

REPORT Nº 25/09¹
CASE 12.310
ADMISSIBILITY AND MERITS (PUBLICATION)
SEBASTIÃO CAMARGO FILHO
BRAZIL
March 19, 2009

I. SUMMARY

1. On June 30, 2000, the Movement of Landless Rural Workers (*Movimento dos Trabalhadores Rurais Sem Terra*, or "MST"), the Pastoral Land Commission (*Comissão Pastoral da Terra*, or "CPT"), the Autonomous National Network of People's Lawyers (*Rede Nacional Autônoma de Advogados e Advogadas Populares*, or "RENAAP"), the Global Justice Center (*Centro de Justiça Global*, or "CJG"), and the International Human Rights Law Group (hereinafter "the petitioners") filed a complaint with the Inter-American Commission on Human Rights ("the Commission") against the Federative Republic of Brazil (hereinafter "the State"), for violations of the right to life (Article 4), to humane treatment (Article 5), to a fair trial (Article 8), and to judicial protection (Article 25), in conjunction with a violation of the obligation of respecting those rights (Article 1.1), as set out in the American Convention on Human Rights ("the American Convention"), that allegedly occurred in connection with the murder of Sebastião Camargo on February 7, 1998, in the state of Paraná.

2. The petitioners claim that the failure to prevent and investigate the death of rural worker Sebastião Camargo Filho triggered the State's international responsibility since it did not adopt measures to guarantee the right enshrined in Article 4 of the Convention. In addition, they state that more than eight years after the events, the case remains in a state of total judicial impunity, which contravenes the terms of Articles 8 and 25 of the American Convention. With respect to the admissibility requirements, the petitioners claim that the unwarranted delay in deciding on the judicial resources exempts them from the requirement of first exhausting all domestic remedies. They also note that they lodged the petition two years and four months after the incident, a period of time which they deem reasonable in light of the judicial delay.

3. The State, in turn, maintains that no state agents were involved in the case and that its agents have taken all the necessary steps to prosecute and punish the accused. Consequently, the State asks the Commission to rule that the petitions set out in the complaint are inadmissible.

4. Upon analyzing the admissibility of the case, the Commission concludes that it meets the formal admissibility requirements contained in Articles 46 and 47 of the Convention and proceeds with its analysis of the merits pursuant to Article 37(3) of its Rules of Procedure. In this report, the IACHR also concludes that the Brazilian State is responsible for violating the right to life, to a fair trial, and to judicial protection as set out, respectively, in Articles 4, 8, and 25 of the American Convention, all in connection with the obligation placed on the State by Article 1(1) thereof whereunder it is required to respect and ensure the rights enshrined in the Convention, with respect to Sebastião Camargo Filho and the members of his family.

¹ Commissioner Paulo Sérgio Pinheiro, a Brazilian national, did not participate in the discussions and vote on this report, in compliance with Article 17(2)(a) of the Commission's Rules of Procedure. Also, Commissioner Felipe González did not participate in the discussions and vote on this report, in conformity with Article 17(2)(b) of the IACHR's Rules of Procedure.

5. As a consequence of the violations detected, the IACHR recommends that the State conduct a serious, impartial, and exhaustive investigation to determine the responsibility of all the perpetrators of the violations and, as applicable, to impose the appropriate legal penalties on the guilty. The IACHR recommends that the State make due reparations to the next-of-kin for the violations, and it recommends the adoption of measures to prevent violations of this kind from reoccurring in the future.

II. PROCESSING BY THE COMMISSION

6. On June 30, 2000, the Commission received the complaint and assigned it the number 12.310. On July 19, 2000, the Commission conveyed the petition to the State and granted it a period of three months in which to submit its comments. On December 7, 2000, the Commission repeated its request of July 19 and gave the State 45 days in which to respond.

7. On January 10, 2001, the State requested an additional 45 days in which to present its reply. On January 18, 2001, the IACHR gave the State an additional 45 days for submitting its comments. On October 15, 2002, during its 116th regular session, the Commission invited the parties to a working meeting to discuss the possibility of reaching a friendly settlement agreement.

8. On January 24, 2003, the Commission told the State that given its failure to respond to the requests for information made in June and December 2000, it had decided to enforce the provisions of Article 37(3) of its Rules of Procedure and defer its treatment of the case's admissibility until the debate and decision on the merits. Consequently, the Commission asked the parties to submit their comments on the merits of the case within the following two months.

9. On March 17, 2003, the petitioners requested an additional 45 days in which to present their reply. On June 6, 2003, the Commission received a series of comments on the merits of the case from the petitioners. On October 14, 2003, a hearing was held during the 118th regular session, at which the Commission again made itself available to the parties to explore the possibility of reaching a friendly settlement agreement in the case. During the hearing, the State submitted a written document setting out its position regarding the case. On November 10, 2003, the IACHR received additional information from the petitioners, which was conveyed to the State the following December 12.

III. POSITIONS OF THE PARTIES

A. Petitioners

10. The petition indicates that in May 1997, the estates of Água da Prata and Dois Córregos, located in the municipality of Marilena, state of Paraná, were occupied by almost 200 families belonging to the Movement of Landless Rural Workers (*Movimento dos Trabalhadores Rurais Sem Terra*). Some days after the occupation, representatives from the National Institute for Settlement and Agrarian Reform (*Instituto Nacional de Colonização e Reforma Agrária*, or "INCRA"), the Paraná State Government, and the Movement of Landless Rural Workers reached an agreement whereby the families agreed to leave the estates and relocate to the Boa Sorte and Santo Ângelo estates, which were to be declared of "social interest" by the Government.² On

² Article 184 of the Brazilian Constitution provides that:

It shall be within the power of the Federation to expropriate on account of social interest, for purposes of agrarian reform, any rural real property that is not performing its social function, against prior and fair compensation in agrarian debt bonds with a clause providing for maintenance of the real value,

November 19, 1997, the families occupied the Boa Sorte and Santo Ângelo estates, claiming that they had already been declared property of social interest.

11. According to the petitioners, on February 5, 1998, the workers who had settled on the estates went to the local authorities to express their concern regarding information that the Rural Democratic Union (*União Democrática Ruralista*, or UDR)³ was planning a violent eviction of the region's estates. The petitioners claim that representatives of the workers reported these rumors to the Paraná state government's Special Advisor for Agrarian Affairs, but their allegations were ignored and no protective measures were put in place.

12. The petitioners report that in the early morning hours of February 7, 1998, a group of some 30 armed individuals, allegedly hired and led by members of the UDR, embarked on a violent extrajudicial eviction at the Santo Ângelo estate. The gunmen, wearing hoods and black uniform shirts, violently forced the families to leave the area and get into a truck. From there, the hooded men continued on to the Boa Sorte estate, where they forced more than 70 families to remain on the ground, their faces turned downwards.

13. According to the petition, Sebastião Camargo Filho, a 65-year-old afro-descendant rural worker, father of two children, had a neck problem that prevented him from remaining in a crouched position, with his head pointing downwards. One of the hooded men, a leader of the operation, seeing that Sebastião Camargo was not obeying the order, aimed his 12-bore shotgun at the base of his neck and fired at him from a distance of less than one meter. Mrs. Antonia Franca, who was laying alongside Sebastião, suffered a number of gunpowder injuries to her body. The petitioners claim that several witness statements from the workers identified the gunman who shot Sebastião as Marcos Menezes Prochet, who at that time was serving as president of the Democratic Rural Union in the region.

14. The petitioners further report that the very same day, February 7, 1998, a police investigation into the eviction and the murder of Sebastião Camargo was launched. The authorities found large amounts of weapons and ammunition at the Boa Sorte and Santo Ângelo estates. The day after the eviction, following an anonymous call, the authorities arrested seven individuals suspected of involvement in the incident at the Figueira estate in Guairaçá municipality. Along with the suspects, an extensive number of large-gauge weapons and ammunition was found, including a hundred spent 12-bore cartridges, and unmarked black tee-shirts and hoods. That same day, the displaced families reoccupied the Água da Prata estate, where they found black hoods, two 12-bore shotguns, and cartridges for those weapons. The workers reported this find to the authorities the same day, but the police did not take the items into custody until six months later, on August 12, 1998.

15. On February 18, 1998, a warrant was issued for the preventive custody of Osni Sanches, for his alleged involvement in hiring the gunmen and his participation in the events of

... continuation

redeemable within a period of up to twenty years, computed as from the second year of issue, and the use of which shall be defined by law.

³ The Democratic Rural Union (UDR) describes itself as "an umbrella organization comprising rural land-owners, with the fundamental aim of upholding property rights and maintaining order and respect for the country's laws. The organization, founded in 1985, had its first regional headquarters in the city of President Prudente, São Paulo; and, later, in 1986, in the city of Goiânia, Goiás, the first national UDR based in Brasília was founded." According to its webpage, the association was created because "rural landowners felt the need to mobilize in order to bring pressure to bear on Congress. At that time, the left-wing of the newly created "New Republic" wanted to put an end to property rights and rural property-owners decided to respond." See: <http://www.udr.org.br/>

February 7, 1998. Mr. Sanches fled from justice, was captured on June 2, 1998, and was later released, on June 18, 1998, under a writ of habeas corpus. The petitioners claim that in spite of the weighty evidence against them, the seven gunmen who had been arrested were released 35 days after being detained.

16. The petitioners claim that in spite of the multiple statements given during the police investigation identifying Marcos Prochet as the gunman who shot Sebastião Camargo Filho, on May 5, 2000, the criminal investigation indicted only Teissin Tina (owner of the Boa Sorte estate) and Osnir Sanches for the crimes of culpable homicide and formation of illegal organization (*formação de quadrilha*). On August 29, 2000, two and a half years after the incident, the Public Prosecution Service in the state of Paraná filed charges against Teissin Tina and Augusto Barbosa da Costa (one of the gunmen hired to carry out the eviction) for the murder of Sebastião Camargo Filho. On March 2, 2001, the case was expanded to include, as co-defendants, Marcos Menezes Prochet and Osnir Sanches.

17. The petitioners claim that because of the delay in the investigation, statutory limitations now apply to several of the crimes committed during the eviction: namely, the crimes of making threats, taking the law into one's own hands (*exercício arbitrário das próprias razões*), and criminal damage. The petitioners also claim that other offenses were unjustifiably dismissed by the Public Prosecution Service: for example, the crime of illegally carrying arms, with respect to which the prosecutor said he was unable to gather sufficient evidence indicating the perpetrators. Additionally, the Public Prosecution Service resolved that the crime of participating on an illegal organization had not taken place. And, in a similar fashion, the investigation into the crime of causing personal injuries was dropped because "the victims could not be located."⁴

18. The petitioners claim that the authorities have been negligent in the investigation and subsequent prosecution of the accused. First of all, the petitioners claim that the authorities failed to conduct key tests to identify the perpetrators. They claim that the twelve 12-bore weapons seized after the crime were not dusted for fingerprints. Neither was an expert examination requested or conducted to detect the presence of firearm residue on the seven detainees' hands. Secondly, the petitioners claim that in spite of the large amount of evidence in the domestic case file, the criminal proceedings are still – unjustifiably – at the initial instructional phase and have exceeded the deadlines set by the country's laws. For example, the petitioners note that although domestic law sets a maximum delay of one month for police investigations, in the case at hand the police investigation took 25 months, in spite of the fact that the statute of limitations kicked in with respect to three of those offenses 24 months after the date on which the incident occurred.

