

REPORT NO. 39/10¹

PETITION P150-06

ADMISSIBILITY

NÉLIO NAKAMURA BRANDÃO and ALEXANDRE ROBERTO AZEVEDO SEABRA DA CRUZ
BRAZIL

March 17, 2010

I. SUMMARY

1. On February 17, 2006, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a petition alleging the international responsibility of the Federative Republic of Brazil for the extrajudicial execution of Nélio Nakamura Brandão and Alexandre Roberto Azevedo Seabra da Cruz ("the alleged victims") allegedly carried out on September 13, 2004 by military police of the state of São Paulo. The petition was presented by the *Fundação Interamericana de Direitos Humanos* ("the petitioner").

2. The petitioner alleges that on September 13, 2004, two individuals, one of whom was carrying a firearm, stole the car belonging to Nélio Nakamura Brandão and his wife, Eladia Aparecida Erguelles Brandão. According to the petition, while his wife was calling the police, Mr. Brandão left in pursuit of the thieves on his motorcycle carrying a firearm of his own. The petitioner points out that the military police also undertook a search for the stolen vehicle and that, after finding the vehicle and the motorcycle, mistook Mr. Brandão for one of the attackers and killed him, as well as one of the thieves, Alexandre Roberto Azevedo Seabra da Cruz, while the other managed to escape. The petitioner emphasizes that the military police that participated in the operation then went on to stage a cover up making believe that the deaths of the alleged victims occurred during a crossfire between Mr. Brandão and the persons who had stolen his vehicle. According to the petitioner, the death of the alleged victims remains unpunished because of the widespread impunity regarding crimes committed by the Military Police, and concludes that there has been undue delay in the resolution of domestic remedies. Consequently the petitioner alleges that Brazil has violated Articles 1.1, 4.1, 5.1, 5.2, 7.1, 8.2, and 24 of the American Convention on Human Rights ("the American Convention").

3. The State alleges that the petition is inadmissible because of the lack of exhaustion of domestic remedies, and that the requirements in Article 46.1 of the American Convention have not been fulfilled. On the one hand, the State points out that the investigation undertaken by the Civil Police was archived on the basis of a judicial decision, but that this decision does not exhaust the remedies available under the internal legislation. On the other hand, it indicates that the Military Police also undertook a parallel investigation that resulted in a criminal prosecution still pending. Finally, the State submits that the families of the alleged victims did not file a civil claim for compensatory damages. Based on the foregoing, Brazil argues that the petition is inadmissible, by virtue of not having fulfilled the requirements set out in Article 46.1 of the American Convention.

4. Without prejudging the merits of the claim, and in accordance with the provisions in Articles 46 and 47 of the American Convention, the Inter-American Commission decides to declare the petition admissible with respect to the alleged violation of Articles 4, 5, and 8 of the American Convention, together with the general obligations enshrined in Article 1.1 and - by virtue of the principle of *iura novit curia* - in Articles 2 and 25 of the same Treaty. On the other hand, the IACHR declares this petition inadmissible with reference to Articles 7 and 24 of the American Convention. Lastly, the Inter-American Commission decides to notify this decision to the parties, publish the present report and to include it in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE COMMISSION

¹ Commissioner Paulo Sérgio Pinheiro, of Brazilian nationality, did not participate in either the deliberations or the decision on the present petition in accordance with the requirements in Article 17.2 of the Commission's Rules of Procedure.

5. The complaint was received on February 17, 2006. On July 7, 2006, the IACHR sent the relevant parts of the petition to the State and set a deadline of two months for it to present observations. After an extension requested on September 1, 2006, the State presented its response to the petition on October 12 and 23, 2006.

6. The Inter-American Commission received additional information from both parties: from the petitioner on January 31, 2007; April 16, 2008; and October 3, 2008; and from the State on November 26, 2007; December 12, 2007; and May 28, 2008. These communications were duly transmitted to the other party.

III. POSITIONS OF THE PARTIES

A. The petitioner

7. The petitioner submits that officers of the Military Police of São Paulo summarily executed the alleged victims on September 13, 2004, and these crimes remain unpunished. According to the petitioner, at approximately 5:30 a.m. on September 13, 2004, as Nélio Nakamura Brandão and his wife, Eladia Aparecida Erguelles Brandão, were leaving their house to go to work, their car was stolen by two individuals, one of whom was carrying a gun.

