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Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume. Commissioner Helio Bicudo, a Brazilian national, did not participate in the consideration and vote on this report, pursuant of Article 19(2)(a) of the Commission's Regulations.
Dated:	7 April 1998
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I. BACKGROUND

1. The Inter-American Commission on Human Rights (the "Commission") initiated its review of this case on May 27, 1994, on the basis of a complaint that can be summarized as follows: The Federal Republic of Brazil (the "State" or "Brazil") violated the American Human Rights Convention to the detriment of João Canuto de Oliveira, a Brazilian citizen who was murdered, by failing to provide him with due protection when he reported to the competent state and federal authorities that he had received death threats, and by the ineffectiveness of the State in conducting an efficient investigation and judicial proceedings subsequent to his assassination.

João Canuto was a labor union leader of rural workers in Río María del Sur, in Pará State. After he was assassinated on February 18, 1985, his two sons were also murdered, as were the next two presidents to succeed him at the head of the Río María Union of Rural Workers. In addition, members of his family and rural leaders linked to that labor association were wounded.

The complaint gives the following information:

- a) On December 18, 1985, João Canuto, who at the time was president of the Río María Union of Rural Workers, Pará State, was assassinated by two gunmen in the context of a dispute over lands between farmers and the owners of the Canaã Plantation, which had earned him the enmity of the local landholders.
- b) João Canuto had been warned that the local landholders and politicians, including the Río María mayor at the time, were conspiring to kill him and that they had hired gunmen for that

purpose. This situation was reported by João Canuto to the local police, but the police did not offer him protection.

c) According to statements by witnesses, a gunman who appeared at the offices of the Ríó María Union of Rural Workers reported that the death of João Canuto had been "ordered by Laranjeira (in reference to the then-Mayor of Ríó María, Adilson Carvalho Laranjeiras) and by somebody from Canaã". According to that testimony, the threats to the life of João Canuto were blatant and were common knowledge.

d) According to the files of the case being processed by the Pará Court of Justice, a group of local politicians and influential landowners, including the then-Mayor of Ríó María, had conspired to assassinate João Canuto, and in the more than nine years since the event occurred, no suspects for the murder of João Canuto have been arrested or tried, despite the existing evidence.

e) According to the complaint, the investigation was conducted in a negligent manner and was not concluded until 1993, after three judges, four prosecutors, and six police officers had participated in it. Three individuals were arrested early in the course of the investigation, but they were later released. Two of them were set free as a result of a habeas corpus filed on their behalf, and the other was released for health reasons, without being asked to provide information so that he could be located or detained again at a later date.[FN1]

f) The Division for Political and Social Order (DOPS), the special police that investigated the crime, concluded that at least five persons were clearly implicated in the murder of João Canuto and it recommended their arrest. Despite this, the corresponding arrest warrants were never issued until the complaint was filed with the Commission. These persons included influential landholders, local politicians, and two gunmen, who went by the names of Gaspar Roberto Fernandes, Jandir Alves de Paula, Vantuir Goncalves de Paula, Ovidio Gómes de Oliveira, and Adilson Carvalho Laranjeira.

g) Various testimonies indicated that there were 20 more landholders implicated in the conspiracy to kill João Canuto, but that the involvement of those landholders in the conspiracy was never adequately investigated by the police. In this regard, the complainant indicated that even a judge, who was subsequently transferred, told Amnesty International that the police had obstructed the investigation.[FN2]

h) The complaint also states that there were irregularities in the legal proceedings, such as the fact that ten statements by witnesses were lost, including one that implicated various important landholders, and so the witnesses had to be deposed a second time.

The complaint goes on to say that despite the fact that the investigation has been concluded, none of the suspects was ever tried for the murder of João Canuto. As a result of the impunity and ineffectiveness of the Brazilian legal system in the case of the murder of João Canuto, two of his sons were murdered, and another was seriously wounded following an attempt on his life. In addition, two other presidents of the Ríó María Rural Workers Union were murdered, and another was the victim of an attempt on his life. The complaint concludes by stating that the acts

committed are a violation, inter alia, of Articles 8, 25, and 1 of the American Convention on Human Rights and Articles 1 and 5 of the American Declaration of the Rights and Duties of Man.

[FN1]Amnesty International, Authorized Violence in Rural Areas, (1988), pp. 37-38 (source cited in the petition).

[FN2] Amnesty International, Authorized Violence in Rural Areas, (1988), pp. 37-38 (source cited in the petition).

2. The Government was informed of the complaint on May 27, 1994, and following three extensions granted by the Commission, it filed its response on November 22, 1994, in which it indicated, inter alia, that the police investigation into the murder of João Canuto was completed in July 1993, that penal action to determine the criminal responsibility of the persons possibly implicated was still being pursued, and that therefore the internal legal remedies had not been exhausted.

3. On May 11, 1995, the petitioner filed his comments on the Government's responsive brief and stated, inter alia, that an exception to the rule of exhaustion of internal legal remedies, as stipulated in Article 46.2.c of the Convention, should apply in the case in point. The petitioner reiterated that in addition to the fact that the police investigation was not thorough and effective, it was also excessively long and protracted. Petitioner added that up to that date, i.e., May 11, 1995, the case was still held up in the Prosecutor's Office, and that the Prosecutor had never filed any charges with the relevant court, in spite of the fact that there was sufficient evidence to establish the guilt of five suspects. It further stated that the police investigation contained various statements of testimony confirming that João Canuto had notified the appropriate authorities of the death threats he had received and had then asked them for their protection, but they did not grant the requested protection.

The petitioner concluded by pointing out that the investigation did not meet the minimum requirements of speediness, since besides taking eight years to be completed, no progress was achieved in convicting the responsible parties. It indicated that the Government had been negligent by failing to institute legal proceedings against the suspects on the basis of the police investigation, and that now that almost 18 months have gone by since it was concluded, the case is still held up in the Prosecutor's Office, and the corresponding information has never been issued.