19. Based on these arguments, the petitioners maintain that the unwarranted delay in ruling on those proceedings exempts them from the requirement of first exhausting the available domestic remedies, in compliance with the provisions of Article 46(2)(c) of the American Convention. They also note that they lodged the petition two years and four months after the incident, a period of time which they deem reasonable on account of the judicial delay.

B. State

20. The State reports that it began proceedings No. 52/2000 before the Criminal Jurisdiction of Nova Londrina district, state of Paraná. The State says that the trial magistrate received the formal complaint on March 10, 2001, and, since some of the statements initially taken

⁴ Public Prosecution Service of the state of Paraná, prosecutor for Nova Londrina district, resolution of August 9, 2000.

by the Public Prosecution Service “were not found, which made the proceedings excessively lengthy,” the investigating magistrate ordered that new statements be taken.

21. Thus, according to the State, although the case did not proceed with due dispatch, considering that multiple summonses were needed to gather statements from persons resident in other districts, the criminal proceedings are being discharged effectively by the criminal court with a view to seeking out the truth of the incident and reaching a final conclusion. The State also notes that the principles of confrontation and defense have been duly respected, in that the accused have been duly summoned, questioned, and allowed to exercise their right of defense.

22. Consequently, the State maintains that its agents have taken all necessary steps in prosecuting those individuals accused of Sebastião Camargo Filho’s murder. Nevertheless, adds the State, delays in the administration of justice are a worldwide problem, primarily affecting developing countries that lack the structures required to provide rapid, prompt attention.

23. The State says that it was aware that the police investigation was too lengthy, which delayed the commencement of the case. However, the State maintains that since the arrests, steps have been taken toward the conclusion of the proceedings, including the questioning of Augusto Barbosa da Costa, Teissim Tina, Osnir Sanches, and Marcos Menezes Prochet.

24. The State also attests that none of its agents participated in any way in the tragic episode of Sebastião Camargo Filho’s death. According to the State, as can be seen from the judicial case file, there was no participation by the civilian police, the military, or any other state agent in the eviction at the Boa Sorte estate, and so the State cannot be accused of international responsibility in respect of this incident.

25. Finally, the State claims that in addition to the ongoing prosecutions of individuals charged with the murder of rural workers, the state of Paraná has taken drastic steps to minimize rural violence, particularly during land evictions. Thus, says the State, the most recent evictions on lands occupied by landless workers have been conducted during the day and overseen by representatives from the Public Prosecution Service and the judiciary. On certain occasions they have even been attended in person by the Attorney-General of the state of Paraná, to oversee the legality of the proceedings.

26. In conclusion, the State maintains that: (i) those accused in the death of Sebastião Camargo Filho are being duly prosecuted; (ii) no agents of the state were involved in the incident; and (iii) the Paraná state government has embarked on a process for the peaceful return of *de facto* occupied lands, thereby avoiding conflicts in rural areas. In light of these conclusions, the State asks the Commission to rule that the petitions set out in the complaint are inadmissible.

IV. ANALYSIS OF ADMISSIBILITY

27. Bearing in mind the regulations in force when the case was opened and the ample opportunities both parties have had to present arguments regarding both the admissibility and the merits of the case, on January 24, 2003, the Commission decided to enforce the rule provided in Article 37(3) of its Rules of Procedure. Consequently, it shall now rule on both the admissibility and the merits of the petition.

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

28. Under Articles 44 of the American Convention and 23 of the Rules of Procedure, the petitioners, as legally recognized nongovernmental entities, have the right to lodge petitions with the IACHR in connection with alleged violations of the American Convention. As regards the State, the Commission notes that the Federative Republic of Brazil has been a state party to the American Convention since its ratification of it on September 25, 1992. The petition names, as its alleged victim, Sebastião Camargo Filho, an individual person with respect to whom Brazil had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. The Commission therefore has competence *ratione personae* to examine the complaint.

29. The petition alleges violations of rights protected by the American Convention. The Commission therefore has competence *ratione materiae* to examine the complaint.

30. The Commission also has competence *ratione temporis*, since the incidents alleged in the petition took place at a time when the obligation of respecting and guaranteeing the rights enshrined in the Convention was already in force for the State.

31. The Commission has competence *ratione loci* to hear this petition, since it alleges violations of rights protected by the American Convention occurring within the territory of the Brazilian State.

B. Other requirements for admissibility

1. Exhaustion of domestic remedies

32. Article 46(1) of the American Convention rules that for a petition to be admissible, the remedies available under the State's domestic jurisdiction must first have been exhausted. The petitioners state that two years and four months after the incident, the police investigation had not yet come to an end, which speaks of an unwarranted delay in the proceedings as described in Article 46(2)(b) of the Convention. The State, in turn, neither denied nor challenged the petitioners' claims with the 90 days for reporting on the alleged facts stipulated by the Commission's Regulations then in force.⁵ The Inter-American Court has ruled that "the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed."⁶ Consequently, the Commission believes that the State tacitly waived the right to argue that the remedies afforded by domestic jurisdiction had not been exhausted by failing to lodge an objection within the deadlines set by Article 30(3) of the Commission's Rules of Procedure.⁷

2. Timeliness of the petition

33. Article 46(1)(b) of the Convention rules that all petitions must be lodged within a period of six months from the date on which the petitioner was notified of the final judgment whereby domestic remedies were exhausted. The petitioners lodged their complaint on June 30, 2000, two years and four months after the death of Mr. Sebastião Camargo Filho. Article 32 of the

⁵ During these proceedings, the State has refrained from submitting its comments on admissibility and merits, in spite of the Commission's repeated requests for it to do so. The only written submission from the State was submitted during the hearing on the case held during the 118th regular session of the Commission on October 14, 2003 – in other words, three years and three months after the Commission first conveyed information to it.

⁶ I/A Court H.R., *Velásquez Rodríguez Case*. Preliminary Objections. Judgment of July 26, 1987, paragraph 88.

⁷ IACHR, Report No. 38/02 (Admissibility), Petition 12.237, *Damião Ximenes Lopes, Brazil*, October 9, 2002, paragraph 23.

IACHR's Rules of Procedure stipulates 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, in the Commission's judgment. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case". Thus, bearing in mind the date on which the alleged incident occurred, the situation of Brazil's domestic remedies with respect to the specific matters placed before the IACHR in this case, and the fact that the State has furnished no information on the status of the domestic remedies, the Commission believes that the instant petition was lodged within a reasonable time.

3. Duplication of proceedings and *res judicata*

34. The case file does not indicate that the substance of the petition lodged with the Inter-American Commission is currently pending in any other international settlement proceeding or that it is substantially the same as another petition or communication already examined by this Commission or any other international body, as described in Articles 46(1)(c) and 47(d), respectively.

4. Characterization of the alleged facts

35. In ruling on admissibility, the Commission must determine whether the incidents described in the petition tend to establish a violation of rights enshrined in the American Convention, as required by Article 47(b), or whether the petition, in compliance with Article 47(c), is to be dismissed as "manifestly groundless" or "obviously out of order." The level of conviction regarding those standards is different from that required in deciding on the merits of a petition.

36. The petitioners argue that the circumstances surrounding the death of Mr. Sebastião Camargo Filho and the failure to conduct an adequate investigation of that incident constitute violations of rights established by Articles 4, 5, 8, and 25 of the American Convention. The Commission believes that *prima facie* the facts of the case could indicate an assumption of State responsibility in ensuring the right to life, to a fair trial, and to judicial protection with respect to Sebastião Camargo Filho. In contrast, the Commission notes that the petitioners do not describe facts that would indicate an independent violation of the alleged victim's right to humane treatment. Consequently, the Commission rules the petition inadmissible as regards that right.

37. For the reasons cited in the foregoing paragraphs, the Commission concludes that it is competent to hear this petition and that, under Articles 46 and 47 of the American Convention, the petition is admissible, as described above.

V. ANALYSIS OF MERITS

A. Preliminary considerations

38. The Inter-American Commission notes that the petitioners have made a series of allegations, and that these claims have not been challenged by the State. Specifically, the IACHR forwarded the relevant parts of the complaint to the State on July 19, 2000, and asked it to provide information on the allegations. Brazil replied on October 14, 2003, and, on that occasion, merely disputed the exhaustion of the remedies provided by domestic jurisdiction.

39. The Commission finds that the State's reply to the petition and the position it held in the hearings before the IACHR show that the parties are in agreement about the death of the alleged victim and about the legal nature of the causes and consequences of that death. However,

the State did challenge other claims, such as the existence of ties between the perpetrators and the authorities, and the alleged negligence of its police and courts in investigating the killing.

40. In accordance with the foregoing – based on the petitioners' claims, Brazil's position regarding the alleged facts, the copies of the judicial proceedings and other evidence in the documents, and the absence of other elements that would make the IACHR conclude otherwise – the Commission will now make a ruling on the facts established in the case at hand.

B. Context: Rural violence and impunity in Brazil

41. The agrarian situation in Brazil over recent decades has been characterized by high levels of concentration in land ownership and the growing mobilization of social sectors seeking a better distribution of farmland. Social pressure for a process of agrarian reform has provoked violent reactions on the part of large-scale landowners who, in certain cases, have enjoyed the acquiescence and collusion of local officials.⁸

42. In its 1997 Report on Brazil, the IACHR said that “Brazil covers a widespread expanse of land with a huge capacity for production and social settlement. But for historical reasons, the way the land is distributed has been extremely uneven, and as a result, conditions propitious to social confrontation and violations of human rights are created.” The IACHR also said that “the agrarian situation is ‘critical’ and that there exist numerous conflicts and *de facto* occupations, which in August 1996 included 50,000 rural families living in ramshackle camps in the squatter areas, with problems of health, work and education, as well as confrontations with the landowners and police forces.”⁹

43. According to figures from the Pastoral Land Commission (*Comissão Pastoral da Terra*), 1,517 individuals with ties to agrarian reform struggles were killed between 1988 and 2000. During the 20-year-long military dictatorship (1964–1984), 42 rural workers were killed every year. Between 1985 and 1989 that figure tripled and reached a total of 117 murders a year. Every year from 1990 to 1993, 52 people died. Between 1994 and 1997 the number of annual deaths was 43.¹⁰ In 1998, the year of Sebastião Camargo’s death, 47 people were killed in land-related conflicts in the country, eight of whom were murdered in the state of Paraná.

44. According to information received both at its headquarters and during its on-site visits, the IACHR sees that in Brazil, at the time of the incident, violence against rural workers fighting for equitable land distribution was systematic and widespread. In addition, in some states there are deep-rooted connections between powerful estate owners and local authorities, some of whom act as instigators of the killings and fund the forced evictions.

