

Institution:	Inter-American Commission on Human Rights
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Session:	Hundred Thirty-Second Regular Session (17 – 25 July 2008)
Title/Style of Cause:	Antonio Ferreira Braga v. Brazil
Doc. Type:	Report
Decided by:	Chairman: Paolo Carozza; First Vice-Chairwoman: Luz Patricia Mejia Guerrero; Second Vice-Chairman: Felipe Gonzalez; Commissioners: Clare K. Roberts, Florentin, Melendez, Victor E. Abramovich. As stipulated in Article 17(2)(a) of the Commission’s Rules of Procedure, Commissioner Paulo Sergio Pinheiro, a Brazilian national, did not participate in the decision on this petition.
Dated:	18 July 2008
Citation:	Ferreira Braga v. Brazil, Case 12.019, Inter-Am. C.H.R., Report No. 35/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by:	APPLICANTS: the Centro de Defesa e Promocao dos Direitos Humanos of the Archdiocese of Fortaleza, the Centro de Defesa da Vida Herbert de Sousa, and the Center for Justice and International Law
Editor's Note:	Footnotes 36-41 appear twice with different text in the original.
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I. SUMMARY

1. On June 11, 1998, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition that the Centro de Defesa e Promoção dos Direitos Humanos [Center for the Defense and Promotion of Human Rights] of the Archdiocese of Fortaleza, the Centro de Defesa da Vida Herbert de Sousa [Herbert de Sousa Center for the Protection of Life], the Center for Justice and International Law (CEJIL) and Antonio Ferreira Braga (hereinafter “the petitioners”) lodged against the Federative Republic of Brazil (hereinafter “the State,” “the Brazilian State” or “Brazil”) alleging the latter’s responsibility for violation, to the detriment of Antonio Ferreira Braga (hereinafter “the alleged victim”), of the rights recognized in Articles I, II, V, IX, XXV, and XXXIII of the American Declaration of the Rights and Duties of Man (hereinafter the American Declaration), Articles 4, 5, 7 and 11 of the American Convention on Human Rights (hereinafter “the American Convention”) and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture (hereinafter the “Inter-American Convention against Torture”).

2. The petition states that the alleged victim and co-petitioner, Antonio Ferreira Braga, was unlawfully arrested by civilian police on April 11, 1993. The following day he was tortured at

the Fortaleza Headquarters of the Ceará State Police's Robbery and Theft Division to force him to confess to the theft of a television set. As for the facts alleged, two of the police officers involved were convicted and sentenced to a total of 6 (six) months in prison due to aggravating circumstances. However, the Police Commissioner in charge of the station where the torture allegedly occurred and the Police Inspector were acquitted. The sentence was ultimately confirmed and became final on May 12, 1999. However, on June 10, 1999, the same judge who confirmed the sentence then issued another decision in which she declared that enforcement of the sentence delivered in the case was time-barred by the statute of limitations because of the time elapsed between the date the complaint was entered and the date of the conviction. The petitioners therefore assert that the State is responsible for violations of the human rights protected under articles I, II, V, IX, XXV and XXXIII of the American Declaration of the Rights and Duties of Man and articles 4, 5, 7 and 11 of the American Convention.

3. The State did not answer the complaint, even though on June 25, 1998 it was given an extension for purposes of providing information on the petition.

4. In this report the Commission analyzes the admissibility requirements and finds that the petition is admissible in respect to Articles 5, 7, 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, and pursuant to its Articles 46(2)(c) and 47. It is also admissible with respect to alleged violations of Articles 1, 6, 7 and 8 of the Inter-American Convention to prevent and Punish Torture. The supposed violation of articles 8.1 and 25 of the American Convention were included by the Commission by virtue of the *iura novit curia* principle. Further, the Commission also finds that the petition is inadmissible in regard to Articles I, II, V, IX, XXV and XXXIII of the American Declaration and Article 4 and 11 of the American Convention.

5. Pursuant to Article 37(3) of its Rules of Procedure, the Commission will also examine the merits of the case. On the question of the merits in this report, prepared pursuant to Article 50 of the American Convention, the Commission finds that the State violated, to the detriment of Mr. Antonio Ferreira Braga, the rights to humane treatment, personal liberty, judicial guarantees and judicial protection, recognized in Articles 5, 7, 8(1) and 25 of the American Convention, all in relation to the obligations *erga omnes* undertaken with Articles 1(1) thereof. The Commission also finds that the State failed to comply with its obligation to prevent and punish torture committed within its territory, as required under Articles 1, 6, 7, and 8 of the Inter-American Convention to Prevent and Punish Torture. The Commission then makes the pertinent recommendations to the Brazilian State.

II. PROCESSING WITH THE COMMISSION

6. The petition was received at the Executive Secretariat on June 11, 1998. On June 25, 1998, the petitioners were advised that the petition had been received. On that same date, the relevant parts of the petition were forwarded to the State, with the request that it submit information on the matter within 90 (ninety) days.

7. On September 22, 1998, the State requested a 90 (ninety) day extension for submitting the requested information. That extension was granted on September 24, 1998, and the State was so advised.

8. Since no reply from the State was forthcoming, on August 31, 1999 the Commission advised it that if the requested responsive information was not supplied within 30 (thirty) days, the facts alleged in the petition could be presumed to be true pursuant to then Article 42 of the Commission's Rules of Procedure, as long as other evidence did not lead to a different conclusion.

9. On November 21, 2002, when the State had still not submitted information on the case, the Commission decided to apply the provisions of Article 37(3) of its Rules of Procedure and to treat the petition's admissibility and merits at the same time. Under Article 38(1) of the Rules of Procedure, both parties were given 2 (two) months to submit observations on the merits.

10. The petitioners submitted information on the merits of the case on February 19, 2003. Receipt was acknowledged on March 17, 2003 and, that same day, the information was forwarded to the State, which was given 60 (sixty) days in which to submit additional observations on the matter. No further information relevant to the case has been received since.

III. POSITION OF THE PETITIONERS

11. The petitioners contend that on April 12, 1993, members of the Ceará State Legislative Assembly's Human Rights Commission, the Fortaleza Municipal Government, its Office for the Defense of Human Rights and the Bar Association caught police officers José Sergio Andrade da Silva, Valderi Almeida da Silva and Valdir de Oliveira Silva Junior (deceased) by surprise in the act of torturing Antonio Ferreira Braga, on the very premises of the Headquarters of the Ceará State Police's Robbery and Theft Division in Fortaleza.

12. The petitioners state that the alleged victim was inside a room measuring 10 square meters, with his hands tied behind his back. He was lying face down on the floor, wrapped in a rug. When he saw people walk into the room, forcing the door open, he screamed: "You saved my life; they were going to kill me." Even after being discovered, the alleged victim purportedly had to spend two more hours tied up and rolled in the rug, waiting for the examiner from the Institute of Criminology to arrive.

13. The petitioners state that once the matter had been verified, the Ceará State Secretary for Public Security ordered the individual transferred to the Institute of Legal Medicine, where he was examined. The examination confirmed that he had been tortured. The means used were electric shock, beating with a cane and semi-asphyxiation using a water-filled rubber inner tube, all was reported in the media.

14. The petitioners allege that the medical examination[FN2] found symmetrical lesions on Antonio Ferreira Braga's wrists, caused by having his hands tied behind his back. The alleged victim had bruises and scrapes on the neck, arms, shoulders, head and legs. After his experience the alleged victim was afraid, and asked where he could be hidden, fearing reprisals from the police officers who had tortured him. The petitioners allege further that he was not properly fed at the police station; when he was found, he had not been given anything to eat or drink for over 24 (twenty-four) hours.

[FN2] Certification of the examination of bodily injuries, conducted by physicians Rita Maria Vasconcelos de Alcantara and Ercilio Guimaraes do Nascimento, from the Institute of Legal Medicine.

15. The petitioners assert that the alleged victim was not detained either by a court order or in flagrante; instead, he was taken into custody on suspicion of having stolen a television set. The petitioners allege that at the time of his arrest, which was 8:00 a.m. on April 11, 1993, the subject was sitting in a bar near his home. The police officers took him back to his house to look for the television set they had accused him of stealing. According to the petitioners, by this time they were already hitting him, trying to force him to confess the crime. When the television in question was not found, they took him to the Headquarters of the Robbery and Theft Division, where he was tortured until representatives of human rights organizations intervened.

16. The petitioners contend that the Police Commissioner in charge of the Robbery and Theft Division, Sonia Maria Gurgel Matos, did not deny the accusation. Indeed, in statements made to the press on April 13, 1993, she said that the report of the alleged torture had come from someone inside the police station. She said she found it odd that representatives from civil society agencies should go to the precise place where the police and prisoner were. She also admitted that she was aware of what was happening and had acquiesced to the events that occurred at the police station. In that same statement to the press she stated that she was the one who had ordered the detainee questioned.

17. The petitioners contend that in statements made to the press on April 14, 2003, even the Ceará Secretary for Public Security, Francisco Crisóstomo, defended the use of violence in police work. The petitioners assert that this official even went so far as to say that the complaint was the result of a “scheme”, and the surprise visit to the station had been too coincidental.

18. The petitioners transcribe a series of news reports on the use of violence by elements in the Ceará state police force, the sense of shared self-interest among members of the police force, the connivance of the authorities, and the tumult the news created within the public. The Commissioner of the Robbery and Theft Division, Sonia Maria Gurgel, was removed and transferred.

19. According to information that the petitioners reported, a police investigation of the facts was opened as case No. 011/93 on April 13, 1993 and concluded on May 6, 1993. On May 23, 1993, the petitioners allege that the Public Prosecutor’s Office brought a complaint against the 3 (three) police officers who committed the torture, and against the Commissioner of the Ceará State Police’s Robbery and Theft Division in Fortaleza, Sonia Gurgel, and Police Inspector Francisco Girolando Batalha. The petitioners allege further that as of June 17, 1993, Antonio Ferreira Braga, the alleged victim, had still not made his pre-trial statement before the judicial authority, despite the requests made to the judge to expedite the hearing because of the threats being made against Mr. Ferreira Braga[FN3]. Four months after the events in question occurred,

on August 25, 1993, Mr. Ferreira Braga purportedly made his pre-trial statement before the judicial authority.

[FN3] Information on the merits of the case that the petitioners submitted on February 18, 2003, page 8.