4. On December 18, 1995, the Government filed its final comments, in which it stated, inter alia, that the Public Prosecutor for the State of Pará had delivered to the Ministry of Justice a copy of the information containing the formal charges of aggravated homicide issued earlier in the month against the persons accused of the murder of João Canuto, known by the names of Adilson Carvalho Laranjeira, Vantuir Goncalves de Paula, Ovídeo Gomes de Oliveira, Jurandir Pereira da Silva, and Gaspar Roberto Fernandes. The Government concluded by stating that the General Coordinator of the Committee for the Protection of Human Rights in the National Justice Ministry would organize a meeting between the representatives of the Ministry and the

State Secretaries of Justice and Public Security, so that they could work out a strategy for cooperation to improve the situation of death threats and impunity in Pará State, and by stressing the importance of having avoided impunity in the case of João Canuto.

5. In this way, the regulatory procedures in this case before the Commission were completed, and a letter was sent to the Government on January 24, 1996 to notify it of that fact.

6. The Commission is now going to consider the facts communicated by the parties in additional reports receiving during the processing of this case:

a. Letter of September 16, 1994 from the petitioner which states, inter alia, that after nearly nine years, the case has still not progressed to the trial stage and that the police investigation into the murder of João Canuto was concluded on July 27, 1993, or almost eight years after the murder took place, and that said investigation showed that five persons were implicated in the crime. The petitioner concludes his letter by pointing out that on August 30, 1993, the case was sent to the Office of the State Prosecutor in the city of Belém, but that there had been no further progress on the case to date.

b. Letter of September 6, 1995, from the Government in which it states, inter alia, as follows: that the documents on the police investigation into the death of João Canuto had been turned over to the Public Prosecutor, Manoel Santino Nascimento Junior, on November 5, 1993; that the necessary steps to correct the irregularity had been taken; that, in addition, said Prosecutor was preparing the information, which was expected to be issued in the next 20 days; and that the Human Rights Committee of the National Justice Ministry reported that contacts had been initiated with the attorney of the victim's family to present a secondary information in the event that the Office of the Public Prosecutor [Ministerio Público] should fail to proceed further on the matter.

c. Letter of September 11, 1995 from the petitioner in which it states, inter alia, as follows: that there was an excessive delay in processing this case and that the Government of Brazil failed in its responsibility to investigate adequately and punish the persons responsible for the death of João Canuto; that there had been absolutely no progress made in the case, and that even though the report of the police investigation had been in the hands of the prosecutor since July 1993, no charges had been filed, despite the large amount of evidence pointing to the criminal responsibility of five persons; and that, as a result, the Government of Brazil had failed to comply with its obligation to investigate and punish the persons responsible for the crime.

d. Letter of October 6, 1995 from the petitioner which states, inter alia, as follows: that the police investigation was finally wrapped up on July 27, 1993, or in other words nearly eight years after the crime occurred; that the Division of Political and Social Order had requested that five persons be arrested and placed in custody pending trial; that on August 30, 1993, the Division of Political and Social Order sent the case to the Office of the Public Prosecutor in Belém, but that no significant action had been taken on this case since that time.

7. In accordance with Articles 58 and 59 of the Commission's Regulations,[FN3] it is appropriate to refer to the facts that are gleaned from the information on this case which was

collected during the on-site visit to Brazil which took place December 4 to 8, 1995, when a delegation from the Commission visited Río María. Together with the Director of the Human Rights Committee of the Ministry of Justice and a legal representative from Brazil's Foreign Affairs Ministry, the Commission took testimony from members of João Canuto's family, other leaders of the Río María Rural Workers' Union, the public defenders of the victims, the judicial authorities, the prosecutors, and municipal officials. During this time, and with the assistance of representatives from the Brazilian State, the following was ascertained:

a. That the police investigation was opened on February 20, 1986 and concluded seven years later in July 1993, and that as a result of that investigation, it was requested that five persons implicated in the crime be taken into custody pending trial. The order was never issued, as the case was sent on to the Office of the Public Prosecutor, where it has been since August 30, 1993, waiting for the corresponding information to be issued.

b. That on August 31, 1995, a Committee comprising federal deputies and deputies from Pará State--which was confirmed by a letter dated September 12, 1995, sent by Deputy Nilmario Miranda to the State Prosecutor, and which appears on page 85 of the file--and members of nongovernmental organizations met with the Attorney for Pará State, Dr. Edith Marília Mara Crespo, who promised that the Public Prosecutor's Office would file charges within eight days.

c. That in a letter dated September 4, 1995, sent by the Pará State Attorney to the Chairman of the Río María Committee, it was stated that Prosecuting Attorney Manoel Santino had not yet responded on the filing of the charges in relation to the murder of João Canuto.

d. That Prosecutor Manoel Santino Nascimento Junior, in a meeting with the legal representative of the victims, Attorney Frei Henri des Roziers, confirmed that the case had been in the Prosecutor's Office for two years and he promised to present an information in the next few days. This promise was repeated during a hearing held with a group from the Río María Committee. On October 18, 1995, Dr. Santino reported that he had delegated authority to Prosecutor Francisco Barbosa to issue the information. Finally, in a letter dated October 18, 1995 and addressed to the Public Prosecutor for Pará, Deputy Nilmário Miranda requested that the charges in relation to the murder of João Canuto be filed immediately.

e. Following other promises made by the new Public Prosecutor on October 2 and 31, 1995, it was not until the delegation from the Inter-American Commission on Human Rights visited the Office of the Public Prosecutor in Belém do Pará on December 11, 1995 that the information in question was finally issued.

f. On 18 December, 1995, the Government of Brazil sent letter 332 to the Commission, which stated as follows: a) The Public Prosecutor for Pará State had forwarded to the National Justice Ministry a copy of the official information containing the charges against the persons accused of the murder of João Canuto; and b) The General Coordinator of the Council for the Protection of Human Rights (CDDPH) had pledged to organize a meeting between representatives from the National Justice Ministry and the Justice and Public Security Secretaries for Pará State with a "view to developing a common strategy for improving the situation in Pará State."

[FN3]Article 58: When a government invites a mission to observe in loco or gives its consent, it shall grant to the Special Commission all the facilities necessary to carry out its mission. More specifically, it shall undertake not to retaliate in any way against the persons or entities that cooperate with the Commission by providing information or testimony of any kind.

Article 59:

a) The Special Commission, or any of its members, may interview freely and in private any persons, groups, entities, or institutions, and the government must provide the relevant guarantees to any of them that provides information, testimony, or evidence of any kind to the Commission.

b) The Special Commission may use any appropriate means to gather, tape, or reproduce information that it considers opportune.