8. According to the petitioner, Mr. Brandão's wife immediately tried to telephone the Police to report the theft, while her husband went into the house to fetch his own gun, got onto his motorcycle, and left in pursuit of the stolen vehicle. The petitioner states that a Military Police vehicle arrived a few minutes later, and that Mr. Brandão's wife reported what had happened. The Military Police also allegedly undertook an immediate search for the stolen vehicle.

9. At around 7 a.m., according to the petitioner, two Military Police vehicles came to Mrs. Brandão's home, and the police officers asked her if she would be able to recognize the two thieves who took her vehicle, including the one on the motorcycle. She told them straight away that the person chasing the thieves on a motorcycle was her husband. The officers then left without providing further information. The petitioner indicates next that she reported to the 19th District of the Military Police to find out more information. There, she heard over a patrol car radio that two individuals had been shot and had been taken to the local hospital. According to the petitioner, when she went to the hospital, she was informed that the body of her husband, who had died of gunshot wounds, was there, together with the body of Alexandre Roberto Azevedo Seabra da Cruz, one of the thieves, also dead from gunshot wounds.

10. The petitioner relates that after arriving at the Civil Police Station to report the crime, Mrs. Brandão became aware that the military police had already reported (*Boletim de Ocorrência* no. 5189/2004) that her husband's death supposedly occurred during a crossfire between himself and the two attackers who had stolen his vehicle; and that Alexandre Roberto Azevedo Seabra da Cruz's death had presumably occurred in a crossfire between the former and the police. The petitioner confirms that the Civil Police launched an investigation (*Inquérito Policial* No. 457/04) regarding the above facts.

11. The petitioner indicates that the evidence gathered during the Civil Police investigation clearly established that the military policemen that had participated in the operation had summarily executed the alleged victims. As regards Mr. Brandão, the military police mistook him for one of the thieves of his vehicle. In this regard, the petitioner claims that the investigation definitely indicated that Alexandre Roberto Azevedo Seabra da Cruz was not armed when he was killed; that during the pursuit, the attackers in the stolen vehicle had not fired any shots; that Mr. Azevedo Seabra da Cruz was shot once by the police during the chase and was then removed from the vehicle and killed with two gunshots to the chest; that one of the police officers had "planted" an unregistered firearm at the crime scene to make believe that Mr. Brandão had died during a crossfire between himself and his attacker; and that both alleged victims had been executed without offering the least resistance. The petitioner argues that the foregoing is corroborated by statements of a military policeman who took part in the operation and

was even allegedly threatened by the other policemen because he confessed both to his participation and the real version of events; and is also confirmed by statements of other witnesses, ballistic tests and other forensic evidence.

12. The petitioner adds that on July 8, 2005, the final report on the aforementioned police investigation indicated that the original version of the events as related by the military police had been intentionally fabricated by them, and that after committing the two murders, they used fraudulent means to alter the crime scene, including the "planting" of an illegally obtained firearm. Therefore the Chief of Police concluded that the police officers involved were guilty of homicide and other connected offences.

13. In spite of this, the petitioner argues that the Public Prosecutor concluded briefly and without reasoned grounds that these crimes were "a classic case of self defense" and requested that the file be archived. The petitioner adds that on August 18, 2005, the Judge of the 1st Chamber of the Jury Tribunal of São Paulo decided to archive the file, in accordance with the opinion of the Public Prosecutor. The petitioner initially alleged that this decision exhausted the domestic remedies and that consequently the petition presented on February 17, 2006 fulfilled all the conditions of admissibility envisaged in Articles 46 and 47 of the American Convention.

14. After receiving the State's response to the petition, the petitioner subsequently added that between the months of August and December 2006, and especially due to the archiving of the civil police investigation and the transmission of the petition to the IACHR, the case received widespread coverage in the media. The petitioner also argued that alongside the civil police investigation, archived by the judicial decision of August 18, 2005, the Military Police undertook another investigation (*Inquérito Policial Militar* No. CPAM9-021/16/04), that was not made public. The petitioner confirmed that this military police investigation lead to a criminal prosecution (No. 052.05.004850-5) against seven military police members for the intentional homicide of the alleged victims before the First Court of the Jury Tribunal of São Paulo, initiated on December 29, 2006 and that was allegedly in its initial stages.