20. The petitioners contend that the proceedings in the case moved very slowly; that the examining phase allegedly continued until April 1996 and that the final sentence of conviction was delivered on July 29, 1996, sentencing Valderi Almeida da Silva and José Sergio Andrade da Silva to 3 (three) months' prison time. That sentence was increased by six months based on aggravating circumstances. The petitioners assert that both Sonia Gurgel and Francisco Girolando Batalha were acquitted on the grounds that they did not participate in the criminal act with which they were charged. But the 9 (nine) month sentence given to the two convicted men was not confirmed until May 12, 1999, which meant that the original 3 (three) months sentence became 9 (nine) months' prison time. The petitioners allege that the same judge then ruled that the enforcement of the sentence was time-barred by the statute of limitations.

21. The petitioners also contend that an internal disciplinary inquiry was instituted with the Office of the Attorney General of the State, which concluded on November 29, 1994. It ordered that officers Valderi Almeida da Silva and José Sergio Andrade da Silva be dismissed for having engaged in torture. The petitioners further allege that Francisco Girolando Batalha was convicted and suspended from the force for 60 (sixty) days for an abuse of power committed by arresting the alleged victim without a court order. Commissioner Sonia Maria Gurgel was acquitted since the inquiry's finding was that she did not participate.

22. The petitioners conclude by asserting that there was no effective punishment for the crimes committed. They contend that the State is responsible in respect of the violation of Articles I, II, V, IX, XXV and XXXIII of the American Declaration, Articles 4, 5, 7 and 11 and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

IV. POSITION OF THE STATE

23. The State did not respond to the petition, even though it was duly notified of it on June 25, 1998. Given the State's failure to reply, and pursuant to Article 38(1) of the Commission's Rules of Procedure, on November 21, 2002 the State was given 2 (two) months to submit its observations on the merits of the case, to which the State did not reply either.

V. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Preliminary considerations

24. The Commission regrets that the State of Brazil did not exercise its right to send information, make observations, challenge the admissibility or inadmissibility of the complaint filed by the petitioners, or challenge the merits of the case within the procedural opportunities

provided for in Article 48 of the American Convention and Articles 30 and 38 of the Commission's Rules of Procedure. It thus did not avail itself of the powers that the inter-American human rights system gives to it. The Commission therefore considers that the State has tacitly waived its right to dispute or challenge whether the requirements for the petition's admissibility have been met.

25. The Commission is duly authorized to request information from the elements involved in a case, to conduct in loco investigations with regard to matters brought to its attention, and to gather the evidence that it deems relevant. However, the State, for its part, not only bears the burden of proving the facts upon which it rests its defense but must also cooperate with the case, which includes providing the information that the Commission requests of it and all the facilities necessary for the investigation that this Commission orders[FN4]. The jurisprudence of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") is that "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"[FN5].

[FN4] See in this regard, for example, Article 48((1)(a), (d) and (e) of the American Convention.

[FN5] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, paragraphs 135 and 136.

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

26. Under Article 44 of the Convention, the petitioners have standing to lodge petitions with the IACHR. The petition names Antonio Ferreira Braga, a Brazilian citizen, as the alleged victim. The Commission is therefore competent *ratione personae* to examine the petition. The State ratified the American Convention on September 25, 1992, and the Inter-American Convention to Prevent and Punish Torture on July 20, 1989.

27. The Commission is competent *ratione loci* to take up the petition because it alleges violations of rights protected under the American Convention, and the Inter-American Convention to Prevent and Punish Torture, violations said to have occurred within the territory of a State party to those instruments.

28. The Commission is competent *ratione temporis* inasmuch as the obligation to respect and ensure the rights protected under the American Convention and the Inter-American Convention to Prevent and Punish Torture was already in effect for the State on the date the facts alleged in the petition were said to have occurred.

29. The petitioners are claiming violations of the alleged victim's right under Articles I, II, V, IX, XXV and XXXIII of the American Declaration. The Commission notes that the petitioners

themselves claim in the introduction to the petition filed with the IACHR that the facts alleged therein occurred on April 12, 1993. Brazil deposited its instrument of ratification of the American Convention on September 25, 1992.

30. The Commission has established that "once the American Convention entered into force (...) the Convention, and not the Declaration, became the source of legal norms for application by the Commission insofar as the petition alleges violations of substantially identical rights set forth in both instruments and those claimed violations do not involve a continuing situation"[FN6].

[FN6] IACHR, Report No. 119/01, Case 11,500, Tomás Eduardo Cirio, URUGUAY, October 16, 2001, para. 36; Report No. 38/99, VÍCTOR SALDAÑO, ARGENTINA, March 11, 1999, para. 13.

31. According to the chronology of the facts as explained by the petitioners, all the alleged violations of the purported victim's rights occurred subsequent to the date on which Brazil deposited its instrument of ratification of the American Convention. Therefore according to the case law cited above, the applicable source of law in this case is the American Convention. Thus the petition should be declared inadmissible as regards the alleged violations of the rights recognized in Articles I, II, V, IX, XXV and XXXIII of the American Declaration.

32. Having thus resolved the matter referenced in the preceding paragraph, the Commission is competent *rationae materiae*, because the petition alleges violations of human rights protected by the American Convention and by the Inter-American Convention to Prevent and Punish Torture.

C. Admissibility requirements

1. Exhaustion of domestic remedies

33. The petitioners allege that the remedies provided under domestic law have been pursued and exhausted.

34. On the issue of exhaustion of local remedies, the State has not replied to any of the Commission's requests seeking information on the matter. The rule requiring that domestic remedies be exhausted is intended to allow the State to resolve the problem under its domestic law before having to face international proceedings[FN7].

[FN7] IACHR, Report No. 60/01, Case 9,111 Ileana del Rosario Solares Castillo, María Ana López Rodríguez, Luz Leticia Hernández, Guatemala, April 4, 2001, para. 23.

35. On this point the Inter-American Court has held that “the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed”[FN8]. Therefore, as the State has not answered any of the Commission’s requests seeking information, the latter concludes that the State has tacitly waived the right that the Convention gives to the State to exercise this means of defense

[FN8] I/A Court H.R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 88.

36. The record shows that the petition was filed on June 11, 1998, before the internal remedies were exhausted. The record also shows that on June 10, 1999, a judgment was handed down declaring that enforcement of the convictions delivered against the persons convicted in the criminal case was time barred based on the statute of limitations, because of the period of time that had passed between the complaint reporting the facts and the date on which the conviction was confirmed[FN9] The State has not entered any objections in this regard, which leads the Commission to infer that the final court ruling in the case was the one that exhausted the remedies under domestic law, as required under Article 46 of the American Convention and Article 31 of the Commission’s Rules of Procedure.

[FN9] As shown in the ruling of the Judge of the Fourth Criminal District, attached as annex XX of the information that the petitioners submitted on the merits.

37. Under Article 100 of Brazil’s Penal Code[FN10], the State must bring criminal cases at its own initiative, unless a law expressly provides that a given case must be brought at the discretion of the aggrieved party. Thus, Law No. 9,455 of April 7, 1997, as amended by Law No. 10,741 of October 1, 2003, criminalized the offense of torture and established other measures in cases of torture, contains no provisions as to the bringing of criminal action, and thus relies on the general provisions of Brazil’s Criminal Code.

[FN10] Brazil’s Criminal Code provides that:

Title VII: CRIMINAL ACTION - A public action and by private initiative

Art. 100 - Criminal actions are brought by the State, except when the law expressly provides that the case must be brought at the discretion of the aggrieved party.

1° - Criminal cases are brought by the Public Prosecutor’s Office, either in representation of the aggrieved party or at the request of the Ministry of Justice, depending on the applicable law.

38. The Commission observes that this issue must be taken up when examining the admissibility of the petition, which in this case coincides with the approval of the report. It

considers that domestic remedies had been exhausted in the present case. Given the foregoing, the requirement provided in Article 46(1)(a) of the American Convention has been satisfied.

2. Time limit for the presentation of the petition

39. Under Article 46(1)(b) of the American Convention, in order for the Commission to admit a petition, the latter must be presented within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

40. In the instant case, the Commission has already established that the internal remedies were exhausted with the June 10, 1999 decision. The Commission observes that the petitioners in this case lodged their complaint on June 11, 1998, which was before the June 10, 1999 judgment that exhausted the remedies under domestic law. However, the admissibility requirements are examined at the time the present report is approved. The Commission therefore finds that the admissibility requirement set forth in Article 46(1)(b) of the American Convention has been met.

3. Duplication of international proceedings

41. The Commission understands that the subject matter of the petition is not pending in another international proceeding for settlement and is not substantially the same as one already examined by another international body or the Commission itself. Therefore, the requirements established in Articles 46(1)(c) and 47(d) have also been met.

4. Characterization of the facts alleged

42. The Commission considers that the petition concerns facts that could tend to establish a violation of rights recognized in the American Convention and in the Inter-American Convention to Prevent and Punish Torture. Specifically the petition concerns alleged violation of the rights guaranteed under Articles 4, 5, 7, 8, 11 and 25 of the American Convention, which concern the right to life, the right to humane treatment, the right to personal liberty, the right to judicial guarantees, the right to privacy and the right to judicial protection, and alleged violation of the obligations undertaken with Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, which concern the State's obligation to prevent and punish any act of torture within its jurisdiction and to take measures to ensure that its obligation is effective.

43. It should be indicated, firstly, that Antonio Ferreira Braga, the alleged victim, has signed the petition and appears as a co-petitioner. This leads the Commission to conclude that the State has not violated the right contained in Article 4 of the American Convention. While acts that cause serious injury to one's physical integrity can lead to one's death, the torture alleged in the instant case did not materialize in such a way that it can now be alleged that the person was arbitrarily deprived of his life. The Commission therefore concludes that the facts described do not tend to establish a possible violation of the alleged victim's right to life. The petition is therefore declared inadmissible with respect to this allegation. Further, based on the interpretation of Article 11 of the American Convention, developed within the system for the protection of human rights[FN11], the Commission also finds that the facts alleged in the present case do not tend to establish a possible violation of that article.