45. At the time of the incident, it was common for groups of gunmen to be formed for carrying out forced evictions, including some in the state of Paraná. The social sectors associated with the power of the land-owners have stepped up their attacks on rural movement leaders by creating private militias and clandestine security companies that have heavy weaponry and conduct military training sessions. In this connection, the Commission has received extensive information about the creation and operation of groups such as those that style themselves the *Primeiro Comando Rural* and the *Primeiro Comando da Capital*.¹¹

⁸ See: UN, Commission on Human Rights, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mr. Miloon Kothari, Mission to Brazil, Doc. E/CN.4/2005/48/Add.3; February 18, 2004, paragraphs 37 *et seq.*

⁹ IACHR, Report on the Situation of Human Rights in Brazil, OEA/Ser.L/V/II.97, Doc. 29 rev.1, September 29, 1997, Chapter VII: Land Ownership and the Rights of Rural Workers.

¹⁰ Figures from the Pastoral Land Commission, cited by Bernardo Mancano Fernandes in his article “*Brasil: 500 anos de luta pela terra*,” available at the website of the National Institute for Settlement and Agrarian Reform (INCRA), <http://www.incra.gov.br/htm/serveinf/htm/pubs/pubs.htm>.

¹¹ See: *Milícias Privadas: Estratégias para impedir a Reforma Agrária em defesa do latifúndio*, report by Terra de Direitos, a human rights NGO.

46. The Commission has seen how this violence has focused on and intensified with respect to leaders of the movements, defenders of rural workers' human rights, and anyone who comes out in favor of pursuing a process of agrarian reform. As is the case in other countries in the region that have this sort of rural conflicts, the people in Brazil who direct and pursue the claims of rural workers are those most directly affected, since they are targeted as examples in order to dissuade others involved in the claims. The acts of violence committed against them are intended to create widespread fear and, consequently, dissuade other human rights defenders and to intimidate and silence the victims' claims and demands.

47. Brazilian human rights organizations insist that human rights violations against the defenders of rural workers have been more frequent under the country's democratic governments than during the military dictatorship, because of the creation and deployment of private militias sponsored by estate owners. In recent years, through its Functional Unit for Human Rights Defenders, general hearings, and visits, the Commission has received numerous claims about violations of the human rights of rural leaders and members of organizations such as the *Movimento dos Trabalhadores Sem Terra*, the *Movimento de Luta Pela Terra*, the *Movimento dos Trabalhadores Rurais Brasileiros*, the *Movimento Muda Brasil dos Trabalhadores Rurais Sem Terra*, the *Comissão Pastoral da Terra*, the *Sindicato dos Trabalhadores Rurais*, and various others.¹²

48. The close relations between the instigators of the crimes and local power structures have ensured impunity for practically all Brazil's cases of rural violence in Brazil. The problem of widespread impunity in Brazil has been reported by such international bodies as the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions who, in her report on Brazil, said that, "in some instances, judges are believed to be subject to pressure from local politicians or influential economic actors such as landowners."¹³

49. The impunity surrounding violations of the human rights of workers engaged in land struggles was also addressed by the Special Rapporteur on the Independence of Judges and Lawyers. Taking as his example the situation in the state of Pará, the Rapporteur expressed his concern at the alarming levels of impunity in Brazil, stating that:

In the State of Pará, the situation is even more serious, with a high rate of violence and blatant impunity. Only 85 of the individuals involved in the 1,207 murders of rural workers between 1985 and March 2001 have been sentenced, meaning there was no judicial follow-up in 95 per cent of the cases. In the same period, 340 rural workers were murdered in southern and south-eastern Pará. Only two of these crimes came to trial, meaning that in 99.4 per cent of all cases no one was either convicted or acquitted of a criminal offence. There is no denying that these crimes were committed with impunity.¹⁴

50. The Commission has spoken on several occasions about the Brazilian state's responsibility for failing to conduct proper investigations of acts of violence committed against rural workers and their defenders. Thus, the Commission found Brazil internationally responsible for failing to investigate and bring punishment for the death of João Canuto de Oliveira, president

¹² Cases involving the defenders of rural workers' human rights can be seen in the following reports: *Na Linha de Frente: Defensores de Direitos Humanos no Brasil. 1997-2001*, Front Line and Justiça Global; and *Na Linha de Frente: Defensores de Direitos Humanos no Brasil. 2002-2005*, Justiça Global and Terra de Direitos (eds).

¹³ UN, Commission on Human Rights, Report on the Mission to Brazil of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Ms. Asma Jahanguir, Doc. E/CN.4/2004/7/Add.3, p. 18.

¹⁴ UN, Commission on Human Rights, Report on the Mission to Brazil of the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Leandro Despouy, Doc. E/CN.4/2005/60/Add.3, p. 13.

of the Union of Rural Workers of *Río María*, on December 18, 1985, in the state of *Pará*.¹⁵ The Commission also tackled the issue in the case of the *Corumbiará* Massacre, noting that: "The subject of this case goes beyond the troubling issues of land distribution in Brazil in general, and the specific situation of the landless male and female workers who, with their families, invaded *Santa Elina* ranch in August 1995."¹⁶

C. Established facts

1. The events of February 7, 1998

51. On February 7, 1998, at approximately 5 a.m., a caravan of vehicles (approximately 60, including cars, trucks, and vans) set out toward the *Santo Ângelo* and *Boa Sorte* estates, in *Marilena* municipality, *Paraná*, where several families belonging to the Movement of Landless Rural Workers were located.¹⁷ In the caravan was a passenger bus carrying a group of between 30 and 40 men, armed with 12-bore shotguns, and wearing hoods and black shirts.

52. They first reached the *Santo Ângelo* estate, where there were several families belonging to the Movement of Landless Rural Workers. The hooded men fired their guns into the air repeatedly. They attacked several people, including children, kicking and pushing them, and hitting them with their rifle butts, while forcing them to leave the estate. The hooded men forced the families to leave the rude shacks they had built, before destroying them along with their contents.¹⁸ Once all the families were expelled from the estate, the hooded men forced them onto trucks to carry them away from it; they then continued on to the *Boa Sorte* estate, where they arrived at around 7:00 a.m.¹⁹

53. At the *Boa Sorte* estate, the hooded men carried out a similar operation, beating the members of more than 70 families and destroying their belongings. The gunmen forced the families from their farms and took them to the entrance to the estate; once there, they forced them to lay face down with their heads on the ground.²⁰

¹⁵ IACHR, Report No. 24/98 (Merits), Case 11.287, *João Canuto de Oliveira (Brazil)*, April 7, 1998.

¹⁶ IACHR, Report No. 32/04 (Merits), Case 11.556, *Corumbiará (Brazil)*, March 11, 2004.

¹⁷ The owner of one of the estates told the domestic courts that:

Arriving at the place there were about 60 vehicles, including cars and trucks, which then set out toward the *Santo Ângelo* estate.

Civilian Police Department of the state of *Paraná*, examination document, past history and interrogation of *Teissin Tina*, February 16, 1998.

¹⁸ See: Statements given by *Adlaberto Klos*, *Ademar Sakser*, *Ilvo Scwinn*, *Joaquim Goncalves da Silva*, and *Antonia Engster*, in police inquiry file No. 002/98.

¹⁹ One of the individuals identified as being one of the gunmen said, in the judicial investigation:

"That on that occasion, the others were given weapons, but the respondent was not; that at the first estate, whose name he cannot recall, everyone was evicted at around 5:00 a.m. in an incident-free operation; and, from there, they went on to the second estate at around 7:00 a.m.; and that all the people were removed from the location, without any problems, and that afterwards this accident took place; a gunshot hit *Mr. Sebastião*; [...] that *Osnir* distributed 12 weapons among the people who participated in the eviction."

Judiciary, Second Criminal Bench, *Paranavaí*, *Paraná*, interrogation of *Augusto Barbosa da Costa*, May 8, 2001.

²⁰ One of the participants in the incident, identified as having hired the gunmen and participated in the eviction, told the police in his statement:

"That they arrived at the estate at daybreak, and then the shooting began in order to intimidate the people who had invaded the estate; that shots were fired into the sky; that in the confusion several shots

Continued...

54. Mr. Sebastião Camargo Filho, of 65 years of age, had a back problem that forced him to walk stooped over. This injury kept him from adopting the position he was told to, so he tried to support his head in his hands to avoid the pain. One of the hooded men, apparently the one in command of the operation, ordered Mr. Camargo to lower his head, but he could not obey. In reaction to Sebastião's inability, the gunman pointed his weapon at the laborer's head and shot him from a distance of less than a meter. The shot caused injuries to the skull and brain that led to the death of Sebastião Camargo.²¹ Then, two of the hooded men immediately put Sebastião's body in a truck and took it to the Santa Teresinha Hospital in Nova Londrina, where he was declared dead on arrival.²²

55. After shooting Sebastião, the leader of the hooded men ordered the rural workers onto a truck, in which they were transported, without their consent, to Querencia do Norte municipality.

2. The legal proceedings into the events of February 7, 1998

56. On February 7, 1998, officers of the military and civilian police went to the Santo Ângelo and Boa Sorte estates, where they seized several 12-bore firearms, cartridges (spent and unspent), black shirts and hoods, and other evidence.²³ That same day, at 4:00 p.m., an autopsy was performed on Sebastião Camargo Filho's body by the Legal Medical Institute of Paraná. This procedure was the commencement of police investigation No. 002/98.

57. On February 8, 1998, the police chief of the 8th Civilian Police Subdivision issued an "Order for imprisonment *in flagrante delicto*" with respect to Augusto Barbosa da Costa, Joao Alves da Silva, Milton F. Alves Filho, William K. Gomes, José Batista Moura, Valdeci Rosa de Oliveira, and Jair Fermino Borracha. On February 10, 1998, a preventive arrest warrant was issued with respect to those individuals and Mr. Osnir Sanches, whom one of the detainees (Augusto Barbosa da Costa) identified in his statement as the person who had hired the gunmen through a security company belonging to him called DEPROPAR.²⁴

58. Over the ensuing days, the police investigation gathered statements from several of the landless workers who had settled on the Santo Ângelo and Boa Sorte estates. These

... continuation

were fired and then word went round that a person had been injured [...] that the respondent was neither hooded nor armed; that the others were wearing hoods and black shirts, on the orders of Tarcizio, that the weapons were handed out at the Nova Londrina crossroads, and that the respondent does not know where they came from."

Judiciary, Second Criminal Bench, Paranaíba, Paraná, interrogation of Osnir Sanches, May 8, 2001.

²¹ See: Report on autopsy conducted on Sebastião Camargo Filho, February 7, 1998.

²² Civilian Police Department of the state of Paraná, entry by Valdisa Simão, clerk of Santa Teresinha Hospital, February 20, 1998. See also the statement given by Osnir Sanches to the Second Criminal Bench of Paranaíba (PR), interrogation No. 171/2000, May 8, 2001, in which he confesses that he helped lift Sebastião's body into the vehicle.

²³ See: "Documents receiving weapons," pp. 10-20 of criminal proceedings 52/00 before the criminal court of Nova Londrina district.