It is evident from the above that the Commission may make use of any reports or information it receives during its on-site visit to present elements of proof related to the events or the case that the information refers to.

8. In accordance with Article 48.1.f. of the Convention, the Commission placed the case before the parties at its 90th Regular Meeting held in March 1996, to try to arrive at a friendly settlement. On this point, the petitioner indicated in a letter dated October 10, 1995 that it was interested in reaching a friendly settlement. On October 23, 1995, the Commission sent a note to the Brazilian Government advising it that it would be given a period of 45 days in which to inform it as to whether or not it was interested in seeking a friendly settlement in that case, and that if it did not notify it of its position in that time, the possibility of arriving at a friendly settlement would be considered as exhausted. The Government did not notify the Commission of its position within that period of time or subsequently.

9. On December 26, 1996, the petitioner reported "the disappearance from the court of the records for Criminal Case No. 0047/90, originating in Xinguara District, Pará State, which the Public Prosecutor's Office was bringing against Jose Ubiratan Matos Ubirajara, Geraldo de Oliveira Braga and others accused of the attempted murder of Orlando Canuto and the murder of the brothers Jose and Paulo Canuto, which occurred on April 22, 1990". This information was transmitted to the Government, along with a request to provide information prior to February 20, 1997, but no reply was ever received on this point.

Bearing this information in mind, the Commission will now consider whether it is competent to take up this case.

II. JURISDICTION OF THE COMMISSION

10. According to Articles 26 and 51 of its Regulations, the Commission is competent to hear and issue an opinion on this complaint of a violation of the right to life and security, as established in the American Declaration of the Rights and Duties of Man.

11. The Commission is also competent to examine complaints against the Brazilian State regarding violations of human rights established in the American Convention on Human Rights and Article 26 of its Regulations.

12. In the first place, based on the American Declaration of the Rights and Duties of Man, it has competence in relation to certain events reported in the present complaint which occurred prior to September 25, 1992, the date that Brazil deposited its instrument of ratification of the American Convention on Human Rights.

13. In the second place, the Commission also has jurisdiction to examine the events, which in this case include the police investigation and subsequent proceedings, that occurred after September 25, 1992, inasmuch as they constitute a violation or continued denial of the right to judicial guarantees (Articles 8 and 25 of the Convention, respectively). When the State of Brazil deposited its instrument of accession to the American Convention, pursuant to the case law of the Court and the Commission, it assumed the specific international obligation to investigate and punish the guilty parties for both the execution and the planning of the assassination of João Canuto, and to offer the pertinent judicial guarantees and judicial protection for the victim and his family members. In analyzing whether the Brazilian State complied with this international obligation, consideration must be given to the excessive delays both in conducting the judicial investigation and in filing the charges with the appropriate courts, which occurred ten years after the murder. In this process, it must be determined whether the State of Brazil complied with the provisions of Article 1.1 of the Convention, namely the duty to respect the rights and freedoms recognized therein and to guarantee that all persons under its jurisdiction may freely and fully exercise them. In the opinion of the Commission, and as stated by the Inter-American Court of Human Rights, from these duties is derived the duty to organize the entire Government apparatus and the institutions through which public authority is exercised to ensure that they are capable of legally guaranteeing the free and full exercise of human rights. Also arising from these duties is the duty to prevent, investigate, and sanction to which we just referred and the duty to reinstate, if possible, the violated right and, if appropriate, to pay compensation for the damages caused.[FN4]

[FN4] See Inter-American Court of Human Rights, Velásquez Rodríguez Judgment, July 29, 1988, par. 186.

14. Consequently, pursuant to Article XVIII of the American Declaration, the Commission has jurisdiction *ratione temporis* to hear and issue an opinion in this case regarding possible violations occurring prior to official ratification of the Convention on September 25, 1992, and it also has jurisdiction pursuant to the American Convention, with regard to acts and procedures carried out by the Brazilian justice system inasmuch as they may constitute a continuous violation of Articles 8 and 25 of the Convention, considered together with Article 1.1 of the same.

15. On this last point, the Commission considered it important to take into account the case law of the European Human Rights Commission. Even though it has recognized and repeatedly

applied the principle of the non-retroactivity of treaties,[FN5] in some of its opinions it has drawn a distinction between this type of situation and others, which constitute situations or violations of a continuous nature. The European Commission has found that it was incompetent *ratione temporis* to hear cases pertaining to the first type of situation, but it has found that it was within its scope to examine situations of a continuous nature.

[FN5] See, for instance, Dec Adm Com Ap 214/56 (June 9, 1958, II YB214, 230-231); Dec Adm Com Ap 343/57 (September 2, 1959), II YB 412, 425; Dec Adm Ap 889/60 (March 9, 1962), V YB 136, 142; Dec Adm Ap (September 18, 1961), IV YB 324, 334; Dec Adm Com Ap (July 26, 1963), VI YB 332, 344.

16. On this point, the European Commission had the following to say:

Nevertheless, in accordance with the generally accepted principles of international law, the Convention is valid for all the Contracting parties only as it pertains to events occurring subsequent to its entry into force for that Party. In the case that those events consist of a series of legal proceedings which extend over several months' time, the date of entry into force of the Convention for the State Party in question serves to divide the period into two parts: the first part falls outside the jurisdiction of the Commission, while the second part cannot be rejected on the basis of those arguments.[FN6]

[FN6] See, for instance, Dec Adm Com Ap 232/57, I YB 246; Dec Adm Com Ap 7211/75 (October 6, 1976, 7 D&R 104, 106-107).

17. Along these same lines, the European Commission stated as follows on another case related to application of Article 25 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols:

According to the case law of the European Court of Human Rights and the Commission, the time period to be taken into account for the purposes of Article 6(1) of the Convention begins at the time that the initial charges are filed against the defendant and ends when there is a judgment on the merits of those charges, either to convict the defendant or to absolve him. The Commission must consider the fact that Italy recognized the jurisdiction of the Commission to hear petitions filed in accordance with Article 25 of the Convention only in reference to acts, decisions, events, or incidents that occurred after July 31, 1973. Therefore, the Commission is not competent, *ratione temporis*, to investigate events that occurred prior to August 1, 1973.[FN7]

[FN7] European Commission of Human Rights, Dec Adm Com Ap 8261/78 (October 11, 1979), 18 D&R 150, 151.