[FN11] In the Cesti Hurtado case, the Court held that “a judicial proceeding does not constitute, in itself, an unlawful attack on the honor or dignity of a person. The proceeding serves to resolve a dispute, even though it may indirectly cause annoyance to those who are subject to the prosecution. Moreover, it is almost inevitable that this should be so; to the contrary, the practice of contested lawsuits would be totally excluded. Furthermore, the punishment applied at the end of such a proceeding is not designed to harm those personal values, in other words, it does not attempt to discredit the person convicted, as occurs in the case of infamous punishment, which specifically suspends this intention (...) any effects on the honor and good reputation of Gustavo Cesti Hurtado that might result from his detention, prosecution and conviction [...] would derive from the violation of Articles 7, 8 and 25 of the Convention ...” I/A Court H.R., Cesti Hurtado Case. Judgment of September 29, 1999. Series C No. 56, paragraphs 177-178.

44. The petition asserts that when the alleged victim was detained, no warrant had been issued for his arrest and he was not caught in flagrante delicto. The Commission considers that this petition does state facts that tend to establish a violation of the right recognized in Article 7 of the American Convention, and will therefore examine this possible violation when examining the merits.

45. The Commission considers that the facts alleged could tend to establish violations of the rights recognized in Articles 8(1) and 25 of the Convention if the rulings in the case prosecuted against the authors of the acts of torture were delivered in violation of the alleged victim’s right to due process or if the rulings appear to violate any other right recognized in the Convention. Therefore, the petition in respect of possible violations of the rights mentioned is admissible.

46. The petition alleges acts of torture committed by agents of the State against the person of Antonio Ferreira Braga. If the allegations are proved during the examination of the merits, they may constitute violations of Article 5 of the American Convention, as the alleged victim’s right to have his physical, mental and moral integrity protected may have been violated.

47. The description of the facts could also tend to establish a violation of Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture.

48. The State has entered no objection challenging any aspect of the Commission’s competence. The petition does not appear to be “groundless” or “obviously out of order.” Therefore, the Commission finds that the present case satisfies the formal requirements for admissibility, established in Article 46(1) of the Convention and Article 32 of the Commission’s Rules of Procedure, as regards possible violations of the rights to humane treatment, to personal liberty, to a fair trial and to judicial guarantees, recognized in Articles 5, 7, 8(1) and 25 of the American Convention, and Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture, all to the detriment of Antonio Ferreira Braga. The supposed violations of article 8.1 and 25 of the Convention were not alleged by the petitioners; however, the Commission will evaluate the facts in light of these dispositions by virtue of the *iura novit curia* principle.

VI. CONCLUSIONS AS TO COMPETENCE AND ADMISSIBILITY

49. Based on the foregoing considerations of fact and of law and without prejudging the merits of the case, the Commission declares that it is competent and finds that the instant case satisfies the admissibility requirements set forth in Articles 46 and 47 of the American Convention. It therefore declares the petition admissible with regard to the possible violations of the rights recognized in Articles 5, 7, 8(1) and 25 of the American Convention, and Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture, and inadmissible in respect of Article 4 and 11 of the American Convention, and Articles I, II, V, IX, XXV and XXXIII of the American Declaration. The supposed violation of rights recognized in articles 8.1 and 25 of the American Convention were included by the Commission by virtue of the *iura novit curia* principle.

VII. ANALYSIS OF THE MERITS

A. Facts acknowledged for purposes of preparation of the present report

50. The State did not challenge the petition. Therefore, pursuant to Article 39 of its Rules of Procedure, the Commission finds that:

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 38 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.

51. The Court has held 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...[FN12].

[FN12] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 138.

52. Because no response to the petition was ever submitted, it must be presumed that:

53. Police Inspector Francisco Girolando Batalha detained Mr. Antonio Ferreira Braga on a public thoroughfare on April 11, 1993, at around 8:00 A.M. The Police Inspector did not have a warrant for the alleged victim's arrest, nor was the latter caught in flagrante. The alleged victim was then taken to the Headquarters of the Ceará State Police's Robbery and Theft Division in Fortaleza, which was then under Commissioner Sonia Maria Gurgel.

54. At 9:00 A.M. on April 12, 1993, representatives of the Ceará State Legislative Assembly's Human Rights Commission, the Fortaleza Municipal Government, its Human Rights Office and the Brazilian Bar Association entered the Headquarters of the Ceará State Police's Robbery and Theft Division in Fortaleza, where they caught police officers José Sergio Andrade da Silva, Valderi Almeida da Silva and Valdir de Oliveira Silva Júnior in the act of torturing Antonio Ferreira Braga[FN13].

[FN13] This subject died before the case went to trial.

55. The alleged victim was found at the Headquarters of the Ceará State Police's Robbery and Theft Division in Fortaleza, in a room measuring 10 (ten) square meters, lying face down with his hands tied behind his back and rolled up in a rug.

56. The Expert Examination done by the Civil Police's Institute of Criminology[FN14] on April 12, 1993, at 2:15 P.M. at the Headquarters of the Ceará State Police's Robbery and Theft Division, located in Fortaleza at No. 1791 Costa Barrios Street, found that the victim was being held in a jail, called an Investigation Room, measuring 2 (two) meters long, 2 (two) meters 50 (fifty) centimeters wide; it had only one door. The Expert also found that Antonio Ferreira Braga was on the floor, lying face down, rolled up in a rug, with his lower extremities tied and his jaw propped up on a piece of clothing[FN15].

[FN14] Annex VIII of the information that the petitioners submitted on the merits of the case, February 18, 2003, page 3.

[FN15] Idem preceding note, page 4.

57. Once the lower extremities were untied and the rug was unwrapped, Antonio Ferreira Braga was found inside wearing only denim Bermuda shorts. His hands were tied behind his back at the wrists, with strips of rubber. After undergoing the necessary examinations, the subject was taken to the Institute of Legal Medicine[FN16].

[FN16] Idem preceding note, page 5 and 6.

58. The same report states that up against the southern wall, just to the right of the body was a black suitcase. It was open and contained various pieces of rubber from an inner tube. Also in the room was a wooden club, measuring 44 (forty-four) by 11 (eleven) centimeters in diameter and weighing 600 (six hundred) grams, a length of cable 4 (four) meters long, with a socket at one end and the other end stripped. Also found was a cord used to tie the individual's lower extremities, handcuffs and pieces of rubber of the kind used in a tire inner tube[FN17].

[FN17] Annex VIII of the information that the petitioners submitted on the merits of the case, February 18, 2003, page 4.

59. The examination done by the Civil Police's Institute of Criminology described in the preceding paragraph concluded that none of the items found at the site were the proper tools of a police investigation and that Antonio Ferreira Braga was being tortured.

60. The Examination of the Corpus Delicti[FN18] conducted at the Institute of Legal Medicine of the Ceará State Secretariat for Public Security on April 12, 1993, found that Antonio Ferreira Braga suffered the following injuries: ecchymosis around the wrists, specifically the lower third of the right and left forearms; ecchymosis on the right shoulder; edema and reddish ecchymosis in the right pre-auricular region; ecchymosis in the spinal region; ecchymosis on the back side of the neck; bruising on the fourth toe of the left foot. They were blunt-force injuries.

[FN18] Annex X of the information that the petitioners submitted on the merits, February 18, 2003.

61. The details as to the subject's condition when found and of the cell in which he was located are graphically described with illustrations prepared by the Institute of Criminology of the Ceará Civil Police, under the Ceará State Secretariat of Public Safety[FN19].

[FN19] Annex XI of the information that the petitioners submitted on the merits of the case on February 18, 2003.

62. Concerning the investigation and prosecution of the facts, on July 29, 1996, the Judge of the 9th Criminal District of Fortaleza, temporarily serving on the bench of Fortaleza's 4th Criminal District, convicted police officers Valderi Almeida da Silva and José Sergio Andrade da Silva and sentenced them to 6 (six) months in prison for grievous bodily harm, criminalized in Article 129 of the Criminal Code. In that same decision, both Sonia Gurgel and Francisco Girolando Batalha were acquitted, on the grounds that they did not take part in the commission of the criminal offense[FN20]. The Public Prosecutor's Office appealed that decision and the appeal was granted by the Ceará Court, First Criminal Chamber[FN21], on December 1, 1998. This ruling added the crime of unlawful restraint, which was originally omitted. The sentence was made final by the Judge of Ceará's 4th Criminal District on May 12, 1999[FN22] and sentenced Valderi Almeida da Silva and José Sergio Andrade da Silva to a total of 9 (nine) months under the open incarceration system[FN23]. However, on June 10, 1999, enforcement of the sentence was declared time-barred because more than five years had elapsed between the date of the complaint and the date of issuance of judgment. The statute of limitations was applied

to the nine-month prison sentence retroactively, one of the bases for the decision delivered[FN24].

[FN20] Annex No. 1 of the original petition submitted by the petitioners on June 11, 1998, page 5.

[FN21] Annex XVIII of the information that the petitioners submitted on the merits of the case, February 18, 2003.

[FN22] Annex XIX of the information that the petitioners submitted on the merits of the case, February 18, 2003, page 4.

[FN23] Idem preceding note. The basic sentence of three-months imprisonment was combined with the aggravating circumstance established in the lower court, for a total of sentence of nine months.

[FN24] Annex XX of the information that the petitioners submitted on the merits, February 18, 2003.

63. The internal administrative-disciplinary proceedings, which concluded on November 29, 1994, ordered the dismissal of Valderi Almeida da Silva and José Sergio Andrade da Silva, for having tortured the alleged victim[FN25]. Francisco Girolando Batalha was convicted and sentenced to a 60-day suspension for having abused his authority by taking the subject into custody without an arrest warrant and for having taken him to the Headquarters of the Robbery and Theft Division. Commissioner Sonia Maria Gurgel was acquitted on the grounds that she did not take part in the acts committed[FN26].

[FN25] Administrative-disciplinary proceeding No. 69/93. State of Ceará, Office of the Prosecutor General of the State, Prosecutor's Report on Administrative-Disciplinary Proceeding, November 29, 1994, page 66. Annex IV of the brief on the merits of the case that the petitioners filed on February 18, 2003

[FN26] Annex IV of the information that the petitioners submitted on the merits of the case, February 18, 2003.

64. Antonio Ferreira Braga was not compensated, a fact presumed to be true based on Article 39 of the Commission's Rules of Procedure, given the absence of any information indicating otherwise and the fact that the State did not challenge the charge.