²⁴ In his statement, Augusto Ferreira, the owner of the Água da Prata estate, said that the weapons found on his property belonged to the company DEPROPAR. See: Report of conclusion of police inquiry No. 002/98, signed by Police Chief Jairo Dos Santos on May 5, 2000, p. 8.

statements described in detail the eviction procedure and several of them identified Marcos Menezes Prochet as the man who had shot Sebastião Camargo.²⁵

59. The tests conducted and included in the police investigation include forensic reports on the injuries suffered by Ademar Sakser, Olivera Franco da Rosa, Maldecir Schwinn, Milton Dalla Porta, Reginaldo Gomes, Adriana Beatriz Fernández, Eloi Citadalla, Adalberto Kloss, Ilvo Schwinn, Joceli Machado, Joaquim Gonçalves da Silva, Arlindo Daguetto, Sandro Gomes, Jorge Pires da Fonseca, Antonia Franca, Rogelio Lotice, and Ana Claudia Lotice.

60. On April 2, 1998, Judge Rosicler Maria Miguel overturned the preventive custody orders issued with respect to Augusto Barbosa da Costa, João Alves da Silva, Milton F. Alves Filho, William K. Gomes, José Batista Moura, Valdeci Rosa de Oliveira, and Jair Fermino Borracha.²⁶

61. On June 2, 1998, Mr. Osnir Sanches turned himself in and was arrested under his outstanding arrest warrant. On June 18, 1998, the Court of Justice of the State of Paraná, under a habeas corpus filing, revoked the preventive custody order issued with respect to Osnir Sanches.

62. On February 8, 2000, Lucimara Salles Ferro, the prosecutor assigned to the investigation, granted a one-month extension of the deadline for finishing the police investigation, arguing the "need to conduct essential formalities for the case to proceed." Further extensions were given on February 28 and April 5, 2000.

63. On May 5, 2000, Jairo dos Santos, Police Chief in Nova Londrina, signed a report concluding police investigation No. 002/98. That report asked the Public Prosecution Service to investigate the alleged responsibility of Teissin Tina and Osnir Sanches as joint perpetrators of the crimes of culpable homicide and conspiracy; and of Toshio Konda, Nelson Tosía Konda, and Augusto Barbosa da Costa for the crime of conspiracy.

64. On August 29, 2000, the Public Prosecution Service filed formal charges against Teissin Tina and Augusto Barbosa da Costa for their alleged involvement in the events of February 7, 1998. In another decision on that same date, the Public Prosecution Service ruled that as of February 7, 2000, statutory limitations applied to the alleged crimes of threatening behavior, taking the law into one's own hands, and criminal damage. In addition, with respect to the crimes of drug possession and illegal bearing of arms, the Public Prosecution Service said it had been unable to gather enough evidence about the perpetrators to file charges. Similarly, the Public Prosecution Service did not file charges for the alleged crime of inflicting physical injuries because "the victims could not be located."²⁷

65. On September 1, 2000, Judge Federico Mendes Júnior admitted the complaint as regards the alleged responsibility of Teissin Tina and Augusto Barbosa da Costa. In addition, to

²⁵ The concluding report of the police investigation says that, "Sandro Gomes Guarezi, a settler on the Boa Sorte estate, said on p. 106 that he was guarding the estate gates when a truck arrived, full of hooded men armed with 12-bore shotguns; he was beaten with rifle butts, and he saw Marcos Prochet, who was not wearing a hood, but later put one on." The statements given by Antonia Franca, Eloi Citadalla, João Otaviano dos Santos, Joaquim Gonçalves da Silva, Aparecido Jose Batista, and Gilson Alcantara agree with his claims. See: Report of conclusion of police inquiry No. 002/98, signed by Police Chief Jairo Dos Santos on May 5, 2000.

²⁶ Judiciary of the state of Paraná, Request for revocation of preventive custody No. 11/98, signed by Judge Rosicler Maria Miguel, on April 2, 1998.

²⁷ Resolution of the Public Prosecution Service, signed by Prosecutor Lucimara Salles Ferro, document No. 036/98, Nova Londrina, August 29, 2000.

guard against the implicit shelving of the criminal action because of a failure to make accusations against all the individuals who might have participated in the incident, the judge decided to refer the proceedings back to the office of the attorney general for Paraná for the terms of the complaint to be expanded.

66. On March 2, 2001, the Public Prosecution Service, as provided for in Article 569 of the Code of Criminal Procedure, expanded the charges to cover Marcos Menezes Prochet and Osnir Sanches.

67. On May 1, 2001, Augusto Barbosa's attorneys asked that evidence for the defense be processed. On September 24, 2001, the defense attorneys of Marcos Menezes made a similar request. On November 20, 2001, Pastoral Land Commission submitted information to be taken into account by the court.

68. On August 8, 2002, the court examined the evidence in the case file and ordered the taking of a number of statements that had been requested but that had not been given.

69. On January 3, 2003, a statement was given by the police chief then in office. On May 22, 2003, the Public Prosecution Service asked the judge to order the taking of new witness statements.

70. On March 5, 2004, a hearing was held as part of the proceedings at which testimony was heard from Edson Luiz Zanini, Armando Chiamulera, Rogelio Luis Lotici, Antonia Franca, Aparecido José Batista, and José Rodrigues dos Santos.

71. Another hearing was held on August 29, 2004, at which the judge summoned new witnesses and instructed the UDR to present a list of its members as of February 1998.

72. On May 17, 2005, Clerk Juliana Nunes Coletti recorded that the proceedings had been paralyzed since March 3, 2005, on account of the absence of a presiding judicial officer. A further record was entered on June 13, 2005, indicating that a substitute judge had been appointed.

73. As of the date of this Report, more than eight years after the incident occurred, the judicial proceedings remain in the discussion phase before the first-instance court.

D. Analysis of law

74. The Commission will now analyze whether in the case at hand and with respect to the alleged victim, the State of Brazil did violate the right to life, to a fair trial, and to judicial protection, in conjunction with the obligation of respecting and ensuring those human rights, set forth in Articles 1(1), 4, 8, and 25 of the American Convention.

1. Violation of the right to life (Article 4)

75. Article 4(1) of the Convention provides that: "Every person has the right to have his life respected... No one shall be arbitrarily deprived of his life." The right to life is of particular importance because it is the *sine qua non* for all the other rights. The right to life is of fundamental importance within the American Convention's system of guarantees, with Article 27(2) stipulating that it is one of those rights that cannot be suspended at times of war, public danger, or other emergencies threatening the independence or security of the Convention's states.

76. The Commission first points out that, in accordance with the jurisprudence of the inter-American system, in order to establish that the rights enshrined in the Convention have been violated, it is not necessary to determine the perpetrators' culpability or intentionality, nor is it essential to identify individually the agents to whom the acts of violation are attributed. In *Paniagua Morales*, the Court specifically ruled that to establish a state's international responsibility, it must be shown that state authorities supported or tolerated infringement of the rights recognized in the Convention, or that the state did not take the necessary steps under its domestic law to identify and, where appropriate, punish the authors of those violations.²⁸

A- State's responsibility for failing to prevent the incident

77. As the Inter-American Court has ruled in its jurisprudence, the states have the obligation to guarantee the creation of the conditions required in order that violations of this inalienable right do not occur and, in particular, the duty to prevent its agents from violating it.²⁹ Compliance with Article 4 of the American Convention, in conjunction with Article 1(1) thereof, not only requires that no person be deprived of his life arbitrarily (negative obligation), but also that the states take all appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction. This active protection of the right to life by the state does not only involve legislators, but all state institutions and those who must protect security, both its police forces and its armed forces.³⁰ As the Court has written:

... the States should adopt the necessary measures, not only at the legislative, administrative, and judicial levels, by issuing criminal provisions and establishing a system of justice to prevent, suppress, and punish deprivation of life through criminal acts, but also to prevent and protect persons from the criminal acts of others and to investigate such situations effectively.³¹

78. The Court also recognizes that the international responsibility of the State may arise from acts violating human rights that may be attributed to it perpetrated by third or private parties in the area of obligations of the State to guarantee individuals respect of such rights.

In connection with this aspect the Court has noted that:

... said international responsibility may also be generated by acts by private individuals that may not in principle be attributed to the State. The States Parties to the Convention have *erga omnes* obligations to respect and ensure respect for the standards of protection and to ensure the effectiveness of the rights enshrined therein in all circumstances, as well as respect for everyone. Such obligations of the State project their effects beyond the relationship between its agents and persons subject to its jurisdiction, since they are also manifest in the positive obligation of the State to adopt the necessary measures to ensure effective protection of human rights in relations between individuals. The responsibility to the State for the acts of private individuals may be attributed in cases where the State fails to comply, by act or omission of its agents when serving as guarantors, with said *erga omnes* obligations contained in Articles 1(1) and (2) of the Convention.³²

²⁸ I/A Court H.R., *The "Panel Blanca" Case (Paniagua Morales et al.)*. Judgment of March 8, 1998. Series C No. 37, paragraph 91.

²⁹ I/A Court H.R., *Case of the 19 Merchants Case*. Judgment of July 5, 2004. Series C, No. 109, para. 153.

³⁰ I/A Court H.R., *"Mapiripán Massacre" Case*. Judgment of September 15, 2005. Series C, No. 134, para. 232.

³¹ I/A Court H.R., *"Pueblo Bello Massacre Case."* Judgment of January 31, 2006, para. 120.

³² I/A Court H.R., *"Mapiripán Massacre" Case*. Judgment of September 15, 2005. Series C, No. 134, para. 111.

79. Complementing said standard of responsibility, the Court has recently indicated that:

... a State cannot be responsible for any violation of human rights committed among private individuals within its jurisdiction. Indeed, the *erga omnes* nature of the treaty-based guarantor obligations of States does not place unlimited responsibility on States for any action by individuals, since their duty to adopt measures to prevent and protect individuals in their relations among one another are conditioned upon the knowledge of a genuine, immediate risk to a specific individual or group of individuals and the reasonable possibility of preventing or averting such danger. That is, although an act or omission by an individual may have as a legal consequence the violation of certain human rights of another individual, this is not automatically attributable to the State; the particular circumstances of the case and the implementation of those guarantor obligations must be considered³³.

80. The Court's reasoning in establishing international liability for acts of third parties as violations attributable to the State is based on the doctrine of the European Court, according to which the State can be held liable for violations committed by third parties when it can be shown that the State had knowledge of a real and immediate threat and failed to adopt reasonable measures to prevent it. In this respect, the Inter-American Court of Human Rights cites European jurisprudence, suggesting that

Taking into account the difficulties involved in planning and adopting government policies in modern societies, the unpredictable nature of human conduct, and the operational choices that must be made according to priorities and resources, such positive obligation should be interpreted in a way that does not place an impossible or disproportionate burden on authorities. Therefore, not everything alleged as a danger to life imposes a treaty obligation on authorities to take operational measures to prevent the danger from coming to pass. The positive obligation arises only if it is established that at the time of the events the authorities knew, or should have known, about a real and imminent threat to the life of a given individual, or given individuals, from criminal acts of third parties, and that the authorities failed to take such measures as were available to them and could reasonably have been expected to prevent the danger (see judgment in *Osman* [...] p. 3159, para. 116). (Translation by the Executive Secretariat of the IACHR.)³⁴

81. Under those standards, the Commission begins to consider whether the events described entail international responsibility for failure to prevent them. In this respect, the Commission finds, in the first place, that the situation described in the paragraph on the established facts follows the pattern of violations and impunity in Brazil, amply documented by local and international organizations, as well as by international agencies (*supra* paragraph 48 onward). In this sense, as stated by the Commission,

Given the fact that the violence [...] is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors, it is the view of the Commission that this case involves not only failure to fulfill the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices. That general and discriminatory judicial ineffectiveness also creates a climate that is conducive

³³ I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006, para. 123.