15. Regarding this criminal action, the petitioner highlights that the list of seven accused military policemen does not include one of the military police under investigation by the civil police, nor any other public official who may have obstructed the investigation or participated in the simulation of a confrontation as the cause of death. In addition, the petitioner points out that several years after these events, the criminal process remains in the initial evidentiary stage; therefore, in this case the undue delay exception of the decision on the domestic remedies in accordance with Article 46.2.c of the American Convention can be applied. Lastly the petitioner also observes that the families of the alleged victims commenced two civil actions for compensation against the State of São Paulo: No. 2007.126567-0 (before the 4th Court) and No. 129691-8 (before the 10th Court). According to the petitioner, the development of this type of process in practice depends to a large measure on the development of the related criminal trial.

16. Based on the above, the petitioner asserts that the crime committed against the alleged victims has not yet been punished by virtue of the widespread impunity commonly associated with crimes committed by the Military Police, and concludes that there has been undue delay in the decision on domestic remedies. In consequence, it requests that the IACHR declares the petition admissible and that Brazil has violated Articles 1.1, 4.1, 5.1, 5.2, 7.1, 8.2, and 24 of the American Convention.

B. The State

17. The State submits that the petition is inadmissible by virtue of the alleged non-fulfillment of an essential prerequisite in Article 46.1 of the American Convention: the exhaustion of domestic remedies. On the one hand, it states that the investigation undertaken by the Civil Police was archived by judicial decision of August 18, 2005, but that this decision does not exhaust the remedies under domestic legislation. On the other hand, the State argues that the military police also carried out a parallel investigation resulting in a criminal prosecution still pending a final decision, which is following its regular course without undue delay. Lastly the State also maintains that the families of the alleged victims have failed to initiate a civil claim for damages.

18. With regard to the investigation undertaken by the Civil Police, the State does not consider that the decision to archive the police investigation amounts to an exhaustion of domestic remedies. In this sense, the State maintains that this decision is *rebus sic stantibus*, and does not constitute a final decision because should circumstances change and fresh evidence be submitted to the authorities, the police investigation could be reopened.

19. The State also emphasizes that alongside the investigation initiated by the Civil Police, the Military Police also undertook an investigation of the same facts (*Inquérito Policial Militar* No. CPAM9-021/16/04). As the State confirms, this latter military police investigation led to the laying of criminal charges by the State Prosecutor against seven military police members for double intentional homicide. The State also adds that these charges were accepted by the judicial authority, and that criminal proceedings No. 4850/05 were instituted before the First Court of the Jury Tribunal of Barra Funda, in São Paulo.

20. Regarding the criminal case, the State observes that the decision is still pending, which allegedly confirms that the domestic remedies have not been exhausted. The State also underlines that there has been no undue delay in deciding the criminal case, and that proceedings are following their normal course. In effect, Brazil asserts that the IACHR cannot consider the time that has elapsed since the events took place as excessive. Additionally, the State points to the possibility of commencing administrative proceedings in regard to any disciplinary penalties applicable to this situation.

21. The State asserts there has been an efficient and competent examination of the facts and that the presentation of the petition to the IACHR was therefore inopportune, as the mechanisms of the Inter-American system are subsidiary to the actions taken in the domestic sphere. Moreover, Brazil argues that the families of the alleged victims did not file a civil action seeking compensation and damages.

22. Lastly, the State argues that the time limit of six months referred to in Article 46.1.b of the American Convention could not be verified or questioned, because the IACHR's communication sending the pertinent parts of the petition made no reference to date on which the petition was received.

23. Based on all the foregoing, the State requests that the Commission declare the petition inadmissible, due to non-fulfillment of the requirement set out in Article 46.1.a of the American Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

24. The petitioner has standing to file petitions with the IACHR under Article 44 of the American Convention. The petition indicates that the alleged victims are Nélio Nakamura Brandão and Alexandre Roberto Azevedo Seabra da Cruz, persons whose rights the State undertook to respect and ensure under the American Convention. As regards the State, the IACHR observes that Brazil is a party to the American Convention, having ratified it on September 25, 1992. The Commission therefore has competence *ratione personae* to examine this petition.

25. The IACHR also has competence *ratione materiae* because the petitioner alleges violations of rights protected by the American Convention. It also has competence *ratione temporis* because the obligation to respect and guarantee the rights protected by the American Convention was already in force at the time the facts allegedly occurred, from September 13, 2004. Finally, the Inter-American Commission also has competence *ratione loci*, because the alleged violations occurred within the territory of a State party to the American Convention.