B. Right to personal liberty (Article 7)

65. Article 7 of the American Convention reads as follows:

1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

66. Article 5, subparagraph LXI of the Brazilian Constitution, reads as follows: No one shall be arrested except in flagrante delicto or by written and reasoned order of a competent judicial authority[FN27]. Article 282 of Brazil's Code of Criminal Procedure provides that "... except in cases of flagrante delicto, incarceration may only be by virtue of a verdict of conviction or in the cases prescribed by law, and by virtue of a written order from a competent authority[FN28]...". According to these laws, the only case in which authorities may detain a suspect without a warrant issued previously by a competent authority is if the suspect is caught in flagrante delicto.

[FN27] "Ninguém será preso senão em flagrante delito ou por ordem escrita e fundamentada de autoridade judiciária competente"

[FN28] "À exceção do flagrante delito, a prisão não poderá efetuar-se senão em virtude de pronúncia ou nos casos determinados em lei, e mediante ordem escrita da autoridade competente".

67. The inter-American system has held that the essence of Article 7 of the American Convention is the protection of the liberty of the individual from arbitrary or unlawful interference by the State and the guarantee of the detained individual's right of defense[FN29].

[FN29] I/A Court H.R., Case of the Juvenile Reeducation Institute, Judgment of September 2, 2004. Series C No. 112, para. 223; Case of Maritza Urrutia, Judgment of November 27, 2003. Series C No. 103, para. 66; I/A Court H.R., Case of Bulacio, Judgment of September 18, 2003. Series C No. 100, para. 129; and I/A Court H.R., Case of Juan Humberto Sánchez, Judgment of June 7, 2003. Series C No. 99, para. 77.

68. A detention is arbitrary and unlawful if not done on the grounds and by the formalities prescribed by law, when executed without observing the procedures that the law prescribes, and when there has been an abuse of the powers of arrest, i.e., when the arrest is made for purposes other than those that the law prescribes and requires[FN30]. The Commission has also held that a detention for improper purposes is itself a punishment constituting a sort of sentence without trial, or an unlawful penalty that violates the guarantee against imposition of punishment without benefit of trial[FN31]. The Inter-American Commission has established that the term "arbitrary" is synonymous with "irregular, abusive, contrary to law"[FN32].

[FN30] IACHR, Report No. 33/04, Case 11,634, Jailton Neri Da Fonseca. Brazil. March 11, 2004, para. 53.

[FN31] IACHR, Annual Report 2001, Report No. 101/01 – Extrajudicial Executions and Forced Disappearances, Case 10,247 et al. (Peru), para. 217.

[FN32] IACHR, Report No. 35/96, Case 10,832, Luis Lizardo Cabrera, Dominican Republic, April 7, 1998, para. 66.

69. With reference to detention, the Court has written the following on the subject of illegal or arbitrary detentions in relation to Article 7, subparagraphs 2 and 3 of the Convention:

[a]ccording to the first of these regulatory provisions, no one shall be deprived of his personal liberty except for reasons, cases or circumstances specifically established by law (material aspect) but, also, under strict conditions established beforehand by law (formal aspect). In the second provision, we have a condition according to which no one shall be subject to arrest or imprisonment for causes or methods that – although qualified as legal – may be considered incompatible with respect for the fundamental rights of the individual, because they are, among other matters, unreasonable, unforeseeable or out of proportion[FN33].

[FN33] I/A Court H.R., Case of Maritza Urrutia. Judgment of November 27, 2003. Series C. No. 103, para. 65; I/A Court H.R., Case of Bulacio, Judgment of September 18, 2003. Series C No. 100, para. 125; I/A Court H.R., Case of Juan Humberto Sánchez, Judgment of June 7, 2003. Series C No. 99, para. 78; I/A Court H.R., Bámaca Velásquez Case. Judgment of November 25, 2000. Series C No. 70, para. 139; I/A Court H.R., Durand and Ugarte. Judgment of August 16, 2000. Series C No. 68, para. 85.

70. The Commission's practice has been to examine whether a detention conforms to Article 7(2) and (3) of the American Convention. It does this by following three steps. The first is to determine the lawfulness of the arrest in the material and procedural sense, which means determining whether the arrest was made in accordance with the domestic laws of the State in question. The second step is to analyze the domestic laws in the light of the guarantees established in the American Convention, to determine whether those laws arbitrary. Finally, if the arrest was made in accordance with domestic laws that are compatible with the American

Convention, the Commission then determines whether the enforcement of the law in the case in question was arbitrary[FN34].

[FN34] IACHR. Report No. 33/04, Case 11,634, Jailton Neri Da Fonseca. Brazil. March 11, 2004. IACHR, Report No. 53/01 Case 11,565 Ana, Beatriz and Celia González Pérez, Mexico, April 4, 2001, paragraphs 23 and 27.

71. In the present case, the Commission observes that the alleged victim was detained unlawfully and arbitrarily. The was arrested in a public place, in the morning, there were no signs of any kind of activity that might be grounds to suspect that he was involved in the commission of a punishable offense. The Commission understands that the arrest was illegal because based on the facts described, the arrest was not made in flagrante; it was also arbitrary because it was made without an arrest warrant. Thus, the individual's right to personal liberty, as prescribed in Article 7(3) of the American Convention, was violated.

72. While the victim was being taken to the headquarters of the Robbery and Theft Division, "he was beaten along the way; it was even said that once at Headquarters, they would put his head in a bag of water to get him to confess to the theft of a television set". Upon arrival at police headquarters, he was not informed of the reasons why he was detained and was never accused of the crime of theft.

73. The Court has held that all persons detained "have the right to live in prison conditions that are in keeping with personal dignity, and the State must guarantee their rights to life and personal integrity"[FN35]. The Court has also held that the State, being responsible for detention centers, is the guarantor of these rights of the detainees, which involves, among other things, the obligation to explain what happens to persons who are under its custody. State authorities exercise total control over persons under their custody[FN36].

[FN35] I/A Court H.R., Cantoral Benavides Case. Judgment of August 18, 2000. Series C No. 69, para. 87; I/A Court H.R., Durand and Ugarte Case. Judgment of August 16, 2000. Series C, No. 68, para. 78; and Castillo Petruzzi et al. Case, Judgment of May 30, 1999. Series C No. 52, para. 195.

[FN36] I/A Court H.R., Case of Bulacio, Judgment of September 18, 2003. Series C No. 100, para. 126.

74. The vulnerability of the detainee worsens when the detention is illegal or arbitrary. Then the person is in a situation of complete defenselessness, which causes a definite risk of abridgment of other rights, such as those to humane and decent treatment[FN37]. The State must provide a satisfactory explanation for what has happened to a person whose physical condition was normal when he was taken into custody, but worsened during or at the end of it[FN38].

[FN37] I/A Court H. R., Case of Bulacio, Judgment of September 18, 2003. Series C. No. 100, para. 127; I/A Court H.R., Case of Juan Humberto Sánchez, Judgment of June 7, 2003. Series C, No. 99, para. 96; I/A Court H.R., Bámaca Velásquez Case, Judgment of November 25, 2000. Series C No. 70, para. 150; and I/A, Court H.R., Cantoral Benavides Case, Judgment of August 18, 2000. Series C No. 69, para. 90.

[FN38] I/A Court H.R., Case of Bulacio, Judgment of September 18, 2003. Series C No. 100, para. 127.

75. Likewise, the detainee and those with legal custody or representation of the detainee have the right to be informed of the causes and reasons for his or her detention at the time it occurs, which “constitutes a mechanism to avoid illegal or arbitrary detentions from the very moment of imprisonment and, at the same time, ensures the individuals right to defense[FN39].

[FN39] I/A Court H.R. Case of Bulacio, Judgment of September 18, 2003. Series C No. 100, para. 127; and I/A Court H.R., Case of Juan Humberto Sánchez, Judgment of June 7, 2003. Series C No. 99, para. 82.

76. Article 7(4) of the American Convention establishes positive obligations that place specific requirements upon both the agents of the State party and any third parties acting with its tolerance or permission and who are responsible for the detention[FN40]. The Court has written that Article 7(4) of the Convention includes a mechanism to avoid unlawful or arbitrary conduct from the moment of the deprivation of freedom and to guarantee the defense of the person detained, so that the latter and those who represent him or have legal custody of him have the right to be informed of the reasons for his detention when this occurs and of the rights of detainees[FN41].

[FN40] I/A Court H.R., Case of Maritza Urrutia, Judgment of November 27, 2003. Series C No. 103, para. 71; and I/A Court H.R., Case of Juan Humberto Sánchez, Judgment of June 7, 2003. Series C No. 99, para. 81.

[FN41] I/A Court H.R., Case of Maritza Urrutia, Judgment of November 27, 2003. Series C No. 103, para. 72; I/A Court H.R., Case of Bulacio, Judgment of September 18, 2003. Series C No. 100, para. 128; I/A Court H.R., Case of Juan Humberto Sánchez, Judgment of June 7, 2003. Series C No. 99, para. 82.

77. Based on the foregoing considerations of fact and of law and the jurisprudence cited, the Commission concludes that the alleged victim was deprived of his liberty arbitrarily and unlawfully; there was no case under investigation where his arrest could have been ordered, nor was he caught in flagrante. The alleged victim was not brought promptly before a competent judge or tribunal for a rapid determination of the lawfulness of his arrest or to order his release, as required under the Brazilian Constitution. Instead, he was held incommunicado at the Headquarters of the Ceará State Police’s Theft and Robbery Division in Fortaleza, where he was

tortured. Police officers were attempting to force him to a confession out of him when human rights defenders burst in on the scene. Those human rights defenders then arranged to have other authorities contacted who put an end to the unlawful situation.

78. From the foregoing the Commission finds that in the present case, the first and third factors that must be present for the Commission to find that a detention was unlawful and/or arbitrary are present. The State is responsible for violation of the right to personal freedom protected under Article 7 of the American Convention, to the detriment of Antonio Ferreira Braga, by virtue of the fact that his right to personal liberty and security was not guaranteed.

A. Right to humane treatment (Article 5)

79. Article 5 of the American Convention reads as follows:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

80. Article 2 of the Inter-American Convention to Prevent and Punish Torture provides 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.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this Article.

81. The Court has found that the Inter-American Convention to Prevent and Punish Torture elaborates upon the principles contained in Article 5 of the American Convention in greater detail and, therefore, constitutes an auxiliary instrument to the Convention[FN36].

[FN36] I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, para. 215.