³⁴ Cf. *European Court of Human Rights, Kiliç v. Turkey, judgment of 28 March 2000*, Application No. 22492/93, paras. 62 and 63; *Osman v. the United Kingdom, judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII*, paras. 115 and 116. Translation by the Secretariat of the Inter-American Court of Human Rights, Cf. I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006, para. 124, footnote 203.

to [] violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.³⁵

82. This case shows a pattern of impunity and repeated acts of violence with the knowledge of state authorities, which, as the Commission has said, makes the State's duty to protect even greater. Nevertheless, the State has not shown that any specific measures were taken at the time of the events to prevent the violence.

83. Additionally, the Commission concluded that, in essence, the State had information on the real and imminent threat to the lives and personal well-being of persons camping on the *Boa Sorte* and *Santo Ângelo* estates and took no measures of any kind to protect them. In this case, the Commission found that the authorities, by various means, were informed of preparations for forcible evictions sponsored by the owners of the region's estates. Specifically, the authorities knew that a forced eviction from the *Boa Sorte* and *Santo Ângelo* estates was about to take place. The persons present in the camps on those estates on February 5, 1998, reported the threats of violent removal to the Special Adviser on Agrarian Affairs of the State of Paraná.

84. In addition, the INCRA Superintendent had asked the Commander of the 8th Battalion of Military Police in Paranavaí to take protective measures, but the authorities responsible for providing protection took no steps to prevent the incident. A local newspaper quoted statements made by an INCRA official in which she regretted the incident and claimed to have given the Military Police advance warning of them:

According to Oliveira, there were reports that the estate owners were arming themselves, but no steps were taken in connection with that by the local police. The INCRA Superintendent said she asked the Commander of the 8th Battalion of Military Police in Paranavaí to adopt measures, when she should have spoken directly to the Secretary of Public Security of Paraná.³⁶

85. Some days after the incident, an officer of the Military Police told the local press that the authorities had been aware that armed individuals had been hired and mobilized to carry out evictions. The daily *Folha de São Paulo* published a statement from the Subcommander of the Military Police, in which he said that:

Lieutenant Clóvis Manoel do Nascimento, 27, a subcommander of the Military Police in Loanda (PR), told *Folha* that they were aware that estate owners were recruiting guards in northwest Paraná: 'We were told by the Office of Public Security that the estate owners were recruiting men in the municipalities of Loanda, Querencia do Norte, and Santa Cruz de Monte Castelo, in order to seize estates in the region.' According to the subcommander, the battalion was aware of the guards last Thursday. The evictions on the *Boa Sorte* and *Santo Ângelo* estates carried out by armed guards took place two days later, in the early morning hours of Saturday.³⁷

86. A press article published some days after the incident confirms this information, quoting as its source the general coordinator of the Rural Democratic Union:

³⁵ Cf. IACHR, Report n° 54/01 (Merits), Case 12.051, Maria da Penha Maia Fernandes, Brazil, 16 april 2001, para. 56.

³⁶ "Emoção e revolta no enterro do sem-terra," *Jornal Estado do Paraná*, February 12, 1998; "MST reage a ataque com invasão no PR", *Folha de São Paulo*, February 9, 1998.

³⁷ "PM sabia sobre recrutamento", *Folha de São Paulo*, February 10, 1998.

"The general coordinator of the União Democrática Ruralista (UDR), northwest region, Tarciso Barbosa de Souza, yesterday claimed in Paranavaí that the region's UDR members are preparing to withstand possible invasions, including the potential use of firearms to protect their property."³⁸

87. The authorities responsible for the investigation had this information, but no state authority has been investigated for failing to proceed accordingly. Moreover, the evidence secured during the domestic proceedings includes statements from the authorities indicating that not only did the local authorities know the evictions were imminent, but also that state officials had acted in collusion with those responsible for planning the incidents. This can be seen in the statement given by the chief of the Civilian Police, when asked whether he had prior knowledge of the eviction plans in the region:

"That same week – specifically, on the Wednesday, with the invasion taking place on the Saturday – at the CTG of the municipality of Nova Londrina (PR), a meeting was held between estate owners, local authorities, members of the UDR, and some local people, at which it was agreed that they would carry out the eviction; the deponent was not at the meeting, but on the Thursday he learned of the facts through officers of his; the deponent then communicated the facts to the police chief of Paranavaí district, who in turn passed the information on to the secretary of public security [...]

That the people present at the meeting prior to the eviction were the president of the CTG at the time, ARLINDO TROIAN; VALDIR TORIAN; ARMANDO CHIAMULERA; the president of the Rural Employers' Union, PEDRO PAULO DE MELO; the vice prefect of Loanda (PR), HUGO ACORSI; the prefect of Nova Londrina at the time of the incident, JOÃO FERNANDES; and TARCISO, a representative of the UDR."³⁹

88. From the above evidence, it can be seen that federal authorities, the civilian police, and the military police were aware of the imminent evictions and that they were to be carried out by armed men. Although state officials were informed in advance, no protective measures were adopted at any level. The laborers living on the estates were defenseless against the gunmen, even though the conditions under which these illegal evictions were to take place were common knowledge in the region.

89. Given those circumstances, the Commission believes that the State adopted no reasonable measures to prevent the violations that took place on February 7, 1998, at the Boa Sorte and Santo Ângelo estates, even though the information available to the State's security forces clearly indicated the imminence of potential violations, including of the right to life, of the individuals occupying the aforesaid estates. As was foreseeable, the eviction had terrible consequences, including the extrajudicial killing of Mr. Sebastião Camargo Filho. Consequently, the Commission holds that the State failed in its obligation of adopting measures to prevent the attack on Mr. Sebastião Camargo Filho's life, thereby violating Article 4 of the American Convention, in conjunction with Article 1(1) thereof.⁴⁰

B- State's responsibility for failing to conduct a proper investigation

³⁸ "Noroeste prepara-se contra invasões", *Gazeta do Paraná*, January 23, 1998.

³⁹ Judicial branch, Second Criminal Bench, Paranavaí, Paraná, case file, statement from Eduardo Mady Barbosa, Civilian Police Chief, January 30, 2003.

⁴⁰ The Commission had previously ruled Brazil responsible for failing to take steps to protect individuals against whom threats had been made. See: IACHR, Report No. 24/98 (Merits), Case 11.287, *João Canuto de Oliveira* (Brazil), April 7, 1998.

90. The jurisprudence of the inter-American system has held on repeated occasions that the failure to investigate and punish violations constitutes a failure on the part of the State to ensure the free and full exercise of human rights,⁴¹ both with respect to the victims and their families and as regards the right of society in general to know what happened.⁴² Failures to investigate and impunity are of particular importance in cases in which the right to life is affected, particularly when they take place as part of a pattern of systematic human rights violations, because they foster a favorable climate for the chronic repetition of such breaches.⁴³

91. In the matter at hand, the Commission finds that the State has failed to abide by its obligation of ensuring the right to life through a serious and impartial investigation. From the evidence contained in the domestic case file, the Commission believes it has been shown, with respect to the right to life, numerous indications suggesting the involvement or collusion of government officials in the eviction operation, and these have not been seriously investigated by the Brazilian courts.

92. First of all, the evidence contained in the domestic case file indicated that the events of February 7, 1998, had a long and public planning phase, including several meetings at which various witnesses reported not only the presence of civilian authorities, but also the fact that those officials played a key role in directing the meetings. Additionally, several witnesses agree that those same authorities participated in the incident or were among the caravan of vehicles that accompanied the gunmen. The owner of one of the estates has repeated those accusations in several of his depositions to the police and to the Public Prosecution Service. For example, he has maintained that:

Among the people who were called on for the demonstration were Dr. HUGO, President of the Rural Employers' Union of Loanda-PR, Dr. PEDRO PAULO DE MELLO, Mr. JOÃO FERNANDES DE ALMEIDA, Municipal Prefect, ARLINDO TROIAN.⁴⁴

On the day of the incident, at around 5:00 a.m., they called my house to say a demonstration was going to take place [...] This early-morning call was made by Dr. Paulinho, President of the Rural Union [...] When I arrived, there were around 60 or 70 cars at the intersection. A lot of people. I remember seeing Mr. Vicente Garcia, the brother of Mr. Bolivar of the Romaria estate. They were both there. Arlindo Troian, the deceased prefect João Fernandes, Valter Kondo, Dr. Armando Chiamulera, and I believe also Napoleão Chiamulera, Antonio Bono, Nelson Bono, Paulo Hara, Camilo and Bento Somenzari, the sons of Gino Hayashi, Tatsusi Suguawara. There were a lot of people from Loanda, and the current prefect, whose name I can't remember.⁴⁵

⁴¹ I/A Court H.R., *Juan Humberto Sánchez Case*, Judgment of June 7, 2003, Series C No. 99, paragraph 134. See also: IACHR, "Resolution 1/03 on Trial for International Crimes," October 24, 2003, in IACHR, Annual Report of the Inter-American Commission on Human Rights 2003, December 29, 2002, Annex I.

⁴² I/A Court H.R., *Trujillo Oroza Case*, Reparations (Art. 63.1 of the American Convention on Human Rights), Judgment of February 27, 2002, Series C No. 92, paragraphs 99-101 and 109; and *Bámaca Velásquez Case*, Reparations (Art. 63.1 of the American Convention on Human Rights), Judgment of February 22, 2002, Series C No. 91, paragraphs 74-77.

⁴³ I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004, Series C No. 110, paragraph 132; *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, paragraph 156.

⁴⁴ Civilian Police Department of the state of Paraná, examination document, past history and interrogation of Teissin Tina, February 16, 1998.

⁴⁵ Judiciary of the state of Paraná, interrogation of Teissim Tina, December 8, 2000.

93. In addition, one of the men identified by the previous witness told the authorities that he has seen, in the caravan of vehicles, the Vice Prefect of Loanda in office at that time. This statement reads as follows:

On the day of the incident I was traveling from Loanda in a group to demonstrate at the Loanda intersection, we saw around 10 or 12 cars, the organizer of the group was Mr. Hugo Acorci, the vice prefect of Loanda.⁴⁶

94. These claims were confirmed on an extra-official basis by one of the lawyers of the estate-owners accused of planning and participating in the incident. The case file contains a photocopy of a report in a local daily paper, reporting the words of one of the defense attorneys:

Lamartine Godoi, attorney-at law, of President Prudente (SP), said yesterday that the prefect of Nova Londrina, João Fernandes de Almeida (PDT), and the vice prefect of Loanda, Hugo Acorsi (no party affiliation), participated in the operation that cleared the Santo Ângelo and Boa Sorte estates.⁴⁷

95. None of these statements has led to a serious investigation of the possible involvement of state authorities in planning and carrying out these events.⁴⁸ On the contrary, more than eight years after the incident took place, it seems that the State's response to Sebastião Camargo Filho's death shows a preference for impunity over the pursuit of a transparent investigation leading to the full clarification of all the individuals involved in the facts. Precisely because the State has not met its obligation of conducting an investigation, the numerous indications of the responsibility of state authorities in the killing of Sebastião Camargo Filho have been neither proven nor refuted.

