom of association also gives rise to positive obligations, such as to prevent attacks on it, to protect those who exercise it, and to investigate violations. These positive obligations must be adopted, even in the sphere of relations between individuals, if the case merits it.[FN22] As it has determined in other cases, the Court considers that the sphere of protection of Article 16(1) [freedom of association] includes the exercise of the right to organize trade unions.[FN23]

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[FN22] I/A Court H.R., Case of Huilca Tecse, Judgment of March 3, 2005. Series C No. 121, para. 76; I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz, supra note 19, para. 144.

[FN23] I/A Court H.R., Case of Huilca Tecse, supra note 22, para. 77; I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz, supra note 19, para. 144.  
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55. The Commission therefore considers that the facts alleged could tend to establish a violation of the right to freedom of association. Accordingly, by virtue of the principle of *jura novit curia*, the IACHR is also admitting the present case for an alleged violation of Article XXII of the American Declaration.

56. The IACHR thus concludes that the petition is admissible on this point, pursuant to Article 47(b) of the American Convention.

## V. CONCLUSIONS

57. The Commission concludes that it has competence to take cognizance of the petition and that the petition meets the admissibility requirements set forth in articles 46 and 47 of the American Convention.

58. Based on the above arguments of fact and of law, and without prejudging the merits of the case,

## THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

### DECIDES:

1. To declare this petition admissible with respect to the alleged violations of Article I of the American Declaration, and articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof. By virtue of the principle of *jura novit curia*, it declares the present petition admissible for a possible violation of articles XVIII and XXII of the Declaration, in connection with the facts that occurred prior to September 25, 1992.
2. To notify the State and the petitioner of this decision.
3. To proceed to process the merits of the case.
4. To publish this decision and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 5th day of the month of March, 2008.  
(Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman;  
Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Florentín Meléndez, and Víctor  
E. Abramovich, Commissioners.