82. The facts alleged in the instant case took place on April 12, 1993. On April 7, 1997, Law No. 9,455 was adopted defining torture as a crime and establishing other measures in this regard. Under the new law, anyone found guilty of practicing torture faces a sentence of 2 (two) to 8 (eight) years' imprisonment. However, while this law cannot be enforced retroactively to this

case, Article 129 of the Criminal Code in force since December 1940, criminalizes grievous corporal injury, which carries a penalty of imprisonment of 1 (one) to 5 (five) years[FN37].

[FN37] Corporal injury. Article 129. To harm the physical integrity or health of another. Penalty – detention for anywhere from three months to one year. Grievous corporal injury. 1. If it results in: I. Disability for routine occupations for more than thirty days; II – a threat to life; III – permanent maiming of a member, loss of sensation or function; IV – inducement of birth: Penalty – Imprisonment for one to five years.

Lesão corporal. Art. 129. Ofender a integridade corporal ou a saúde de outrem: Pena - detenção, de três meses a um ano. Lesão corporal de natureza grave . 1º Se resulta: I - Incapacidade para as ocupações habituais, por mais de trinta dias; II - perigo de vida; III - debilidade permanente de membro, sentido ou função; IV - aceleração de parto: Pena - reclusão, de um a cinco anos.

83. From the foregoing it follows that torture is absolutely prohibited by the international conventions to which Brazil is party and by its own domestic laws.

84. In the instant case, as shown in the section on the establishment of the facts, it has been proved that Antonio Ferreira Braga was tortured by agents of the Brazilian State, a fact shown by the evidence in the case file and not contested by the State[FN38].

[FN38] Annex VIII of the information that the petitioners submitted on the merits of the case, February 18, 2003.

85. The expert examination conducted by the Civil Police’s Institute of Criminology[FN39] found that Antonio Ferreira Braga had been subjected to torture and that the place where Mr. Ferreira Braga was found and the instruments discovered there were not suitable for a police investigation[FN40].

[FN39] Annex VIII of the information that the petitioners submitted on the merits of the case, February 18, 2003, p.3..

[FN40] Annex VIII of the information that the petitioners submitted on the merits of the case, February 18, 2003.

86. One of the facts established in the present case was that instruments used in the practice of torture were found at the scene of the events[FN41], and that on the very same day, the Ceará State Institute of Legal Medicine conducted an Examination of the Corpus Delicti[FN42], which found that the alleged victim had sustained serious and obvious injuries.

[FN41] Annex VIII of the information that the petitioners submitted on the merits of the case, February 18, 2003.

[FN42] Annex X of the information that the petitioners submitted on the merits of the case.

87. Thus, the findings concerning the torture of Mr. Ferreira Braga are based on a number of pieces of evidence and various expert examinations and reports done by authorities of the State.

88. When the evidence in the case file and the laws cited above are combined, the conclusion is that the alleged victim was tortured by police officers José Sergio Andrade da Silva, Valderi Almeida da Silva and Valdir de Oliveira Silva Júnior, at the Headquarters of the Ceará State Police's Robbery and Theft Division, on the morning of April 12, 1993, to force him to confess to a robbery. Their conduct falls within the parameters established in Article 2 of the Inter-American Convention to Prevent and Punish Torture.

89. As previously observed, the Court has written that a "person who is unlawfully detained is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated"[FN43]. It has also held that "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being"[FN44]. The Court's jurisprudence is that a brief period of detention is enough to constitute an infringement of the victim's mental and moral integrity according to the standards of international human rights law[FN45] and that when such circumstances occur, it is possible to infer, even in the absence of other evidence in this regard, that treatment of the victim during his isolation was inhuman, degrading, and extremely aggressive[FN46].

[FN43] /A Court H.R., Case of Baldeón García, Judgment of April 6, 2006. Series C No. 147, para. 119; I/A Court H.R., Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, para. 87; Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 96; Bámaca Velásquez Case. Judgment of November 25, 2000. Series C No. 70, para. 150; and Cantoral Benavides Case. Judgment of August 18, 2000. Series C No. 69, para. 90.

[FN44] I/A Court H.R., Bámaca Velásquez Case. Judgment of November 25, 2000. Series C No. 70, paragraph 150; Cantoral Benavides Case. Judgment of August 18, 2000. Series C No. 69, para. 83; and Fairén Garbi and Solís Corrales Case. Judgment of March 15, 1989. Series C No. 6, para. 149.

[FN45] I/A Court H.R., Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 98; Bámaca Velásquez Case. Judgment of November 25, 2000. Series C No. 70, para. 128; and Cantoral Benavides Case. Judgment of August 18, 2000. Series C No. 69, paragraphs 82 and 83.

[FN46] Mutatis mutandi: I/A Court H.R., Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 98; Bámaca Velásquez Case. Judgment of November 25, 2000. Series C No. 70, para. 150; and Cantoral Benavides Case. Judgment of August 18, 2000. Series C No. 69, paragraphs 83, 84 and 89.

90. All the facts described in the petition and not contested by the State, combined with the precedents referenced above, lead the Commission to conclude that on the morning of April 12, 1993, police officers José Sergio Andrade da Silva, Valderi Almeida da Silva y Valdir de Oliveira Silva Júnior subjected Antonio Ferreira Braga to treatment that qualified as torture by the criteria established in Article 5 of the American Convention and Article 2 of the Inter-American Convention to Prevent and Punish Torture, in an effort to force him to confess to a punishable offense. This constitutes a violation of Article 5 of the American Convention.

D. Violation of Articles 8 and 25 of the American Convention (Right to a Fair Trial and Right to Judicial Protection), in relation to Articles 1(1) and 2 thereof.

91. As for the violation of Articles 8 and 25 of the American Convention and of Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, the petitioners allege that the case prosecuted against those charged with having tortured the alleged victim lasted 5 (five) long years, and only then did the decision become final. Because of the time elapsed, enforcement of the sentence that the convicted men received were time-barred by the statute of limitations.

92. Article 8(1) of the American Convention reads as follows:

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.

93. Article 25 of the American Convention provides 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.

94. Article 1(1) of the American Convention states 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.

95. The police investigation into the matter was opened on April 13, 1993, and concluded on May 6 of that year[FN47]. On May 26 of the same year, the Public Prosecutor's Office filed charges against Valderi Almeida da Silva, José Sergio Andrade da Silva, Sonia Maria Gurgel Amaral and Francisco Girolando Batalha[FN48]. The lower court ruling was delivered on July 29, 1996, and convicted police officers Valderi Almeida da Silva and José Sergio Andrade da Silva, sentencing them to 6 (six) months imprisonment, based on aggravating circumstances. The same ruling acquitted Sonia Gurgel and Francisco Girolando Batalha, on the grounds that they had not participated in the commission of the crime[FN49]. This ruling came 3 (three) years and 3 (three) months after the crimes were committed.

[FN47] Original complaint that the petitioners filed on June 11, 1998, page 8.

[FN48] Annexes 1 and 2 of the original complaint that the petitioners filed on June 11, 1998, page 5.

[FN49] Annex 1 of the original complaint that the petitioners filed on June 11, 1998, page 5.

96. The sentence of conviction was amended on appeal and then was confirmed and became final on May 12, 1999[FN50]; however, on June 10, 1999, the court declared that enforcement of the sentence for the crime was time-barred by the statute of limitations, because of the length of time that had passed between the date on which the events occurred and the date on which the conviction was delivered[FN51]. From the date on which the events occurred, it would be almost 6 (six) years before the criminal case was finally closed.

[FN50] Annex XIX of the information that the petitioners submitted on the merits, February 18, 2003, page 4.

[FN51] Annex XX of the information that the petitioners submitted on the merits, February 18, 2003.

97. The internal disciplinary inquiry, which ended on November 29, 1994, ordered the dismissal of Valderi Almeida da Silva and José Sergio Andrade da Silva for their torture of the alleged victim. Francisco Girolando Batalha was convicted and sentenced to a 60 (sixty) day suspension for having overstepped his authority by arresting the subject without a warrant and taking him to the Headquarters of the Robbery and Theft Division. Commissioner Sonia Maria Gurgel was acquitted on the grounds that she did not participate in these events[FN52].

[FN52] Annex IV of the information that the petitioners submitted on the merits, February 18, 2003.

98. In this case, it is important to emphasize that the events occurred on April 12, 1993. It is established fact that Valderi Almeida da Silva and José Sergio Andrade da Silva were tried,

convicted and sentenced for the punishable offenses of arbitrary violence and abuse of authority, and their sentence became final on May 12, 1999[FN53]. However, on June 10, 1999, the sentence was declared time-barred based on the statute of limitations[FN54]. The legal grounds cited to apply the statute of limitations in the June 10, 1999 ruling was the amount of time that had elapsed between the date of the complaint and the date of the judgment, in other words more than 5 (five) years[FN55]. In the July 29, 1996 ruling delivered by the Judge of the 9th Criminal Court of Ceará serving as interim judge on the bench of the 4th Criminal Court, Francisco Girolando Batalha and Sonia Maria Gurgel Matos were acquitted of the punishable offenses with which they were charged. The crimes charged were grievous bodily injury, unlawful constraint and arbitrary violence, provided for in Articles 129, 146 and 322 of the Criminal Code. The measure was adopted on the basis of Article 386.IV of the Code of Criminal Procedure[FN56].

[FN53] As set down in the decision of Ceará's Fourth District Criminal Court, attached as Annex XIX of the information that the petitioners submitted on the merits.

[FN54] As set down in the decision of Ceará's Fourth District Criminal Court. See Annex XX of the information that the petitioners submitted on the merits, February 18, 2003.

[FN55] Ibid.

[FN56] Article 386 of the Code of Criminal Procedure reads as follows: The judge shall acquit the accused, stating the grounds in the operative part of the judgment, wherein he or she acknowledges that: iv – there is no evidence that the accused has committed the offense.

Art. 386. O juiz absolverá o réu, mencionando a causa na parte dispositiva, desde que reconheça: IV - não existir prova de ter o réu concorrido para a infração penal;

99. It should be observed that although the domestic proceedings in this case follow their course, they were ineffective in determining the responsibility of all the accused and compensating the alleged victim. Under the American Convention and the Inter-American Convention to Prevent and Punish Torture, any situation in which the practice of torture has been shown must be investigated and prosecuted rapidly. All persons responsible for those actions must be convicted and punished, and the person tortured must be duly compensated. If this does not happen, the proceedings are ineffective and flawed.