18. On the applicability of this legal doctrine of the European Commission to the inter-american system, the following opinion has been put forward:

... the doctrine according to which the European Commission and the Human Rights Committee of the Civil Rights Pact have jurisdiction to take cognizance of events occurring prior to the date of entry into force of the Convention for a specific State, provided and to the extent that those events are likely to result in a continuous violation of the Convention extending beyond that date, is applicable to the Inter-American system.[FN8]

[FN8] Andrés Aguilar, *Derechos Humanos en las Américas* [Human Rights in the Americas], supra note number 8, page 202.

III. ADMISSIBILITY OF THE PETITION

19. This petition fulfills the formal requirements for admissibility as stipulated in Article 46(c) and (d), Paragraph 1, of the Convention, since the subject of the petition is not dependent on another proceeding under international law. It also meets the requirement contained in (d), as it contains the name and signature of the legal representative of the institution that filed the petition, which is a nongovernmental organization recognized in one or more member states of the organization. Likewise, the petition is written on the letterhead paper of that organization, which shows its name and address. Further, although the profession and nationality of the legal representative of the organization filing the petition is not given, the Commission finds that, based on the Court's writing in Paragraph 36 of the judgment issued on June 26, 1987 on preliminary objections in the *Godínez* case,[FN9] the requirements that were not observed in the complaint are, in view of their nature, exceptionable and exceptions have been duly made to them without entailing disrespect of the same.

[FN9] The Court took into account in the first place that under international jurisdiction, failure to observe certain procedures is not always relevant, since what is important is that the purposes for which the specific procedures were designed are met. (*International Court of Human Rights, Godínez Cruz Case, preliminary objections, judgment of June 26, 1987, Paragraph 36*).

20. It is now appropriate to consider if this petition meets the formal requirements of admissibility specified in Paragraph 1, sections a) and b) on exhaustion of domestic remedies and the six-month period for presentation, or, in the event it does not, if the exceptions specified in Paragraph 2 of those provisions apply. They state as follows:

The provisions of Paragraphs 1.a and 1.b of this Article shall not apply in the following circumstances:

a. The internal laws of the state in question do not provide for due legal process for protection of the right or rights that are alleged to have been violated;

- b. The person whose rights are presumed to have been infringed has not been permitted access to domestic legal remedies, or has been prevented from exhausting them; and
- c. The decision regarding those remedies has been unjustifiably delayed.

21. In this regard, the Government of Brazil has filed a preliminary objection of failure to exhaust internal legal remedies, based on the fact that those remedies are still in process.

22. The petitioner, in turn, has alleged that the domestic legal remedies were ineffective and that there was an unjustified delay in the investigation and processing of the case against the perpetrators of the assassination of João Canuto, and that the exception specified in Article 46.2.c of the Convention applies.

23. The Inter-American Court of Human Rights has written as follows:

The rule of prior exhaustion of domestic remedies permits the State to settle the problem according to its internal law before it is faced with international proceedings. This is particularly valid in international human rights law, since it contributes to or complements internal law (American Convention, Preamble).[FN10]

[FN10] Inter-American Court of Human Rights, Velásquez Rodríguez Case, July 29, 1988, par. 61.

24. According to the Court, this rule has implications that are contemplated in the Convention. One of them is the obligation assumed by the States Parties to provide effective domestic legal remedies to victims of human rights violations (Article 25 of the Convention), and another is that these remedies must be examined in accordance with the rules of due legal process (Article 8.1 of the Convention). All of this is to take place within the scope of Article 1.1 of the Convention, which establishes the State's obligation to guarantee to persons under its jurisdiction the free and full exercise of the rights recognized by the American Convention on Human Rights.[FN11]

[FN11] Velásquez Rodríguez Case, judgment of July 29, 1988, par. 62.

25. It is evident that the burden of proof regarding exhaustion of internal legal remedies falls on the State that is alleging their non-exhaustion. This includes the duty to indicate the internal remedies that must be exhausted and their effectiveness.[FN12] The Court has also maintained that "if the State proves the existence of certain internal remedies that should have been used, the burden of proof is reversed and it is the responsibility of the petitioner or the author of the report to demonstrate that those remedies were exhausted or that the case falls within the scope of one of the exceptions referred to in Article 46.2 of the Convention..."[FN13] In addition, since the requirement of the petition is established in the Convention, because the inter-american system is subsidiary and contributory to domestic laws, it is the responsibility of the author of the report or

the petition to allege said prior exhaustion, or the reasons why he considers that the exceptions stipulated in Articles 61 and 63 are applicable to the case.

[FN12] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1988, par. 87; Godínez Cruz Case, Preliminary Objections, Judgment of December 11, 1991, par. 30; Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, par. 40; and, Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 59.

[FN13] Cfr Inter-American Court of Human Rights, Exceptions to exhaustion of domestic remedies (Art. 46.1, 46.2.1 and 46.2.b of the Convention), Advisory Opinion No. 11/90, Series A, No. 11, Paragraph 41.

26. In this case, the State of Brazil confined its allegation to the non-exhaustion of said remedies, without enumerating which of them might have been used. Moreover, it did not diminish the merit of the allegations related to the ineffectiveness of the remedies that were attempted, nor did it present any documentary evidence in this regard.

27. Because the State of Brazil did not object to the majority of the petitioners' allegations, and did not justify the delay and the ineffectiveness of the internal legal remedies, the Commission must draw its conclusions in the absence of a more active participation by the Brazilian State.[FN14] It must also consider the allegations and evidence presented by the petitioner regarding the delay and ineffectiveness of the domestic remedies in this case.

[FN14] Inter-American Court of Human Rights, Velásquez Rodríguez Judgment, July 29, 1988, par. 137.

28. According to court records, in the course of this year, after more than ten years have lapsed since the murder of João Canuto, and after the case was held up in the Prosecutor's Office for two years, the charges of aggravated homicide were filed against the five persons implicated in the assassination that was the subject of the a police investigation which in turn took seven years and six months to complete.[FN15]

[FN15] Article 10 of Brazil's Code of Criminal Procedures establishes a period of 30 days for completion of police investigations. In the sub-judice case, it is obvious that this time limit was not observed, since the police investigation lasted seven years and six months.