B. Other Requirements for the Admissibility of the Petition

1. Exhaustion of Domestic Remedies

26. Under Article 46.1, in order for a petition to be admissible before the IACHR, the domestic remedies must have been exhausted, in accordance with generally recognized principles of international law. It is established in paragraph 2 of the said Article that these provisions shall not apply when the domestic legislation does not afford due process of law for the protection of the right in question; if the alleged victim has been denied access to the remedies under domestic law, or if there has been unwarranted delay in the decision regarding the aforementioned remedies.

27. As regards the exhaustion of domestic remedies, the IACHR observes at the outset that in cases such as the present, of alleged extrajudicial executions --in other words, criminal breaches subject to public prosecution-- the appropriate remedy is normally an investigation and criminal proceedings. In this regard, the IACHR also underlines that the requirement to exhaust domestic remedies applies when, in effect, there are remedies to ensure the reparation of the alleged violation in the domestic system. In effect, in accordance with Article 46.2.a of the American Convention, the said requirement is not applicable when "the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated."

28. In accordance with the above, at the admissibility stage, the Inter-American Commission must also determine whether the proceedings in the domestic jurisdiction have complied with due process requirements for the protection of the rights allegedly violated, in conformity with Article 46.2.a of the American Convention. The IACHR notes that in the present case, parallel investigations were undertaken by the civil *inquérito policial* and the military *inquérito policial*.²

29. With regard to the domestic remedies in the ordinary jurisdiction, i.e., the civil police investigation (eventually) followed by a criminal prosecution before a civil tribunal, it is not disputed that the civil *Inquérito Policial* No. 457/04 was archived by the judicial decision of August 18, 2005, (*supra*, paragraphs 13 and 17). Regarding this point, the IACHR has consistently held that in Brazil, the judicial archiving of a police investigation is of a definitive nature, with no opportunity to challenge such a

² The Inter-American Commission has examined other cases in the past where it was pointed out that the alleged obscurity of Law 9.299 of 1996 has resulted in two police investigations being undertaken - one civil, the other military - with conflicting conclusions (see, in this respect, IACHR, Report No. 96.09, Admissibility, Petition 4-04, *Antônio Pereira Tavares and others*, December 29, 2009, paragraph 35).

decision. Therefore, once a police investigation is archived, domestic remedies must be considered as exhausted to the effect of the admissibility of the claim.³

30. On the other hand, neither has it been disputed that there is a criminal action pending before a civil tribunal that originated from the parallel military police investigation of the same violations allegedly committed by the military police (*supra*, paragraphs 14 and 19). In effect, in accordance with the documents submitted by both parties, the military *Inquérito Policial* No. CPAM9-021/16/04 led to a criminal process before the ordinary jurisdiction against seven military policemen for double intentional homicide. The former by virtue of Law N° 9.299/96 which changed provisions of the Military Criminal Code and the Military Criminal Code of Procedure, transferring competence to the ordinary jurisdiction for the prosecution and trial of crimes against life committed by the military police against civilians.⁴

31. The IACHR has repeatedly indicated that, in general, military judicial systems --both investigation and trial-- do not offer effective remedies to deal with violations of human rights. Therefore, cases involving the military jurisdiction are not necessarily subject to the requirement of prior exhaustion of domestic remedies before filing a petition with the Inter-American Commission (see *infra*). Other relevant international human rights organs have systematically applied the same reasoning.⁵

32. With specific regard to Brazil, in its decision on the admissibility of petition 11.828 (*Eldorado dos Carajás*) in 2003, the IACHR concluded that it "does not consider the military police to have the independence and autonomy needed to impartially investigate alleged violations of human rights allegedly carried out by military police."⁶ In effect the IACHR has emphasized that even when a criminal process is underway before the ordinary jurisdiction, the mere investigation of violations of human rights by military justice entails problems. It has held that:

[w]hen the military justice system conducts the investigation of a case, the possibility of an objective and independent investigation by judicial authorities which do not form part of the military hierarchy is precluded. Thus, when an investigation is initiated in the military justice system, a conviction will probably be impossible even if the case is later transferred to the civil justice system. The military authorities will probably not have gathered the necessary evidence in an effective and timely manner. In those cases which remain in the military justice system, the investigation will frequently be conducted in such a manner as to prevent the case from reaching the final decision stage.⁷

33. In consequence of the foregoing, and having regard to the circumstances of this petition, the Inter-American Commission reiterates that "Brazilian law does not provide the due process necessary for the effective investigation of alleged human rights violations of human rights perpetrated by military police"⁸; and that after the enactment of Law No. 9.299/96, the fact that "the investigation of crimes