96. The Commission finds that the state authorities, ever since the incident took place, have been negligent in adopting effective measures for clearing it up. Indeed, some official actions and omissions could seem to indicate the authorities' acquiescence with the commission of the crimes under investigation. For example, an analysis of the statements and other evidence from the police investigation reveals that police officers who stopped the truck in which the evicted laborers were being taken away against their will did nothing to prevent their transportation, to stop the driver of the vehicle, or to look for further additional evidence to help clear up the murder. Thus, some of the statements collected by the police indicated that:

On the journey from the estate to the city of Querencia, highway police stationed at the entrance to Laonda stopped the truck, whereupon several of the laborers shouted out for

⁴⁶ Judiciary of the state of Paraná, statement (accusation), Napoleão Augusto Chiamulera, March 12, 2003.

⁴⁷ "*Advogado de fazendeiros acusa prefeito*", *Estado do Paraná*, February 12, 1998. On p. 553 of the domestic case file.

⁴⁸ Another indication of the presumed involvement of state authorities that has not been seriously investigated can be found in a statement contained in the case file reporting that:

In addition to the individuals named, at the site of the incident he recognized the land owners – that is, the owner of the Santo Ângelo estate and the owner of the Boa Sorte estate – together with a person he claims was a policeman, since he was wearing a shirt with a police badge beneath his black shirt; and that this person was deliberately lifting the black shirt so the others could see he was a member of the Military Police.

Civilian Police Department of the state of Paraná, statement taken from Sandro Gomes Guarez, February 17, 1998.

help, since they were being abducted and there had already been one death; two highway police officers then sent the truck on its way.⁴⁹

As they were passing the highway police post in Loanda, he heard a woman asking for help and saying that one man had been hurt, but assistance was not given.⁵⁰

As they passed the highway police station in Loanda, the deponent shouted at the highway police officer: 'Please help! There's one man dead and another one injured at the Boa Sorte estate! Help!' With a wave of his hand, the highway policeman sent the driver on his way.⁵¹

97. The officials manning the post corroborated these claims. The report concluding the police investigation states that:

The officers José Alvacir Borges, Sergio Canola, and Adenil Lucio Aleixo were questioned and replied that a Mercedes Benz vehicle was stopped on February 7, 1998, at around 8:00 a.m., in which there were around 50 people, all in a state of agitation, desperation, and fear; they were informed that on the Marilena estate there had been gunfire and deaths, but they did not ask for help and said nothing about bodyguards, and the truck was allowed on its way to avoid confusion.⁵²

98. Thus, although the police officers said that "all [the passengers on the truck] wanted to talk and describe what had happened on an estate in the municipality of Marilena (PR), where there had been gunfire and killings" and that "the people were desperate and terrified," the police allowed the truck to continue on its way.⁵³ This failure to react immediately received no disciplinary or judicial sanctions.

99. The investigation into Sebastião Camargo Filho's death, more than eight years after it began, has not resulted in the punishment of any of the guilty, in spite of the copious evidence available to the officials tasked with the investigation. With this, Mr. Camargo's case became part of the pattern of impunity surrounding the violent actions committed by the gangs of gunmen operating in Paraná and other Brazilian states.

100. In consideration of the above, the Commission believes that Brazil failed to abide by its international obligations by neither investigating nor punishing all the guilty. The Brazilian State has not met its obligation of duly investigating the whereabouts of the planners and perpetrators of Mr. Sebastião Camargo Filho's murder, and of bringing them to justice and punishing them, and neither has it provided the victims' relatives with due compensation. In addition, the State has neither corroborated nor disproved the indications of its agents' acquiescence and collusion in the incident.

101. The Commission concludes that Article 4 of the American Convention must be interpreted with reference to the purpose and goal of the Convention "as an instrument for the protection of individual human beings" that requires "that its provisions be interpreted and

⁴⁹ Statement given by Antonia Franca on February 17, 1998, to the Civilian Police Department of the state of Paraná.

⁵⁰ Civilian Police Department of the state of Paraná, statement taken from Edson Luiz Zanini, February 10, 1998.

⁵¹ Civilian Police Department of the state of Paraná, statement taken from Jorge Pires da Fonseca, February 19, 1998.

⁵² Report on conclusion of police inquiry No. 002/98, signed by Police Chief Jairo Dos Santos, May 5, 2000, p. 10.

⁵³ Civilian Police Department of the state of Paraná, statement by José Alvacir Borges, officer of the Military Highway Police, April 23, 1999.

applied so as to make its safeguards practical and effective.”⁵⁴ The State’s obligation of protecting the right to life, analyzed in conjunction with the obligation in Article 1(1) of respecting and ensuring the rights enshrined in the American Convention, necessarily requires an “effective official investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the State.”⁵⁵ International and regional human rights law has ruled that any violation of right to life requires the state involved to undertake a judicial investigation by a criminal court instructed “to prosecute criminally, try and punish those held responsible for such violations.”⁵⁶ Such a process of investigation, prosecution, and compensation has not been undertaken in a serious and exhaustive fashion by the State, which gives rise to its international responsibility.

102. Consequently, the Commission finds that the Brazilian State failed to comply with its obligation of guaranteeing the right to life of Sebastião Camargo Filho, in that it failed to prevent the violation of the victim’s right to life in spite of learning, through several of its agents, of the imminent risk facing the rural workers occupying the Boa Sorte and Santo Ângelo estates. It also failed in its obligation of guaranteeing the right to life by not investigating the incident in a timely fashion in spite of its role as guarantor, and by not punishing the guilty, in spite of the evidence of acquiescence contained in the case file, all of which constitutes a violation of Article 4(1) of the American Convention, in conjunction with Article 1(1) thereof.

2. Right to a fair trial and to judicial protection (Article 8 and Article 25)

103. According to the jurisprudence of the Inter-American Court, any victim of a human rights violation is entitled to obtain, from the competent agencies of the State, the clarification of the events in question and to establish the responsibilities for the violation through the procedures for investigation and prosecution described in Articles 8 and 25 of the Convention.⁵⁷

104. Article 25 of the Convention provides as follows:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b. to develop the possibilities of judicial remedy; and
 - c. to ensure that the competent authorities shall enforce such remedies when granted.

105. In turn, Article 8 of the Convention provides as follows:

⁵⁴ European Court, *McCann et al. v. United Kingdom* (1995), Series A No. 324, paragraph 146 (citations omitted).

⁵⁵ *Ibid.*, paragraph 161.

⁵⁶ Human Rights Committee of the United Nations, *Bautista v. Colombia*, Decision of October 27, 1995, paragraph 8.6. See also: IACHR, Reports 28/92 (Argentina), *Herrera et al.*, and 29/92 (Uruguay), *De los Santos Mendoza et al.*, in Annual Report of the IACHR 1992-1993, March 12, 1993, pp. 35, 154.

⁵⁷ I/A Court H.R., *Barrios Altos Case*. Judgment of March 14, 2001. Series C No. 75, paragraph 48.

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

106. The protection afforded by the cited precepts is reinforced by the general obligation of respecting those rights set forth in Article 1(1) of the Convention. In this regard, the Inter-American Court has expressly stated that:

Article 25, read in conjunction with Article 1(1) of the American Convention, requires the State to guarantee to all persons access to the administration of justice and, in particular, to prompt and simple recourse for, among other results, having the persons responsible for human rights violations judged, and to obtain reparations for the harm suffered... Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society..." That article is closely linked to Article 8.1, which provides that every person has the right to a hearing, with due guarantees... for the determination of his rights, whatever their nature.⁵⁸

107. Consequently, the states parties are obliged to take all measures to ensure that no one is deprived of judicial protection and the exercise of the right to a simple and effective recourse.⁵⁹ Against that backdrop, states are obliged to investigate human rights violations, bring the perpetrators to justice, compensate the victims, and prevent impunity. This obligation acquires a special dimension when, as in the case at hand, they involve actions that contain indications of acquiescence or collusion on the part of civilian and military authorities and that took place as part of a generalized pattern of violence against rural workers.

108. Both the Commission and the Court hold that the failure to identify the perpetrators of human rights violations by means of a diligent investigation and subsequently to punish them in duly conducted proceedings is enough to rule that the State has failed to abide by Article 1(1) of the Convention.⁶⁰

109. Now, a breach of the State's obligation of investigating does not occur simply because no one has been convicted or because, in spite of the efforts made, it was impossible to establish the facts. However, in order for the international protection bodies to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive, serious, and impartial investigation.⁶¹ The judicial investigation must be undertaken in good faith in a diligent, exhaustive, and impartial fashion, and it must be aimed at exploring all the possible lines of inquiry to identify the perpetrators of the crime with a view to their subsequent prosecution and punishment.

⁵⁸ I/A Court H.R., *Loayza Tamayo Case*. Reparations Judgment of November 27, 1998, paragraph 169; *Velásquez Rodríguez Case*, *Fairén Garbi and Solís Corrales Case*, and *Godínez Cruz Case*, Preliminary Objections, paragraphs 91, 90, and 93, respectively.

⁵⁹ I/A Court H.R., *Barrios Altos Case*. Judgment of March 14, 2001. Series C No. 75 paragraph 43.

⁶⁰ I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63; paragraph 228.

⁶¹ IACHR, Annual Report 1997, Report No. 55/97, Case 11.137, *Juan Carlos Abella et al.*, Argentina, paragraph 412. See also: IACHR, Annual Report 1997, Report 52/97, Case 11.218, *Arges Sequeira Mangas*, Nicaragua, paragraphs 96 and 97.

110. In this case, in connection with the events at the Boa Sorte and Santo Ângelo estates of February 7, 1998, the State had the duty of undertaking, on an *ex officio* basis, an effective judicial investigation to identify all those guilty of the violations, to bring them to justice, and to apply the corresponding legal sanctions, to which end it was required to initiate criminal proceedings and pursue them to their final conclusion.

111. As the IACHR has stated in other cases,⁶² the “Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions,” adopted by the United Nations Economic and Social Council in Resolution 1989/65, explain what is needed for the investigation of a suspicious death in accordance with standards of due diligence.

112. These principles state that, in cases like this, the investigation must aim at determining the cause, form, and time of death, the person responsible, and the procedure or action that caused it. A proper autopsy should also be performed, all material and documentary evidence must be gathered, and witness statements must be taken. The investigation must distinguish between death by natural causes, death by accident, suicides, and homicides.

113. The agencies of the UN have supplemented these principles with the “Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions,”⁶³ according to which, the chief purpose of an inquiry is to “discover the truth about the events leading to the suspicious death of a victim.” The Manual states that those in charge of an inquiry must adopt, at a minimum, measures covering the following:

- (b) To recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible.
- (f) To identify and apprehend the person(s) involved in the death.
- (g) To bring the suspected perpetrator(s) before a competent court established by law.