29. However, "the foundation of the international protection of human rights" which is referred to in Article 46.1 of the Convention, "lies in the need to safeguard victims from the arbitrary exercise of public authority." [FN16] The exceptions contemplated in Article 46.2 of the Convention seek precisely to guarantee international action whenever internal legal remedies,

and the internal judicial system itself, do not prove to be effective in guaranteeing respect for victims human rights.

[FN16] Inter-American Court of Human Rights, Godínez Cruz Case, Judgment of June 26, 1987.

30. In this way, the formal requirement regarding nonexistence of internal remedies that guarantee the principle of due process (Article 46.2.a of the Convention) refers not only to a formal absence of internal legal remedies but also to the case in which said remedies are inadequate. Denial of justice (Article 46.2.b of the Convention) and an unjustified delay in serving justice (Article 46.2.c of the Convention), however, are also linked to the effectiveness of those remedies.[FN17]

[FN17] Mónica Pinto, *La Denuncia ante la Comisión Interamericana de Derechos Humanos* [The Complaint Before the Inter-American Commission on Human Rights, Puerto Publishers, 1993, page 64.

31. In this sense, the generally accepted principles of international law refer both to the fact that internal remedies formally exist and to the fact that they are adequate to protect against the legal situation that was violated, and effective in leading to the result for which they were conceived.[FN18] This is why their exhaustion should not be interpreted as the need to carry out mechanically the formalities in question, but rather that the reasonable possibility of obtaining the remedy should be analyzed in every case.[FN19] Therefore, the right to cite non-exhaustion of internal legal remedies as the grounds for declaring a petition inadmissible may not lead to a situation in which "international action to assist the defenseless victim is held up or delayed to the point where it is useless." [FN20] This means that if the processing of internal remedies is delayed unjustifiably,[FN21] it can be concluded that they have lost their effectiveness to produce the result for which they were established, "thereby placing the victim in an unprotected condition." [FN22] It is in this instance that international protective mechanisms, including the exceptions specified in Article 46.2 of the Convention, should be applied.

[FN18] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 62-66; Farién Garbi and Solís Corrales Case, Preliminary Objections, March 15, 1989, par. 86-90; Godínez Cruz Case, Judgment of January 20, 1989, par. 75.

[FN19] Inter-American Court of Human Rights, Velásquez Rodríguez Judgment, July 29, 1988, par. 72, Farién Garbi and Solís Corrales Judgment, Preliminary Objections, March 15, 1989, par. 97; Godínez Cruz Judgment, January 20, 1989, par. 75.

[FN20] Inter-American Court of human Rights, Godínez Cruz Case, Judgment of June 26, 1987, par. 95.

[FN21] This type of delays adversely affects the effectiveness of domestic legal remedies, since it causes a deterioration of the evidence, and especially evidence presented by witnesses who have moved or tend to forget the facts, after so many years have gone by.

[FN22] Inter-American Court of Human Rights, Godínez Cruz Case, Judgment of June 26, 1987, par. 95.

32. In the case in point, the Government did not refute the arguments of the petitioner pertaining to the ineffectiveness of the internal remedies attempted. It also had an opportunity to refute the allegations by the petitioner regarding the delay and lack of diligence in the police investigation, and the failure of the Public Prosecutor, who was responsible for initiating proceedings, to issue the information.

33. The facts in evidence indicate, however, that over ten years have gone by since the events occurred,[FN23] and that not one of the five persons suspected of planning and carrying out the homicide of João Canuto has yet been punished.

[FN23] The events occurred on December 18, 1985.

34. By virtue of the foregoing, the Commission considers that the exception provided for in Article 46, section 2, Paragraph c) of the Convention, referring to the unjustified delay in the decision related to the domestic legal remedies, is applicable to this case.

35. The Commission therefore concludes that the sub-judice complaint is admissible pursuant to the provisions of Article 46, section 2, Paragraph c) cited above e.

IV. FUNDAMENTAL ISSUES

A. Responsibility of the Federal Republic of Brazil for the Acts and Omissions of its Institutions and Agents

36. Before going straight into an analysis of the alleged facts and the right presumed to be violated, the Commission believes that it would be appropriate to clarify why an act or omission by a State institution entails its international responsibility.

37. On this point, Article 1.1 of the Convention is a key element for determining the responsibility of the State with regard to the violation of human rights that are recognized in that legal instrument. This provision states as follows;

The States Parties to this Convention shall undertake to respect the rights and freedoms recognized therein and to guarantee their free and full exercise to all persons under their jurisdiction, without discrimination of any kind for reasons of race, color, sex, language, religion, political opinion or opinions of any other kind, national or social origin, economic position, birth, or any other social condition.

38. This article clearly establishes the State's obligation both to respect the rights and freedoms recognized in the Convention, and to guarantee their exercise. As a result of that

obligation, the State has the duty to "prevent, investigate, and punish" violations of the human rights recognized by the Convention.[FN24]

[FN24] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 172.

39. Likewise, international law assigns the State international responsibility for the behavior of its institutions and agents when they are operating in that capacity, even if outside the normal scope of their functions. This includes the higher organs of the State, such as the Executive, Legislative, and Judicial Branches, and acts and omissions of public officials or agents acting in their place.[FN25]

[FN25] See Santiago Bendavia, *International Public Law*, Editorial Jurídica de Chile, 1976, p. 151.

40. In a judgment handed down on July 29, 1988 (Velásquez Rodríguez Case), the Inter-American Court of Human Rights established as follows:

It is a principle of international law that the State must answer for the acts of its agents performed in their official capacity and for their omissions, even if they were acting outside the scope of their authority or in violation of domestic law.[FN26]

[FN26] Inter-American Court of Human Rights, Velásquez Rodríguez Case, judgment issued on July 29, 1988, par. 170.