³ IACHR Report No.37/02, Admissibility, Case 12.001, *Simone André Diniz*, Brazil, October 9, 2002, paragraphs 25-27; Report No.80/85, Inadmissibility, Petition 12.397, *Hélio Bicudo*, Brazil, October 24, 2005, paragraph 27; Report No. 41/07, Admissibility, Petition 998-05, *Lazinho Brambilla da Silva*, Brazil, July 23, 2007, paragraph 57; Report No. 118/09, Inadmissibility, Petition 397/04, *Nelson Aparecido Trindade*, Brazil, November 12, 2009, paragraph 22; and Report No. 119/09, Inadmissibility, Petition 398/04, *Edson Prado*, Brazil, November 12, 2009, paragraph 24.

⁴ IACHR, Report No. 40/03, Merits, Case 10.301, *42º Distrito Policial (Parque São Lucas)*, Brazil, October 8, 2003, paragraph 75.

⁵ See UN Doc. E/CN.4/Sub.2/2000/44, Administration of Justice Through Military Tribunals and Other Exceptional Jurisdictions, August 15, 2000, paragraph 40; and *Report of the Special Rapporteur on the Question of Torture*, UN Doc E/CN.4/1995/34, January 2, 1995, paragraph 76(g).

⁶ IACHR, Report No. 4/03, Admissibility, Petition 11.820, *Eldorado dos Carajás*, Brazil, February 20, 2003, paragraph 27. See also IACHR. *Report On the Situation of Human Rights in Brazil*, OEA/Ser.LV/II.97, Doc. 29 rev. 1, Chapter III (September 29, 1997), paragraphs 77 and 95(i).

⁷ IACHR, Report No.4/03, Admissibility, Petition 11.820, *Eldorado dos Carajás*, Brazil, February 20, 2003, paragraph 28.

⁸ IACHR, Report No.4/03, Admissibility, Petition 11.820, *Eldorado dos Carajás*, Brazil, February 20, 2003, paragraph 32.

committed by military police officers [will continue] to be entrusted to the Military Police [...] means that the impartiality needed for the administration of justice [...] will continue to be compromised."⁹

34. Therefore the IACHR determines, in line with its constant doctrine, that although formally there does exist a remedy in Brazil for investigation of human rights violations perpetrated by military police, the power that Brazilian law grants to the military police itself to investigate such violations, for purposes of admissibility, constitutes a legal ground that exempts the petitioners from the obligation to exhaust it, since such remedy is inadequate.¹⁰ Consequently, the IACHR considers that this situation is covered by the exception to the rule of the prior exhaustion of domestic remedies set forth in Article 46.2.a of the American Convention.¹¹

35. It only remains to emphasize that invoking the exception to the rule of exhaustion of domestic remedies is inextricably linked to a determination of possible violations of certain rights enshrined in the American Convention, such as the guarantees of access to justice, and, in this case, by virtue of the fact that the lack of due process guarantees stems from Brazilian law itself, the possible failure to fulfill the obligation to adopt provisions of domestic law. Nevertheless, Article 46.2 of the American Convention, by its nature and object, is a rule with autonomous content, *vis-à-vis* the substantive rules of the same international instrument. Therefore, the determination as to whether exceptions to the rule on exhaustion of domestic remedies provided for in that Article apply to the case in question, must be carried out in a manner prior to and separate from an examination of the merits of the claim. Such determination rests upon parameters different from those employed to establish possible violations of Articles 2, 8 and 25 of the American Convention¹². Therefore the Inter-American Commission clarifies that the causes and effects allegedly resulting in lack of due process in the present case shall be analyzed, where relevant, in the report on the merits of the claim in order to verify whether the American Convention has been infringed.

⁹ IACHR, Report No. 40/03, Merits, Case 10.301, *42º Distrito Policial (Parque São Lucas)*, Brazil, October 8, 2003, paragraph 77.

¹⁰ See, *inter alia*, IACHR, Report No.4/03, Admissibility, Petition 11.820, *Eldorado dos Carajás*, Brazil, February 20, 2003, paragraph 31; Report No. 23/02, Merits, Case 11.517, *Diniz Bento da Silva*, Brazil, February 28, 2002, paragraph 25; and Report No. 32/04, Merits, Case 11.556, *Masacre de Corumbiara*, Brazil, March 11, 2004, paragraph 265.