100. Following this line of reasoning, the Inter-American Court has held that in order for due process of law to be present in a proceeding, it must observe all the requirements that serve “to protect, to ensure, or to assert the entitlement to a right or the exercise thereof”[FN57]. In other words, the “prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending judicial determination[FN58].

[FN57] I/A Court H.R., Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 25.

[FN58] I/A Court H.R., Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 28. and I/A Court H.R., The Right to Information on Consular Assistance. In the

Framework of the Guarantees of Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 118.

101. As for the domestic proceeding in this case and the length of time taken, the Court has established that the proceeding is at an end when a final and firm judgment is delivered. This is the point at which the remedies under domestic law have been pursued and exhausted, and “that period of time, particularly in criminal matters, must cover the entire proceeding, including any appeals that may be filed[FN59].

[FN59] I/A Court H.R., Case of Hilaire, Constantine and Benjamin et al. Judgment of June 21, 2002. Series C No. 94, para. 142; Suárez-Rosero Case, Judgment of November 12, 1997. Series C No. 35, para. 71.

102. As for the “reasonable time” period referenced in Article 8(1) of the American Convention, the Court has held that three factors should be considered in determining the reasonableness of the time in which a proceeding takes place: a) the complexity of the case, b) the procedural activity of the interested party, and c) the conduct of the judicial authorities[FN60]. Based on the facts and evidence presented in the present case, this was not a complex matter, police from the Robbery and Theft Division detained Antonio Ferreira Braga without a court-ordered arrest warrant and did not catch him in the commission of a criminal offense; when the police took him to the headquarters of the Robbery and Theft Division, they tortured him to force him to confess to a crime that he had not committed. In addition, the facts in the present case led to a public criminal action brought and prosecuted solely by the Public Prosecutor’s Office, but not with the necessary speed.

[FN60] I/A Court H.R., Case of Hilaire, Constantine and Benjamin et al. Judgment of June 21, 2002. Series C No. 94, para. 143; Suárez-Rosero Case, Judgment of November 12, 1997. Series C No. 35, para. 72; I/A Court H.R., Genie Lacayo Case, Judgment of January 29, 1997. Series C No. 30, para. 77; European Court of Human Rights, *otta v. Italy*. Judgment of February 19, 1991, Series A No. 195-A, para. 30; European Court of Human Rights, *Ruiz-Mateos v. Spain*, Judgment of June 23, 1993, Series A No. 262, para. 30.

103. Concerning the duration of the domestic proceedings, the Inter-American Court has held that in certain cases a prolonged delay in itself can constitute a violation of the right to fair trial. In these situations, the State must provide, according to the above criteria, an explanation and proof as to why it has needed more time than normally required to issue a final judgment in a particular case[FN61].

[FN61] I/A Court H.R., Case of Hilaire, Constantine and Benjamin et al. Judgment of June 21, 2002. Series C No. 94, para. 142; Suárez-Rosero Case, Judgment of November 12, 1997. Series C No. 35, para. 145

104. With regard to the right to effective recourse, the Commission considers that in the instant case, it is obvious from the evidence supplied by the petitioners and not contested by the State that the domestic proceedings dragged on for more than 6 (six) years; by May 12, 1999, the date the judgment became final and the persons convicted were sentenced, enforcement of that sentence was time-barred by the statute of limitations. This was the court's finding on June 10, 1999, which meant that the persons convicted in the case were never punished for their crimes. The Commission has also established that the alleged victim was not compensated.

105. The jurisprudence constante of the Court is that the formal existence of remedies under domestic law is not sufficient; they must also be effective[FN62], i.e., capable of producing results or responses to the violations of rights recognized in the Convention. In other words, every person has the right to a simple and rapid recourse or to any other effective remedy before competent judges or tribunals that will protect them against acts that violate their fundamental rights[FN63]. That guarantee constitutes one of the basic pillars not only of the American Convention, but also of the rule of law in a democratic society as per the Convention"[FN64]. As the Court has written, "... A remedy which proves to be illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective..."[FN65]

[FN62] I/A Court H.R. Cesti Hurtado Case. Judgment of September 29, 1999. Series C No. 56, para. 125; I/A Court H.R. ,Case of Paniagua Morales et al. Judgment of March 8, 1998. Series C No. 37, para. 164; Suárez Rosero Case. Judgment of November 12, 1997. Series C No. 35, para. 37; Godínez Cruz Case. Judgment of January 20, 1989. Series C No. 5; paragraphs 66, 71 and 88; and Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, paragraphs. 63, 68 and 81.

[FN63] I/A Court H.R., Cantoral Benavides Case. Judgment of August 18, 2000. Series C No. 69, para. 163; Durand and Ugarte Case. Judgment of August 16, 2000. Series C No. 68, para. 101; Cesti Hurtado Case. Judgment of September 29, 1999. Series C No. 56, para. 121; Castillo Petruzzi et al. Case. Judgment of May 30, 1999. Series C No. 52, par 185; and Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No.9, para. 24.

[FN64] I/A Court H.R., Cantoral Benavides Case. Judgment of August 18, 2000. Series C No. 69, para. 163; Durand and Ugarte Case. Judgment of August 16, 2000. Series C No. 68, par 101; The "Street Children" Case (Villagrán Morales et al). Judgment of November 19, 1999. Series C No. 63, para. 234; Cesti Hurtado Case. Judgment of September 29, 1999. Series C No. 56, para. 121; Castillo Petruzzi et al. Case. Judgment of May 30, 1999. Series C No. 52, para. 184; Paniagua Morales et al. Case. Judgment of March 8, 1998. Series C No. 37, para. 164; Blake Case. Judgment of January 24, 1998. Series C No. 36, para. 102; Suárez Rosero Case. Judgment of November 12, 1997. Series C No. 35, para. 65, and Castillo Páez Case. Judgment of November 3, 1997. Series C No. 34, para. 82.

[FN65] I/A Court H.R., Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

106. As demonstrated, the excessive delay in prosecuting the domestic proceedings time-barred the sentence imposed. The Commission therefore finds that these proceedings were ineffective in providing the alleged victim a simple and prompt recourse to protect him against the acts that violated his rights.

107. The Court has written that the general obligations of the States include a positive obligation of guarantee with regard to persons under their jurisdiction[FN66]. This obligation to ensure requires the State: "...to take all necessary measures to remove any impediments which might exist that would prevent individuals from enjoying the rights the Convention guarantees. Any state which tolerates circumstances or conditions that prevent individuals from having recourse to the legal remedies designed to protect their rights is consequently in violation of Article 1(1) of the Convention..."[FN67]

[FN66] I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C NO. 70, para. 194.

[FN67] I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies* (Art. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 34 and, similarly, *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, para. 68; *Godínez Cruz Case*. Judgment of January 20, 1989. Series C No. 5, para. 71; and *Fairén Garbi and Solís Corrales Case*, *supra* note 53, para. 93

108. Concerning the statute of limitations under domestic law, the Court has written that any statute of limitations provisions or other domestic legal obstacles whose purpose is to obstruct the investigation and punishment of those responsible for human rights violations are inadmissible[FN68]. The Court further held that "in the light of the general obligations established in Articles 1(1) and 2 of the American Convention, the States Parties are obliged to take all measures to ensure that no one is deprived of judicial protection, in the terms of Article 25 of the Convention"[FN69].

[FN68] I/A Court H.R., *Bulacio Case*, Judgment of September 18, 2003. Series C No. 100, para. 116; *Trujillo Oroza Case*, *Reparations*, para. 106; *Barrios Altos Case*, *Interpretation of the Judgment on the Merits* (Art. 67 American Convention on Human Rights). Judgment of September 3, 2001. Series C No. 83, para. 15.

[FN69] I/A Court H.R., *Barrios Altos Case*, para. 43.

109. Under international law, the obligation to try and, if convicted, to punish the perpetrators of certain international crimes, among them the crimes against humanity, follows from the

obligation to ensure upheld in Article 1(1) of the American Convention. This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power are 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 of human rights. If the apparatus of the State functions in such a way that such violations go unpunished or the victim's rights are not fully restored, when possible, then it can be said that the State has failed to fulfill its obligation to ensure the free and full exercise of the protected rights to persons subject to its jurisdiction[FN70].

[FN70] I/A Court H.R., Case of Almonacid Arellano et. al., Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 154, para. 110; Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 166, and Godínez Cruz Case. Judgment of January 20, 1989. Series C No. 5, para. 175.

110. The Court has held that the investigation must be conducted resorting to all legal means available and must be focused on the determination of the truth and the investigation, prosecution, arrest, trial, and conviction of those persons that are responsible for the facts, both as perpetrators and instigators, especially when State agents are or may be involved in such events[FN71].

[FN71] I/A Court H.R., Case of Almonacid Arellano et. al., Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 154, para. 111; Case of Ximenes Lopes, para. 148; Case of Baldeón García, para. 94; and Case of the Massacre of Pueblo Bello. Judgment of January 31, 2006. Series C No. 140, para. 143.

111. This Court ruled the following in the Barrios Altos Case:

all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extra-legal, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law[FN72].

[FN72] I/A Court H.R., Case of Almonacid Arellano et. al., Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 154, para. 112; Barrios Altos Case, Judgment of March 14, 2001. Series C No. 75, para. 41.

112. The Commission therefore concludes that the State violated, to the detriment of Antonio Ferreira Braga, the rights protected under Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof.

E. Violation of Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture

113. Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture read as follows:

Article 1

The State 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 7

The States Parties shall take measures so that, in the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention, or arrest.

The States Parties likewise shall take similar measures to prevent other cruel, inhuman, or degrading treatment or punishment.

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-grounded 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.

114. The Inter-American Court has written that torture and cruel, inhuman or degrading punishment or treatment is strictly prohibited by international human rights law. The prohibition against physical and psychological torture is today part of the international jus cogens and is absolute. It persists even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, martial law or a state of emergency, civil commotion or conflict, suspension of constitutional guarantees, internal political instability or other public emergencies or catastrophes[FN73].

[FN73] I/A Court H.R., Case of Baldeón García, Judgment of April 6, 2006. Series C No. 147, para. 117; Case of García Asto and Ramírez Rojas, Judgment of November 25, 2005. Series C No. 137, para. 222; Case of Caesar. Judgment of September 11, 2005. Series C No. 123, para. 59; and Case of Lori Berenson Mejía. Judgment of November 25, 2004. Series C No. 119, para. 100.