41. In other words, in the case under study, the Federal Republic of Brazil is responsible for the acts and omissions of one of the public officials of the Federal State of Pará, as represented in the person of the Mayor of Río María at the time, who conspired to murder João Canuto. It is also responsible for the acts and omissions of its police officers, who denied police protection to the victim before he was murdered, and subsequently took more than seven years to complete the investigation into the murder of João Canuto. Finally, the State of Brazil is also responsible for the lack of diligence of the Public Prosecutor, who just recently filed the charges with the appropriate judicial authorities, two years after the investigation was concluded.

42. Since Brazil is a Federal State, it is the national State that must be held responsible in the international sphere. Article 28 of the Convention has the following to say on this point:

1. When a State Party is a Federal State, the National Government of that State Party shall comply with all the provisions of this Convention related to the subjects over which it exercises legislative and judicial jurisdiction.

2. As regards provisions pertaining to matters that fall within the scope of the entities comprising the federation, the national Government must immediately take the pertinent steps pursuant to its constitution and laws, so that the competent authorities of said entities may adopt the necessary provisions to ensure compliance with this Convention.

43. As a result, the Commission concludes that in the case in point, the Federal Republic of Brazil is responsible and must answer internationally for the violation of the right to life committed by one of its public officials, and for the acts and omissions of its agents and institutions in charge of preventing the commission of illicit acts in violation of human rights, investigating those acts and identifying the persons responsible for them, and initiating State action to sanction them.

44. The Commission further concludes that it is the responsibility of the Federal State of Brazil to take the pertinent steps, pursuant to its Constitution and laws, to ensure that the competent authorities of the Federated States adopt the necessary measures to comply with the Convention, and especially with its Article 1.1, in accordance with the provisions of Article 28, Paragraph 2 of that legal instrument.

V. RIGHT TO LIFE

45. On December 18, 1985, João Canuto, President of the Ríó María Union of Rural Workers, was assassinated by two gunmen. Various local politicians and landholders were presumably involved in the assassination, including the then Mayor of Ríó María, Adilson Carvalho Laranjeiras. In view of the fact that the Brazilian State ratified the American Convention after the events that gave rise to this complaint, the petitioner alleges that these events violate the right to life of the victim, as established in Article 1 of the American Declaration of the Rights and Duties of Man.

46. Article 1 of the American Declaration establishes that:

Every human being has the right to life, and to personal freedom and security.

47. This provision establishes as a basic principle that no person may be arbitrarily deprived of his life.

48. As was pointed out earlier, it is a principle of international law that the State answers for the acts of its agents performed in their official capacity, and for their omissions, even if they were operating outside the scope of their jurisdiction or in violation of domestic law.[FN27] This responsibility of the State extends to the violation of the right to life as a result of the act or omission of Government agents, among other things.

[FN27] Inter-American Court of Human Rights, Velásquez Rodríguez judgment of July 29, 1988, par. 164.

49. The Commission recalls that the Mayor of Río María, who was acknowledged to be one of the assassins of João Canuto, was a key member of a group of persons who owned fields and contracted workers. This group was in open conflict with the Río María Union of Rural Workers and, as was supported by testimony received by the Commission's delegation at the time of its visit, the Mayor used the connections and power of his office to take part in acts of intimidation against the officials and members of the Union and to maintain his own impunity and the impunity of his cohorts.

50. In the present proceeding, Brazil did not dispute the allegation by the petitioner to the effect that the then mayor of Río María, in his official capacity and acting with the impunity granted by that office and in control of the forces of law and order in the region, participated in the murder of João Canuto. On the contrary, the State admitted that said official had participated in the murder of João Canuto in one of its letters to the Commission in which it stated that the mayor of Río María at the time, Adilson Carvalho Laranjeira, was accused by the Public Prosecutor of having participated in the assassination of João Canuto. On the basis of this information, the Commission finds that the State, as a result of the action of one of its agents, represented in the person of the former mayor of Río María, violated the right to life of João Canuto, a Brazilian citizen, pursuant to Article 1 of the American Declaration.

51. At the same time, the Government did not dispute the petitioner's argument that the police officers in question failed to offer police protection to the victim, despite the fact that it was public knowledge that he had been receiving death threats, which could find their justification in the land dispute in which João Canuto was involved as President of the Río María Rural Workers Union.[FN28]

[FN28] According to Amnesty International's report, "Brazil, Authorized Violence in Rural Areas," "... the number of murders has been on the rise and the victims are carefully chosen. Leaders of communities of farm workers, labor union leaders, herders, nuns, priests, and attorneys who defend the rights of farmers in land holding disputes have been the victims of threats and attacks, and even on occasion of murder. These attacks and murders are closely related to the degree to which the communities of rural workers in question are organized or are active politically...". Amnesty International, Brazil, Authorized Violence in Rural Areas, page 8, September 1988.

52. By virtue of the foregoing, and in keeping with the principle of international law according to which silence on the part of the defendant or an elusive or ambiguous response may be interpreted as acceptance of the facts set forth in the petition, unless information to the contrary appears in the court documents or results from judicial conviction,[FN29] which is not the case in this proceeding, the Commission infers that Brazil has tacitly acknowledged the existence of these facts and its responsibility for them.

[FN29] Inter-American Court of Human Rights, Judgment of July 29, 1988, Velásquez Rodríguez case, par. 138.

53. Consequently, the Commission declares that Brazil also failed to fulfill its duty to prevent[FN30] the commission of an illicit act in violation of human rights by not affording protection to the victim when he requested it, leaving him unprotected and thereby facilitating his subsequent murder.[FN31] Pursuant to the opinion of the Inter-American Court of Human Rights, this situation occasioned the international responsibility of the State.[FN32]

[FN30] The State has the legal duty to prevent, within reason, violations of human rights... (Inter-American Court of Human Rights, Velásquez Rodríguez case, judgment issued on July 29, 1988, par. 174).

[FN31] The duty of prevention covers all those measures of a legal, political, administrative, or culture nature that serve to safeguard human rights and ensure that any violations of those rights will be effectively considered and treated as an illicit act which, as such, is liable to entail sanctions to the person who committed them. (Inter-American Court of Human Rights, judgment of July 29, 1988, Velásquez Rodríguez case, Paragraph 175).