114. In order to ensure the exhaustive and impartial investigation of an extra-legal, arbitrary, or summary execution, the Manual states that “one of the most important aspects... is the collection and analysis of evidence.” Thus, the “persons conducting an investigation should have access to the scene where the body was discovered and to the scene where the death may have occurred.” According to the parameters set in the Manual, the evidence gathering procedure should follow certain guidelines, some of which are indicated below:

- (a) The area around the body should be closed off. Only investigators and their staff should be allowed entry into the area.
- (b) Colour photographs of the victim should be taken as these, in comparison with black and white photographs, may reveal in more detail the nature and circumstances of the victim’s death.
- (c) Photographs should be taken of the scene (interior and exterior) of any other physical evidence.

⁶² *Inter alia*, IACHR, Report No. 10/95, Case 10.580, *Manuel Stalin Bolaños*, Ecuador, Annual Report of the IACHR 1995, OEA/Ser.LV/II.91, Doc. 7, rev. 3, April 3, 1996, paragraphs 32 to 34; Report No. 55/97, Case 11.137 *Juan Carlos Abella et al.*, Argentina, paragraphs 413 to 424; and Report No. 48/97, Case 11.411, *Ejido Morelia*, Mexico, Annual Report of the IACHR 1997, OEA/Ser.LV/II.98, Doc. 7, rev., April 13, 1996, paragraphs 109 to 112.

⁶³ UN document ST/CSDHA/12.

(...)

- (j) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. When applicable, tests for gunshot residue and trace metal detection should be performed.

115. Based on these parameters the Commission believes that the police investigation pursued to investigate the incident was imprecise, tardy, and plagued with omissions. As regards the gathering of evidence, the investigation was marked by several irregularities. Inexplicably, the authorities did not take fingerprints from the 12 firearms seized at the Boa Sorte and Santo Ângelo estates on the day of the incident. Neither did they perform chemical residue tests on the seven detainees to see if they had recently fired guns. Another indication of the authorities' negligence was the delay in seizing the weapons that the landless workers found on the Águia da Prata estate.

116. Thus, on February 20, 1998, a "deed of examination of firearm" was recorded with respect to a Taurus pistol seized in the operation during which seven individuals were detained on February 8, 1998. Although the technical report found that "inside the barrel there was residue from activated gunpowder," no tests were conducted to take fingerprints from the weapon.

117. On pages 306 to 311 of the domestic case file there are six "Deeds of examination of efficiency and usability of firearms," conducted on December 9, 1998, covering the weapons seized on February 7 of that year at the Santo Ângelo estate. According to the conclusions of those tests, all the examined weapons were in good working order and capable of being fired. Inexplicably, however, no fingerprints were taken from the weapons in order to identify the persons who might have made use of them.

118. It is also clearly evident that the authorities responsible for the investigation were negligent in submitting their evidence. This can be seen in the document of September 8, 1999, signed by the prosecutor in charge of the investigation, which reads:

Since the instant investigation is paralyzed, awaiting the submission of documents sent to the Loanda Police Department (document No. 342/98, dated February/98) and to the Maringá Institute of Criminalistics (document No. 054/98, dated August/98), already requested by the local office (see pp. 294/295 and 307/308), the public prosecutor requests that those agencies, by means hereof, be required to report on their compliance with the formalities requested by the police authority, and be held in contempt if they do not.⁶⁴

119. This communication shows how requests made by the Public Prosecution Service in February and August 1998, and repeated on December 8 of that same year, had not been complied with more than one year later. The Commission notes that on November 24, 1999, the Criminalistics Institute sent a reply to the second request made by the Public Prosecution Service, stating that the technical test requested had been carried out on March 10, 1998, but failing to explain why the report on that test was sent to the corresponding authorities more than one year and eight months after the testing was conducted.⁶⁵

⁶⁴ Public Prosecution Service of the state of Paraná, police inquiry documents No. 36/98, deed issued by Prosecutor Lucimara Salles on September 8, 1999.

⁶⁵ Civilian Police Department of the state of Paraná, Criminalistics Institute, document signed by Helio Marineli Franco and Rosaline P.F. Martins, to the Judge of Nova Londrina district, November 24, 1999.

120. These serious omissions have not been explained by the Brazilian State, even though the formalities were necessary to identify the perpetrators. Neither has the State explained the failure of the police officers who stopped the truck that was forcibly transporting the rural workers to seize it and its driver immediately.

121. Thus, the police investigation proceeded in a negligent fashion for a period of more than two years, in spite of the fact that domestic law sets a deadline of one month for those formalities. The Brazilian judicial authorities themselves criticized the way in which the police investigation was carried out. In connection with this, the judge overseeing the proceedings said that:

Two and a half years after the tragic event occurred, culminating in the death of a landless worker, it is true that scant information was gathered to inform an opinion on the crime; but other people should also face charges, based on indications that arose during the investigation.

A great deal more could have been done: investigation of people (including those identified), procedures for recognition, reconstruction of the incident and route taken by the alleged assailants, examination of the exactness of statements – in other words, a more detailed investigation to provide the prosecutor with information on the facts, circumstances, and people involved.⁶⁶

122. Given those circumstances, domestic remedies became ineffective, to the point where the unjustified delays led to statutory limitations applying to several of the crimes under investigation. With this, the authorities' negligence culminated in the impunity of the incident. Three of the crimes under investigation were punishable by less than one year and so, in compliance with Brazilian law, two years after they were committed statutory limitations applied to them. However, the initial phase of the investigation conducted by the Civilian Police alone took longer than two years. When the investigation was placed before the Public Prosecution Service, statutory limitations already applied to the crimes of threatening behavior, taking the law into one's own hands, and criminal damage.

123. The judicial authorities had access to extensive evidence, which would have enabled them to examine various lines of inquiry, but they inexcusably failed to make timely use of them. For example, some days after the incident, the regional UDR circulated a note claiming it was responsible for the eviction,⁶⁷ but it was not until August 26, 2004 (six years after the incident), that the presiding judge asked the UDR in Paranavaí for a list of the estate-owners who were members of the organization in February 1998.

124. Based on the foregoing considerations, the Commission concludes that Brazil's lack of due diligence in the investigation and in the gathering of essential evidence, without which criminal proceedings could not proceed, establishes a violation of Articles 8 and 25 of the American Convention, in conjunction with Article 1(1) thereof.

⁶⁶ Judiciary, state of Paraná, conclusions of Judge Federico Mendes Junior, September 1, 2000, doc. No. 52/00, criminal proceedings.

⁶⁷ A local newspaper reported this claim as follows:

"A note distributed by the northwest regional UDR states that the eviction was carried out by a group of rural producers from the region, in protest at the situation of the owners of the Boa Sorte and Santo Ângelo estates."

"UDR diz que ação foi organizada por produtores rurais", *Folha de Londrina*, February 10, 1998.

VI. CONCLUSIONS

125. Based on the considerations of fact and law set out above, the Inter-American Commission concludes that:

1. It is competent to take up this case and that the petition is admissible under Articles 46 and 47 of the American Convention.

2. The Brazilian State is responsible for violating the right to life, to a fair trial, and to judicial protection as set out, respectively, in Articles 4, 8, and 25 of the American Convention, all in connection with the obligation placed on the State by Article 1(1) thereof whereunder it is required to respect and ensure the rights enshrined in the Convention, with respect to Sebastião Camargo Filho.

VII. RECOMMENDATIONS

126. Based on the analysis and conclusions of this report, the Inter-American Commission on Human Rights recommends that the Brazilian State:

1. Conduct a complete, impartial, and effective investigation of the incident, with a view to identifying and punishing the material and intellectual perpetrators of Sebastião Camargo Filho's murder.
2. Make full amends to the next-of-kin of Sebastião Camargo Filho, including both moral and material damages, for the human rights violations identified in this report.
3. Adopt, on a priority basis, a global policy for eradicating rural violence, including preventive measures and measures to protect communities at risk, and stronger measures to protect leaders of movements working for the equitable distribution of rural land.
4. Adopt effective measures to dismantle illegal armed groups involved in conflicts related to land distribution.
5. Adopt a public policy to tackle the impunity surrounding violations of the human rights of individuals involved in agrarian conflicts and seeking the equitable distribution of land.

VIII. ACTIONS SUBSEQUENT TO REPORT N° 4/06

127. On February 28, 2006, at its 124th session, the IACHR adopted Report N° 4/06, in keeping with Article 50 of the American Convention. The State was notified of the report on April 17, 2006, and given a period of two months to comply with its recommendations.

128. On April 17, 2006, the Commission informed the petitioners that it had adopted Report N° 4/06 and requested that within two months they advise of their position on presenting the case to the Court; the position of the victim and grounds on which they felt the case should be referred to the Court. They were also asked to provide, by the same deadline, data on the victim; the power of attorney of the victim's representatives; available evidence in addition to that submitted during the proceedings before the Commission; data on witnesses and experts they intended to offer to the Court; and what they sought in terms of reparations and costs.

129. On June 21, 2006, the State presented its first report on the measures adopted in compliance with the recommendations issued in Report N° 4/06. The State also asked the IACHR for an extension of the deadline for submitting information on recommendations 2 and 4 of the report on admissibility and merits, since these were under negotiation between the parties and under study by various government bodies involved in their implementation.

130. On June 26, 2006, the petitioners stated their position in favor of presenting the case to the Inter-American Court and provided details on the relatives of the victim. Also, since the IACHR's correspondence had been received late, the petitioners requested an extension of one month for presentation of their arguments in favor of referring the case to the Court and of other data and documents requested by the Commission.

131. On July 5, 2006, the Commission granted an extension of 30 days for the Brazilian State to reply to recommendations 2 and 4 of Report N° 4/06. On the same date, a copy of the State's correspondence on compliance with the recommendations was sent to the petitioners.

132. On July 10, 2006, the State requested that the Commission grant an additional extension of four months for its compliance with the recommendations contained in Report N° 4/06. In addition, the State indicated its understanding concerning the suspension of the three-month period stipulated in Article 51.1 of the American Convention.

133. On July 11, 2006, the IACHR granted the four-month extension requested by the State for compliance with the recommendations in Report N° 4/06. The Commission also asked the State to present its final report on compliance with the recommendations by October 30, 2006.

134. On October 27, 2006, the petitioners presented a document on their position on submitting the case to the Inter-American Court, based mainly on the alleged noncompliance with the recommendations of Report N° 4/06; the position and data on the relatives of the victim; potential documentary evidence, witnesses, and experts for the case; and their position on reparations and costs. They also provided documents accrediting them as representatives of the victim's relatives. This correspondence was supplemented with the petitioners' writ of November 6, 2006, identifying an additional expert.

135. On November 1, 2006, the State presented a report on measures adopted in compliance with the recommendations of the IACHR. The pertinent parts of that writ were transmitted to the petitioners on December 14, 2006, and they were given a period of one month to present their observations on the matter.

136. On November 13, 2006, the State requested an additional extension of six months to comply with the recommendations of Report N° 4/06. It also requested that the Commission's mediation in a possible agreement with the petitioners. The State expressed its understanding that, should another extension be granted, the period stipulated in Article 51.1 of the American Convention would be suspended.