¹¹ See, *mutatis mutandi*, IACHR Report No. 96/09, Admissibility, Petition 4-04, *Antônio Pereira Tavares and others*, December 29, 2009, paragraph 35.

¹² IACHR, Report No. 96/09, Admissibility, Petition 4-04, *Antônio Pereira Tavares et al.*, December 29, 2009, paragraph 35; Report No. 72/08, Admissibility, Petition 1342-04, *Márcio Lapoente da Silveira*, Brazil, October 16, 2008, paragraph 75; Report No. 23/07, Admissibility, Petition 435-06, *Eduardo José Landaeta Mejía et al.*, Venezuela, March 9, 2007, paragraph 47; and Report No. 40/07, Admissibility, Petition 665-05, *Alan Felipe da Silva, Leonardo Santos da Silva, Rodrigo da Guia Martins Figueiro Tavares et al.*, Brazil, July 23, 2007, paragraph 55.

2. Timeliness of the Petition

36. Article 46.1 of the American Convention requires that petitions be lodged within a period of six months from the date on which the final judgment was notified. Article 32.2 of the IACHR's Rules of Procedure provides that:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

37. Regarding the present claim, the IACHR already found *supra* that one of the exceptions to the rule on the exhaustion of domestic remedies was applicable to it, therefore it must be established whether the petition was filed within a reasonable time. In this regard the Inter-American Commission considers that, in principle, compliance with admissibility requirements must be verified at the moment of approval of the admissibility report. Consequently, taking into account the circumstances of the case, particularly the date on which the alleged victims died and the criminal proceedings described *supra*, the Inter-American Commission finds that the petition was filed within a reasonable time and that the requirement in Article 32.2 of the Rules of Procedure has been satisfied.

3. Duplication of Proceedings and *res judicata*

38. There is no information on the record indicating that the subject of this petition is pending settlement in another international procedure, or that the case essentially duplicates a petition pending or already examined and settled by this or another international organization. The Inter-American Commission therefore finds that the requirements provided for under Articles 46.1.c and 47.d of the Convention have been satisfied.

4. Colorable Claim

39. The Inter-American Commission must establish whether the allegations of fact made in the petition tend to establish violations of the rights protected in the American Convention, pursuant to the requirements in Article 47.b or whether --pursuant to Article 47.c-- they should be rejected for being "manifestly groundless" or "obviously out of order." In the present procedural stage the IACHR must carry out a *prima facie* evaluation of whether the petition includes claims that could potentially characterize violations of rights protected in the American Convention, and not to establish the actual existence of a violation of rights. This determination does not imply a prejudging of the merits of the claim.

40. In this sense the Inter-American Commission observes that, if true, the petitioner's claims regarding the alleged extrajudicial execution of the alleged victims by the military police of São Paulo could characterize a violation of Article 4 of the American Convention. In addition, if it is shown that the alleged extrajudicial executions remain unpunished due to a lack of diligence and impartiality on the part of the authorities charged with the investigation and the criminal process, as well as by the wide jurisdiction granted by Brazilian law to Military Courts when referring to investigations undertaken by the Military Police themselves, and taking into account the alleged suffering caused by the alleged denial of justice to the next of kin of the alleged victims, the IACHR considers that the foregoing could tend to establish a violation of Articles 5, 8 and- by virtue of the principle *iura novit curia* - 25 of the American Convention, to the prejudice of Eladia Aparecida Erguelles Brandão and other next of kin of the alleged victims who might be identified at the merits stage. The Commission considers all those provisions of the American Convention admissible in conjunction Article 1.1 of the same instrument.

41. On the other hand the IACHR does not find that the allegations of fact submitted by the petitioner present, *prima facie*, elements that could characterize possible violations of the rights protected in Articles 7 and 24 of the de American Convention. Therefore the IACHR finds these claims inadmissible pursuant to the requirements in Article 47.b of the American Convention.

V. CONCLUSIONS

28. The Inter-American Commission concludes that it is competent to examine the merits of this case, and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention. Based on the foregoing arguments of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**DECIDES:**

1. To declare this petition admissible in relation to the alleged violations of the rights protected in Articles 4, 5, 8, and 25 of the American Convention, in conjunction with the general obligation enshrined in Articles 1.1 and 2 of the said Treaty;

2. To notify this decision to the parties;

3. To continue with the analysis of the merits of the case; and

4. To publish its decision and to include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 17th day of the month of March 2010.
(Signed: Felipe González, President; Dinah Shelton, Second Vice-president; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).