115. Every person's right to protection of his physical, mental and moral integrity and the State's obligation to treat private persons with the dignity that is inherent in every human being implies reasonable prevention of situations that might be detrimental to the protected rights[FN74].

[FN74] I/A Court H.R., Case of Baldeón García, Judgment of April 6, 2006. Series C No. 147, para. 117; Case of García Asto and Ramírez Rojas, Judgment of November 25, 2005. Series C No. 137, para. 222

116. The Court has held that the State, as guarantor of the rights recognized in the Convention, is responsible for observance of the right of every person in its custody to humane treatment[FN75]. Consequently, the State is presumed responsible for the tortures, cruel, inhuman, or degrading treatments suffered by a person under the custody of state agents, if the authorities have not carried out a serious investigation of the facts followed by the prosecution of whoever appears as responsible for them[FN76]. The obligation to provide a satisfactory and convincing explanation of what occurred and disprove the allegations regarding its responsibility, through adequate evidentiary elements is incumbent upon the State[FN77].

[FN75] I/A Court H.R., Case of the Miguel Castro Castro Prison. Judgment of November 25, 2006. Series C No. 160, para. 273; and Case of López Álvarez. Judgment of February 1, 2006. Series C No. 141, paragraphs 104 to 106.

[FN76] I/A Court H.R., Case of the Miguel Castro Castro Prison. Judgment of November 25, 2006. Series C No. 160, para. 273; Case of López Álvarez. Judgment of February 1, 2006. Series C No. 141, para. 273; The “Street Children” Case (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 47.

[FN77] I/A Court H.R., Case of the Miguel Castro Castro Prison. Judgment of November 25, 2006. Series C No. 160, para. 273; Case of López Álvarez. Judgment of February 1, 2006. Series C No. 141, para. 273; Case of Juan Humberto Sánchez, Judgment of June 7, 2003. Series C No. 99, para. 111.

117. As has been shown, Antonio Ferreira Braga was tortured on the morning of April 12, 1993, in a unit of the Headquarters of the Ceará State Police’s Robbery and Theft Division in Fortaleza, by agents of that Division. The State did not prevent those acts and, based on the outcome of the cases prosecuted in connection with the events, failed to punish the responsible parties. The delay in the case triggered the statute of limitations because the final judgment was not delivered until May 12, 1999, more than 6 (six) years after the events transpired.

118. Article 8 of the Inter-American Convention to Prevent and Punish Torture expressly provides that State Parties have an obligation to proceed at their own initiative and immediately in cases such as this.

119. The State, however, did not act in this case in conformity with those provisions. While civil law and internal disciplinary proceedings were conducted, the high-ranking officials in charge of the Headquarters of the Robbery and Theft Division were acquitted and the subordinate police officers did not serve their prison sentence. By the time the conviction became final, enforcement of the sentence was time barred by the statute of limitations, which meant that the remedies were entirely ineffective. Having thus failed to provide judicial protection, the State also failed to effectively prevent and investigate the torture to which the victim was subjected.

120. Through a disciplinary-administrative proceeding before the Public Prosecutor’s Office, the State dismissed two police officers, Valderi Almeida da Silva and José Sérgio Andrade da Silva for the torture of Mr. Ferreira Braga, suspended police officer Girolanda Batalha for 60 (sixty) days for having detained Mr. Ferreira Braga without an arrest warrant or in flagrante, and in the end suspended Police Commissioner Sonia Maria Gurgel Matos for 15 (fifteen) days for negligence in the supervision of the prisoners in her custody and in the inspection of the cells under her authority. This shows that certain necessary steps were taken by the State to investigate, prosecute and punish those responsible for serious violations of the fundamental rights recognized in the American Convention; however, these measures were not sufficient to redress the harm caused to the victim.

121. The Commission has also established that the alleged victim was tortured on the premises of the Headquarters of the Ceará State Police’s Robbery and Theft Division in Fortaleza. The torture was inflicted by police officers attached to that division who were trying to force the alleged victim to confess to a crime. Under Article 7 of the Inter-American Convention to Prevent and Punish Torture, the State had an obligation to take measures to train police officers

and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, taking care to emphasize the prohibition against the use of torture in interrogation, detention, or arrest. From the facts examined in the instant case, the Commission is able to infer that the agents, who tortured the alleged victim when questioning him, did not have the proper training that the Inter-American Convention to Prevent and Punish Torture requires for personnel working for the State in these areas.

122. Having established these facts, the Commission concludes that the State failed to fulfill the obligations it undertook in the Inter-American Convention to Prevent and Punish Torture.

123. The Commission therefore concludes that the State failed to comply with its obligation to prevent and punish torture, in accordance with Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Antonio Ferreira Braga.

F. Violation of Article 1(1) of the Convention: the State's obligation to respect and ensure the individual rights, in conjunction with Article 2, which establishes the State's obligation to adopt domestic legislative and other measures, and Article 28, which establishes the federal clause.

124. The foregoing analysis demonstrates that the State failed to comply with its obligation to respect the rights and freedoms of the individuals within its jurisdiction, provided for in Article 1(1) of the American Convention, by its violation of the rights recognized in Articles 5, 7, 8 and 25 of the American Convention, and Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture.

125. As the Inter-American Court has written that “[a]ccording 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”[FN78].

[FN78] I/A Court H.R.. Velásquez Rodríguez Case. Judgment of June 29, 1988. Series C No. 4, para. 169.

126. The second obligation stipulated in Article 1(1) is to ensure the free and full exercise of the rights and freedoms recognized in the Convention. The Commission concludes that by violating the right to humane treatment in the case of the victim named in this report, his right to a fair trial and his right to judicial protection, the Brazilian State failed to fulfill its obligation to guarantee the free and full exercise of the Convention-recognized rights to all persons subject to its jurisdiction.

127. Article 2 of the American Convention makes more precise and elaborates upon the obligation erga omnes to respect and ensure, contained in Article 1(1) of the American Convention[FN79]. In effect, the obligation to adopt domestic legal provisions requires that States parties enact and implement legislative and other measures needed to ensure the full and

effective exercise of the rights and freedoms guaranteed by the Convention to all persons subject to their jurisdiction (principle of effet utile)[FN80].

[FN79] I/A Court H.R., Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 American Convention on Human Rights). Advisory Opinion OC-7/86 of August 29, 1986. Series A No. 7. Separate Opinion of Judge Gros Espiell, para. 6; Caballero Delgado and Santana Case, Reparations, Judgment of January 29, 2004, Dissenting Opinion of Judge Cançado Trindade, para. 9.

[FN80] I/A Court H.R., Case of Bulacio, Judgment of September 18, 2003, para. 140; Case of the Five Pensioners, Judgment of February 28, 2003, para. 164; Case of the “Juvenile Reeducation Institute.” Judgment of September 2, 2004, para. 205-206; Case of Gómez Palomino v. Peru, Judgment of November 22, 2005, para. 91.

128. The Federal State had an obligation to adopt effective measures to prevent Antonio Ferreira Braga from being tortured by police agents attached to the Ceará State Police’s Robbery and Theft Division in Fortaleza, who detained him for a supposed theft. The State had an obligation to afford the aggrieved party with a rapid and effective investigation of the facts, and the resulting prosecution and punishment of the responsible parties, which should have been followed up by adequate compensation for civil damages.

129. Regardless of the internal division of authorities, the Federal State had an obligation to adopt effective measures to prevent police agents working for the State from engaging in the practice of torture to force a confession from persons within their custody. The State failed to fulfill that obligation. It had an equal obligation to adopt other measures to ensure effective investigation, prosecution and punishment of particular acts, and to compensate the aggrieved party so that the system of justice functioned effectively. This is the only way that the State would have been in full compliance with the duty to adopt internal measures to ensure the rights and freedoms recognized in the American Convention.

130. From the standpoint of international law, the rule that federated units in a federal State are bound by international human rights treaties is based on the Vienna Convention on the Law of Treaties (Articles 27[FN81] and 29[FN82]) and the so-called federal clause. Article 28 of the American Convention makes provision for the so-called federal clause, which is the basis of a federal government’s obligation to immediately take appropriate measures so that the competent authorities of the constituent units of a federation or union like Brazil might adopt the legislative and other measures necessary to ensure compliance with the American Convention.

[FN81] Article 27 of the Vienna Convention on the Law of Treaties: “Internal law and observance of treaties. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46.”

[FN82] Article 29 of the Vienna Convention on the Law of Treaties: “Territorial scope of treaties. Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.”

131. To determine what obligations follow from the American Convention for States organized as federal systems, one has to interpret its Article 28 in combination with its Article 1(1)[FN83]. Article 1(1) provides that States, regardless of the structure they adopt, have an obligation erga omnes to respect and ensure the rights established in the Convention. The federal clause further clarifies the scope of the State's obligations erga omnes, but does not limit them.

[FN83] I/A Court H.R., Velásquez Rodríguez Case, op. cit., paragraphs 164-167.

132. The purpose of the human rights protection required under the American Convention in general and the specific provisions in particular, transcends any invocation of the internal delegation of competences or the organization of the units that are the components of a federation[FN84].

[FN84] See in this regard Godfried and Ingrid Pohl v. Austria, Communication. No. 1160/2003, U.N. Doc. CCPR/C/81/D/1160/2003 (2004). para. 9.2

133. This argument is completely germane to Article 28 of the American Convention, which requires federal States to comply with their international obligations in respect of their entire territory. Units of a federation are part of the State, and as such are equally bound by the provisions of the international treaties the federal government ratifies.

134. The federal State has an obligation to consider that the "suitable measures" of which Article 28 of the American Convention speaks, must produce results that are fully compliant with the State Party's obligations.

135. The Commission underlines that this is the understanding of Article 28 of the American Convention that most closely corresponds to articles 27 and 31 of the Vienna Convention and Article 29(a) of the American Convention. Any other interpretation of the obligation contained in the federal clause would take one to the absurd extreme of transforming the protection of human rights into a purely discretionary decision, left to each State party to decide.

VIII. RECOMMENDATIONS

136. Based on the analysis and conclusions contained herein, the Inter-American Commission on Human Rights recommends to the Brazilian State:

1. That the necessary measures be taken to give legal effect to the obligation to investigate and effectively punish the authors of the unlawful detention of Antonio Ferreira Braga and the torture inflicted upon him. The State must ensure criminal due process to prevent the statute of

limitations from being invoked as grounds for time-barring criminal punishment in the case of crimes like torture and to prevent unwarranted delays in due process.