137. On November 17, 2006, the Commission granted the six-month extension sought by the State and requested that the State present a report on compliance with the recommendations on January 17, 2007. It also requested the State to indicate a date for a working meeting among the parties with the IACHR present. The purpose of the meeting would be to discuss a possible agreement on reparations to the relatives of the victim.

138. On February 1, 2007, the Commission convened the parties to the case to a working meeting, which was held on March 1, 2007, during the 127th regular session.

139. On February 7, 2007, the petitioners transmitted their observations on the State's correspondence of November 1, 2006, on compliance with the recommendations issued by the IACHR. On the same date, the petitioners reported that they would be unable to attend the working meeting convened by the Commission, since they did not have the material resources to cover the travel costs of the victim's relatives and their representatives. They also suggested that the working meeting be held in the State of Paraná, or at the next session of the IACHR.

140. On February 27, 2007, the petitioners indicated that a representative of the organization Global Justice could appear at the working meeting convened by the Commission. On March 1, 2007, the meeting among the parties to discuss a possible agreement was held. At that meeting the State pledged that on March 20, 2007, it would send a calendar, agreed upon with the petitioners, for compliance with the recommendations, including a date for a follow-up meeting in Brazil.

141. On May 2, 2007, the Commission requested that the parties provide information on the measures agreed upon at the working meeting held on March 1, 2007, in particular on the calendar for compliance with the recommendations and the measures adopted in that regard. The petitioners presented such information on May 8, 2007. On May 11, 2007, the IACHR decided not to submit this case to the Inter-American Court, taking into account issues related to its *ratione temporis* jurisdiction.

142. On May 18, 2007, the State provided a copy of the *Sentença de Pronúncia* of those accused of the murder of Sebastião Camargo and reported on the compliance with recommendation No. 1, related to the investigation of the facts and the punishment of those responsible for the death of the victim, and recommendation No. 2, on reparations to the relatives of the victim, issued in Report N° 4/06.

143. On October 30, 2007, the petitioners transmitted correspondence on new acts of violence that had taken place in rural areas of the State of Paraná, which indicated noncompliance with the recommendations of the IACHR.

144. On February 8, 2008, the Commission requested the parties to present information on compliance with the recommendations of Report N° 4/06 within one month. The petitioners answered this request on March 11, 2008. On March 19, 2008, the State, in turn, requested a one-month prorogation to present the information requested.

145. On March 26, 2008, the Commission granted a new extension to the State for its observations on compliance with the recommendations set forth in the merits report, until April 26, 2008.

146. On May 5, 2008, the State requested a 15-day prorogation to present information on its compliance with the Commission's recommendations. The Commission granted the prorogation on May 6, 2008. To date, the State has not presented the information requested.

147. On July 18, 2008 the Inter-American Commission adopted Report N° 33/08 — the text of which appears above — in accordance with Article 51(1) of the American Convention. On August 5, 2008, the IACHR forwarded the report to the State of Brazil and to the petitioners, as provided for in Article 51(2) of the American Convention and gave that State one month to report on its compliance with the IACHR recommendations referred to in paragraph 126 above. On September 8 and September 19, 2008 the State reported on its compliance with the recommendations of the IACHR. The petitioners also reported on October 22, 2008 on measures taken to implement the recommendations of the Inter-American Commission.

IX. ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS

A. Full, impartial and thorough investigation undertaken to establish the facts and punish the actual perpetrator and instigator in the murder of Sebastião Camargo Filho.

148. On October 23, 2006, the Nova Londrina District Judge convicted⁶⁸ defendants Teissin Tina, Augusto Barbosa da Costa, Osnir Sanches and Marcos Prochet. The first three did not

⁶⁸ For crimes within the competence of the Jury Tribunal, once probable cause proceedings have been opened, the judge must examine the book of evidence (*acervo probatório*) in the criminal proceedings in order to verify whether or not it is possible to show the probable existence of a culpable homicide, as well as the respective and alleged perpetrator. Consequently, the Magistrate produces the *Pronúncia* decision, in which he confirms the existence of evidence that would

appeal the sentence and, thus, could go to jury trial. The prosecutor, however, asked for the case to be transferred from the jurisdiction of Nova Londrina to the jurisdiction of Curitiba so that an impartial jury could be ensured. Defendant Marcos Prochet then sought to appeal the above-mentioned decision through an “appeal in the strict sense” (*recurso em sentido estrito*). The State stressed as well that a recent amendment to the Brazilian Penal Code was being promoted by way of Law 11.689 of June 9, 2008, in particular to speed up the process for crimes over which the jury has competence. The foregoing notwithstanding, the IACHR observed that unfortunately, based on more up-to-date information provided by both parties, the above-mentioned request for transfer of trial and the appeal in strict sense were still pending.

B. Full compensation, including moral and material compensation, for the family of Sebastião Camargo Filho, for the human rights violations identified in the report

149. The family members of Sebastião Camargo Filho have to date not received any compensation for the human rights violations cited by the IACHR. The State has argued that despite the efforts of the Federal Government, it was unable to get a commitment from the state of Paraná to pay damages to the victim’s family members. For their part, the petitioners cited the vulnerable conditions under which the family members of Sebastião Camargo Filho were living, and stressed further that, under Article 28 of the American Convention, the Federal Government could not justify failing to comply with this recommendation arguing that a jurisdiction failed to commit to paying the damages.

C. Adoption, as a matter of priority, of a comprehensive policy to eradicate rural violence, covering prevention and protection measures for at-risk communities and to strengthen protection measures for community leaders advocating equitable distribution of rural property

150. In order to comply with this recommendation the State took a series of steps, notably, the creation of a national agrarian defense counsel’s office (*Ouvidoria Agrária Nacional - OAN*), equivalent to an ombudsman, under the Ministry of Agricultural Development. It has sought to facilitate dispute resolution on the ground through public hearings and meetings and mediation involving the affected parties, the competent state authorities, and members of civil society. According to the State, more than 10 local agrarian defense counsel’s offices have been established and welfare, legal and technical assistance programs put in place for the occupying families. These programs are undertaken through civil society organizations, with state funding. The OAN also provided free [*Disque Terra e Paz*] telephone service to report land disputes and obtain information on land issues throughout Brazil. As regards the “Peace in the country” campaign, which is also coordinated by the OAN, the Office for Social Tension Prevention was created to monitor and analyze policies adopted by the various state institutions, and to receive reports on specific situations. The State reported that in 2004 and 2005 the OAN reached out to 268,811 families.⁶⁹ The “Commission to Combat Rural Violence” was also established with a central mandate to prepare the national plan to combat rural violence, now at the implementation phase. The State has reported as well that 414 homicides stemming from violence in the country were recorded between 2001 and 2005. That number would be lower following adoption of the measures being referred to. Information was also presented on the National Plan to Combat Violence in the Rural Areas of the

... continuation

indicate the materiality and perpetrator of the crime and determines the legal disposition and related sanctions he understands apply to the prisoner. Regarding the *Pronúncia* see article 413 of the Brazilian Penal Code.

⁶⁹ It is also worth taking note of the training program for mediators, which has trained 240 individuals in different regions; and the program for welfare, legal and technical assistance for the occupying families.

State of Paraná, prepared by the OAN; state policies on this subject; and data on agrarian reform undertaken in this state. Finally, the State cited the 2004 launch of the National Program to Protect Human Rights Advocates, which has already been implemented in the states of Pará, Pernambuco, and Espírito Santo by agreement. The State also noted that it expected implementation of the program in the states of Paraná and Mato Grosso to be complete by the end of 2008.

151. The petitioners also noted that the issue of violence in the country remains a major concern, especially in Paraná. They explained that in 2006 that state had recorded 33 cases of aggression, 1 death threat, 2 cases of intimidation, 4 murders stemming from land disputes in the country, 3 cases of attempted murder, and 3 cases of torture.

D. Adoption of effective measures to dismantle illegal armed groups engaged in disputes over land distribution

152. To comply with this obligation, the State cited certain measures it had taken to combat illegal armed groups that were engaged in land conflicts, specifically, Federal Police operations to dismantle the illegal armed groups known as *Paz no Campo*, *Faroeste*, *Março Branco*, *Tentáculos*, and *Terra Limpa*. The petitioners also noted that illegal armed groups had continued their attacks in Paraná. According to statistics from the Pastoral Land Commission, the state of Paraná ranks third in the number of families that are victims of activities carried out by these armed militias.

E. Adoption of a public policy to combat impunity for human rights violations by individuals involved in land disputes and equitable land distribution advocates

153. The State maintained that it had taken comprehensive steps to combat violence, through the measures included in the National Plan to Combat Violence in the country, which was at the implementation phase and included setting up juries, prosecutor's offices, and police commissions specialized in land disputes. In this regard, the petitioners have alleged that the creation of juries and land prosecutor's offices alone was not enough to combat impunity related to human rights violations in land disputes. They stressed as well that a biased judiciary is still a major reason the violence was continuing, because of the failure to investigate and punish murder suspects.

X. PUBLICATION

154. While acknowledging that the Brazilian State had taken a series of measures to combat rural violence, the Inter-American Commission on Human Rights must note that rural violence in Brazil has not diminished to any significant degree; neither has impunity with respect to violations of the human rights of individuals involved in those conflicts. Government policies to eradicate rural violence have also not proven inadequate to contain the illegal armed groups involved in conflicts over land distribution.

155. The IACHR would also like to stress that even though more than ten years have elapsed since Sebastião Camargo Filho was killed, the State has yet to conduct a thorough investigation to identify, prosecute and try the perpetrators of that crime. There has been to date no definitive ruling from the criminal proceedings in the victim's murder, and according to information provided by the parties, none of the suspects has been brought to trial before a jury. The IACHR also observed that the family members of Sebastião Camargo Filho have not received either moral or material compensation for the human rights violations cited in this report.

156. In conclusion, the Inter-American Commission on Human Rights wishes to reiterate that the Brazilian State failed to comply with its obligation to guarantee Sebastião Camargo Filho his right to life, enshrined in Article 4 of the American Convention, by failing to prevent the victim's death despite knowing the imminent threat faced by workers camped out on the *Boa Sorte* and *Santo Ângelo* plantations, and furthermore by failing to duly investigate the case and bring the perpetrators to justice. The IACHR would also like to reiterate that the Brazilian State must take responsibility for the violation of judicial guarantees and judicial protection provided for in Articles 8 and 25 of the American Convention, because it did not apply due diligence in the process of investigating and collecting evidence, which is indispensable for moving the trials forward. Finally, the Commission would also like to reiterate that the State has failed to comply with the general obligation established in Article 1(1) of the Convention under reference.

157. Based on the preceding arguments and the provisions of Article 51(3) of the American Convention on Human Rights, the IACHR has decided to publish this report and to include it in its Annual Report to the OAS General Assembly. In carrying out its mandate, the Inter-American Commission will continue to monitor the measures taken by the State of Brazil until the recommendations have been fully complied with.

Done and signed in the city of Washington, D.C., on the 19th of March, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Sir Clare K. Roberts, Florentín Meléndez, and Paolo Carozza, members of the Commission.