[FN32] An illicit act in violation of human rights which could not initially be directly imputed to a State because, for instance, it was the act of an individual, or because the perpetrator of the crime had not been identified, may entail the international responsibility of the State, not for the crime itself, but because of its failure to exercise due diligence to prevent the violation or to deal with it as required by the Convention. (Inter-American Court of Human Rights, Judgment of July 29, 1988, Velásquez Rodríguez case, par. 172 in fine).

VI. RIGHT TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION

54. The petitioner alleges in his written complaint and in subsequent letters that the investigation triggered by the murder of João Canuto had proceeded extremely slowly, and that the prosecutor took more than two years to file criminal charges. Petitioner further alleges that these facts constitute a violation of Articles 8 and 25 of the Convention.

55. The Commission finds that, in the first place, Article XVIII of the American Declaration of the Rights and Duties of Man, which speaks of the right to justice, is applicable to this case. It states as follows:

All persons may have recourse to the courts to assert their rights. Likewise, they should have access to a simple, brief proceeding in which the system of justice protects them against acts by authorities that violate, to their detriment, any of the fundamental rights consecrated in the constitution.

56. It is now fitting to determine whether Article 8, on the right to judicial guarantees, and Article 25, on the right to judicial protection, both contained in the American Convention on Human Rights, are applicable.

57. As was stated earlier, Brazil deposited its instrument of accession to the American Convention on September 25, 1992, at a time when, in the case under consideration, the police investigation to identify the persons presumed to be responsible for the murder of João Canuto was still dragging on.[FN33] The obligation to investigate extends over a period of time. The ineffectiveness of the Brazilian State in failing to conduct a prompt, efficient investigation constitutes in itself a specific, independent violation of the right to life. The lack of diligence on the part of the Office of the Public Prosecutor by failing to file charges occurred, however, in 1993, or after the State of Brazil had deposited its instrument of accession to the American Convention. The violation of the right to justice and the duty to adopt provisions of domestic law, as referred to in Articles 1.1, 8, and 25 of the Convention, are also examples of denial of justice.

[FN33] The police investigation was initiated immediately following the murder on December 18, 1985, and it lasted until July 27, 1993, when it was concluded by the Division of Political and Social Order (DOPS) of the Federal Police and sent to the Office of the Public Prosecutor of Pará State, in Belém.

58. In accordance with Article 8 of the American Convention:

All persons have the right to be heard, with due guarantees and within a reasonable period of time, by a competent, independent, and impartial court or judge, previously established by law, in connection with any criminal charges formulated against them, or to determine their rights and obligations pertaining to civil, work, or fiscal matters, or matters of any other sort.

59. International jurisprudence has in turn maintained the following:

The guarantees serve to protect, ensure, or assert the entitlement to or exercise of a right. Since the States Parties have the obligation to recognize and respect the rights and freedoms of individuals, they also have the obligation to protect and ensure their exercise through pertinent guarantees (Article 1.1), that is to say, suitable measures to ensure that those rights and freedoms are effective in all circumstances.

60. Article 25 of the Convention reads as follows:

All persons have the right to a simple, prompt remedy to protect them against acts that violate their fundamental rights as recognized by the Constitution, the law, or this Convention, even when said violation is committed by persons while exercising their official functions.

61. In this regard, Brazil not only did not at any time dispute the allegations made by the petitioner, but it confirmed them in the letters that it forwarded to the Commission regarding the case in point. The same conclusion is reached from the information gathered by the IACHR delegation during its on-site visit to Río María and Belém do Pará.[FN34]

[FN34] In its response on November 22, 1994, the government stated as follows: "The police investigation into the murder of Joao Canuto was completed in July 1993, and criminal proceedings to determine the criminal responsibility of the persons possibly implicated are still going on." Likewise, on December 18, 1995, it stated in its final comments that: "The Public Prosecutor of the State of Pará delivered to the Ministry of Justice a copy of the formal charges of aggravated homicide against the persons accused of the murder of Joao Canuto."

62. Taking into account the findings of the Inter-American Court in the Genie Lacayo case,[FN35] the Commission analyzed the proceedings of the case as a whole to determine whether the repeated delays in investigating the crime and in filing the pertinent charges also affected the right recognized in Article 8 of the Convention, since that Article states that the determination of the rights of the affected parties must be carried out within a "reasonable period of time." Article 25 of the Convention refers to a "simple and prompt remedy." Thus the time periods established in Brazil's legislation on criminal procedure provide an important criterion for assessing what constitutes a reasonable period of time in the framework of Brazil's internal procedures.[FN36] The facts presented below demonstrate that a reasonable period of time was exceeded in the present case:

- a. The police investigation or inquiry was initiated on February 20, 1986, and it was concluded in July 1993, thus taking seven years and six months to complete, while Brazilian legislation gives a period of 30 days to complete an investigation.[FN37]
- b. Although the entity that completed the investigation recommended that the five suspects presumed to be responsible for committing the murder of João Canuto be taken into custody pending trial, this was not done, and they remained at large.
- c. Once the investigation was concluded, the official reports were forwarded to the Office of the Public Prosecutor, who received them on August 30, 1993. It was not until October to December of 1995, however, that the Prosecution issued the information, or a little over two years after the results of the investigation had reached that office. This delay is also a violation of Brazilian laws on criminal procedure.[FN38]

[FN35] In this case, the Court considered the possible delays in the various stages of the process, the "overall analysis of the procedure," namely, the reasonability of the time throughout the proceedings, and concluded that "even if the police investigation and the time taken by the Office of the Public Prosecutor of the Republic of Nicaragua to file charges with the judge of the trial court are excluded, by counting from ... the date on which the judge issued the order to begin proceedings up to the present time, when there still has been no final ruling, over five years have lapsed, and this Court finds that this period of time exceeds the limits of reasonableness as set forth in Article 8.1 of the Convention." Genie Lacayo case, Judgment dated January 29, 1997, Paragraph 81.

[FN36] Inter-American Commission on Human Rights. Petition filed with the Inter-American Court of Human Rights against the State of Nicaragua, page 8.

[FN37] Article 10 of Brazil's Code of Criminal Procedure states that a police investigation must be completed in a period of 30 days, if it does not involve a case of flagrante delicto; otherwise the period for completion of the investigation is 10 days. It is clear that in the case in point, the

police investigation, which took 7 years and 6 months, far exceeded the peremptory period of time stipulated by law.