2. That an investigation be conducted to establish the civil and administrative responsibilities incurred by the unreasonable delay in the criminal prosecution of the torture inflicted upon Antonio Ferreira Braga, especially delays on the part of the judicial authorities who heard the case, in order to determine whether there was negligence in their conduct and if so to punish them accordingly.

3. That adequate reparation be made to Antonio Ferreira Braga for the violations of his human rights established herein, including pecuniary compensation.

4. That training be given to civil police officers in order to provide them with a basic understanding of respect for the fundamental rights protected under the American Convention, especially as regards proper treatment.

IX. ACTIONS SUBSEQUENT TO ISSUING REPORT N°84/07

137. On October 16, 2007, at its 130th regular period of sessions, the IACHR adopted Report N° 84/07, in accordance with Article 50 of the American Convention, on November 19, 2007, so informing the State and setting a period of two months for it to report on compliance with the recommendations the report contained.

138. On the same date, in accordance with the provisions of Article 43(3) of its Rules of Procedure, the Commission notified the petitioners that it had adopted the report on the merits, which had been forwarded to the State, and requested that they indicate their position regarding referral of the case to the Inter-American Court. In addition, on December 10, 2007, certain considerations made by the Commission in said report were forwarded to the petitioners, on a confidential basis.

139. On December 20, 2007, the petitioners forwarded a submission indicating that, as the Commission was aware, Antonio Ferreira Braga had been the victim of constant threats by the accused, especially after Mr. Ferreira Braga formally reported them. The submission indicates that, fearing for his safety and that his family, Mr. Ferreira Braga and his family had moved to the state of Rondônia, where they were under the protection of an unspecified shelter. The petitioners indicate that Antonio Ferreira Braga had fled from said shelter and, in recent years, had several times moved from federal state to federal state seeking to protect himself. The petitioners also state that the last contact with the victim had been in 2003, when the final briefs in this case were prepared. In 2003, Antonio Ferreira Braga had informed the Center for the Defense and Promotion of Human Rights of the Archdiocese of Fortaleza that he was attempting to return to the state of Ceará. However, since that time, he had not again contacted said organization, so his whereabouts were unknown. On December 4, 2007, a search for the victim had begun, but he had not been located. Therefore, in the same submission of December 20, 2007, the petitioners requested a 30-day extension to submit their position on referring the case to the Court, as well as information on the victim and beneficiaries. The Commission informed the petitioners that they could submit their position on referring the case to the Inter-American Court for consideration, and the list of the victim's family members and address, until January 31, 2008.

140. On January 24, 2008, the State requested a 2-month extension to submit information on compliance with the recommendations of Report N° 84/07, because “on January 25, [2008], the Federal Government [would] meet with the state authorities responsible, at which time it [would] repeat the request for information on measures taken to comply with the aforesaid recommendations.” In said submission, the State indicated its understanding that the granting of the extension would suspend the period set forth in Article 51(1) of the American Convention for referral of the case to the Inter-American Court. However, the State did not submit any information whatsoever on compliance with the recommendations set forth in Report N° 84/07. That communication was forwarded to the petitioners on January 25, 2008, granting a period of seven days to indicate their position on the request for an extension. On February 1, 2008, the petitioners forwarded a communication indicating that they supported the request for an extension submitted by the State of Brazil.

141. On February 8, 2008, the petitioners submitted a communication indicating that they were in favor of referring the case to the Inter-American Court for consideration. In that connection, the petitioners reiterated the violations of Antonio Ferreira Braga’s human rights, the impunity of the agents responsible for said violations, and the effects that the facts had had on his family. The petitioners also argued that, although torture had been defined as an offence in Law No. 9.455/97, the judicial bodies had refused to implement the provisions of said law, utilizing traditional concepts such as “abuse of authority” and “bodily harm” to characterize actions which, as a result of their characteristics, constituted the crime of torture. They also noted that the Court would be able to analyze the lawfulness of time-barring the crime of torture, used in the criminal proceedings instituted in connection with the crimes perpetrated against the victim, as well as the current failure to investigate, prosecute, and punish perpetrators in cases of torture in Brazil.

142. On February 13, 2008, the Commission notified the parties of its decision not to refer the instant case to the Inter-American Court of Human Rights. On that date, it requested the State to submit, within a period of one month, i.e., by March 13, 2008, a report on the measures taken to comply with the recommendations of Report N° 84/07.

143. On June 6, 2008, the petitioners presented their observations on the compliance with the IACHR’s recommendations in this case, remarking that “the failure of the Brazilian State to take a stronger political stance against torture in Brazil has allowed torture to continue, as well as the ineffective application of important instruments like Law No. 9.455/97, which defines torture as a crime.”

144. On April 1 and June 13, 2008, the State presented its observations on its compliance with the Commission’s recommendations in this case. The Brazilian State indicated that it “has undertaken efforts to fulfill the recommendations of the Inter-American Commission on Human Rights in the case cited. Account should be taken, therefore, of the good faith of the Brazilian State, even if it has not been possible to comply fully with all of the recommendations to date.” The State also mentioned that a meeting had been held on the fulfillment of the recommendations, on January 25, 2008. Participating in that meeting were the petitioners and representatives of the Special Secretariat for Human Rights of the Office of the President of the Republic, the Ministry of Foreign Affairs, the Secretariat of Justice and Citizenship of Ceará, the

State Public Prosecutor's Office, the Court of Justice of Ceará, and the Office of the Attorney General of the State of Ceará.

X. EVALUATION OF COMPLIANCE WITH THE RECOMMENDATIONS

A. Concerning the adoption of necessary measures to give legal effect to the obligation to investigate and punish effectively the parties responsible for the illegal arrest and torture of Antônio Ferreira Braga, and to prevent the statute of limitations from being applied to crimes such as torture

145. The parties' remarks indicate that police officers José Sérgio Andrade da Silva and Valderi Almeida da Silva were sentenced to nine months in prison for the crimes of bodily harm and unlawful restraint, on first appeal, on May 12, 1999. However, on June 10 of that same year, the statute of limitations was applied to this case and the punishment of the two convicts was time-barred. The decision on appeal also upheld the acquittal of Police Inspector Francisco Girolando Batalha and District Police Chief Sônia Maria Gurgel Matos. Furthermore, the enactment of Law 9.455/97 after the events in this case occurred increased the punishment indicated for the crime of torture from 2 to 8 years in prison; but it did not remove the applicability of the statute of limitations to the crime of torture in Brazil. To date, therefore, it is still permissible in Brazil to apply the statute of limitations as grounds for time-barring punishment in cases of torture, as happened in the case of the torture of Antônio Ferreira Braga. The Commission concludes, therefore, that the State has failed to comply with this recommendation.

B. On the civil and administrative investigation of authorities who may have acted negligently, causing the unreasonable delay in the criminal proceedings in this case

146. As for this recommendation, the petitioners argued that they knew of no initiative on the part of the State to begin proceedings to ascertain responsibility for the delay in the criminal proceedings in this case. The State did not submit information on compliance with this recommendation; rather, it argued that the criminal proceedings had been conducted in a reasonable period of time. Consequently, the IACHR finds that this recommendation remains pending fulfillment.

C. On adequate compensation to Antônio Ferreira Braga

147. The petitioners indicated that the Recurso Especial lodged by the State of Ceará in the context of the action for compensation being considered in the domestic justice system has been in the Superior Court of Justice for nearly two years without procedural action. They added that the amount of the indemnity, if paid, would be limited to moral damages, since the Judiciary had barred the payment of material damages and lost wages due to lack of evidence. The State, for its part, recognized that a decision in that action is pending, and noted that the State of Ceará will take steps to finalize the civil suit in the Superior Court of Justice and enter into an agreement with Antônio Ferreira Braga. Therefore the Commission finds that the State has not fulfilled its recommendation concerning adequate compensation to the victim. In this respect, the Commission emphasizes the need to provide full compensation (*restitutio in integrum*) to the

torture victim Antônio Ferreira Braga, as recommended by the Commission. Furthermore, this compensation to the victim should not be contingent upon personal efforts on his part to obtain compensation for the human rights violations cited in this report.

D. On the training of Civilian Police officers in matters of fundamental rights, especially on humane treatment and the prohibition of torture

148. On this recommendation, the petitioners recognized that the State has taken some limited, though successful measures against the practice of torture in Brazil. They emphasize, however, that institutional torture remains systematic in Brazil and should be fought with a series of government policies and measures. Similarly, the State mentioned that the Secretariat of Public Security and Social Defense of Ceará, in its Civilian Police training courses, includes modules on ethics and citizenship, human rights, human relations, the Statute on Children and Adolescents, the lawful use of force, and Law 9.455/97. The Commission recognizes the State's efforts in this regard and urges that initiatives such as those mentioned be continued and reinforced, so as to prevent and fight torture countrywide by way of coordinated, ongoing government policies through which the State may, for example, implement fully the Comprehensive Plan of Action to Prevent and Monitor Torture in Brazil.

XI. CONCLUSIONS AND PUBLICATION

149. Accordingly, the Commission finds that the Brazilian State has violated the rights of Mr. Antônio Ferreira Braga as enshrined in Articles 5, 7, 8.1, and 25 of the American Convention; and finds, further, that the State failed to fulfill the obligation set forth in Article 1.1 of the Convention and the obligations set forth in Articles 1, 6, 7, and 8 of the Inter-American Convention to Prevent and Punish Torture. The violation of the rights enshrined in Articles 8.1 and 25 of the American Convention was included by the Commission under the principle *iura novit curia*.

150. On March 13, 2008, the Commission adopted Report N° 1/08 – the text of which is above – under Article 51 of the American Convention. On March 31, 2008, the IACHR transmitted the report to the Brazilian State and to the petitioners, in accordance with Article 51.1 of the American Convention. On the basis of the foregoing analysis, the Commission finds that the State has not complied with its recommendations.

151. Accordingly, the IACHR has decided to reiterate the recommendations contained in paragraph 136 *supra* and to publish this report and include it in its Annual Report to the OAS General Assembly. In accordance with its mandate, the Commission will continue to evaluate the measures taken by the Brazilian State until the recommendations have been fulfilled in their entirety.

Done and signed in the city of Washington, D.C., on the 18th day of the month of July, 2008. (Signed: Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman; Clare K. Roberts, Florentín, Meléndez, and Víctor E. Abramovich, members of the Commission).