[FN38] Article 46 of the Brazilian Code of Criminal Procedure states as follows: "The deadline for presentation of the information in the event that the accused is in custody shall be 5 days counting from the date that the Public Prosecutor's Office receives the reports of the police investigation, and 15 days if the accused is at large or has been released on bail...".

63. In this case, the Commission finds that the lack of efficiency in the investigation into the murder of João Canuto, which was reflected in unjustified delays in completing that investigation, in addition to the obvious negligence on the part of the Office of the Public Prosecutor in failing to issue the corresponding information, compromised the international responsibility of the Brazilian State. In fact, the unjustified delay in both the police investigation and the procedures conducted by the Office of the Public Prosecutor, which amounted to a total of ten years, not only exonerates the petitioner from his obligation to exhaust domestic legal remedies, as was mentioned in the chapter regarding admissibility, but also is a violation of Article 8 of the American Convention on Human Rights, in that it deprived the victim and his family of the right to obtain justice "within a reasonable period of time," as stated in those provisions, and of Article 25, which establishes that all persons are entitled to a "simple and speedy remedy."

64. As regards the provisions of Article 1.1 of the Convention on the obligation of the States Parties to guarantee that any persons under their jurisdiction may freely and fully exercise the rights recognized in the Convention, the Inter-American Court of Human Rights[FN39] has found that stemming from this obligation are the duty to organize the Government apparatus and structures through which public authority is exercised, the duty to prevent, investigate, and sanction any violation of rights recognized by the Convention, and the duty to ensure that the infringed right is reinstated and, if appropriate, compensation for any damages caused is paid.

[FN39] Inter-American Court of Human Rights, Velásquez Rodríguez, Judgment of July 29, 1988, Pfo. 166. Decisions and judgments, Series C, No. 4, San José, Costa Rica.

65. Likewise, among the obligations arising from Article 2 of the Convention is the one establishing the obligation of the States Parties to adopt provisions of internal law. This provision states as follows:

If the exercise of the rights and freedoms referred to in Article 1 is not already guaranteed under legislative or other provisions, the States Parties shall, in accordance with their constitutional procedures and the provisions of this Convention, undertake to adopt the laws or other measures required to make those rights and freedoms effective.

66. To conclude, the Commission considers it appropriate to refer to the obligation to guarantee the free and full exercise of human rights provided for in Article 1.1 of the Convention, as did the Inter-American Court of Human Rights:

... is not exhausted with the existence of a regulatory order designed to facilitate compliance with this obligation, but it also involves the need for the Government to conduct itself in a manner that provides for the effective guarantee of the free and full exercise of human rights in actual practice.

67. Based on the foregoing, the Commission concludes that in the case in point, by incurring unjustified delays in both the police investigation and the negligent action on the part of the Public Prosecutor's Office in issuing the information, the Brazilian State violated Article XVIII of the American Declaration of the Rights and Duties of Man and Articles 8 and 25 of the American Convention on Human Rights, considered in conjunction with Article 1.1 of that legal instrument.

VII. PROCESSING BY THE IACHR AFTER APPROVAL OF THE REPORT AS PER ARTICLE 50 OF THE AMERICAN CONVENTION

68. This report, previously approved by the Commission in its 97th Period of Sessions, in October 1997 following Article 50 of the American Convention, was sent confidentially to the Government on December 1^o, 1997 with a request to inform the Commission within three months, about any measures taken to fulfill its recommendations. The Commission has not received answer from the Government, and has decided in its 98th Period of Sessions in March 1998 to adopt it as definitive report, as establish in Article 51 of the Convention. Based on the previous considerations.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

A. Declares that Brazil is responsible for the violations of the following rights: the rights to life, freedom, and personal security and safety (Article 1) and the right to justice (Article XVIII) of the American Declaration of the Rights and Duties of Man; and, the rights to judicial guarantees (Art. 8) and judicial protection (Art. 25) contained in the American Convention on Human Rights, considered in conjunction with Article 1, Paragraph 1.1.

B. Recognizes that the Brazilian State is interested in improving the situation in the State of Pará, through the efforts of the Council for the Protection of Human Rights (CDDPH) and other institutions, and recommends that those efforts be intensified to prevent cases such as the present one from being repeated.

VIII. RECOMMENDATIONS

A. To ask the Brazilian State to ensure that its pertinent institutions or agents expedite penal action with due diligence and that its competent legal institutions or agents hand down judgments promptly and impartially and, in accordance with the seriousness of the crime committed and the applicable laws, mete out timely punishment to the individuals involved in the murder of João Canuto.

B. To recommend to the Brazilian State that it make reparations by paying compensation to the members of the victim's family for damages caused as a result of the illicit activities and the negligence on the part of the State and its agents in performing and exercising the duties of public office in this case.

C. To recommend to the Brazilian State that, pursuant to Art. 28.2 of the Convention, it immediately take the pertinent steps pursuant to its constitution and laws to ensure that the competent authorities of the State of Pará adopt the necessary provisions to ensure compliance with the commitments undertaken under the American Convention on Human Rights.

IX. PUBLICATION

74. On March 10, 1998, the Commission sent to the Brazilian State, Report No. 24/98 adopted in the instant case (Chapters I TO VIII supra) based on Article 51.1 and 51.2 of the American Convention, and putting forward a period of one month for said State to adopt the necessary measures to fulfill the recommendations formulated therein, and thereby remedying the situation under analysis. The Commission has not received answer from the Government to that effect.

X. FINAL ANALYSIS AND CONCLUSIONS

The Inter-American on Human Rights shall decide if the Brazilian State has adopted adequate measures to fulfill the recommendations included in this report. Considering that it has not received any information indicating that those measures have been adopted, and on the basis of the previous considerations, as established in Articles 51.3 of the American Convention and 48 of its Regulations the IACHR decides to reiterate the conclusions and recommendations included in Chapters VII and VIII supra, to make public this report and to publish it in its Annual Report to the General Assembly of the OAS.

On April 10, 1998, the Government of Brazil informed the Commission that it is exploring in light of Article 48 (f) of the American Convention, the possibility of proposing a friendly settlement in this case. To that effect, the Commission sent such communication to the petitioners. At the time of publication of this report their answer had not been received