

REPORT Nº 33/01*
CASE 11.552
ARAGUAIA GUERRILLA MOVEMENT
JULIA GOMES LUND *ET AL.*
BRAZIL
March 6, 2001

I. SUMMARY

1. On August 7, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition from the Brazil section of the Center for Justice and International Law (CEJIL/Brazil) and Human Rights Watch/Americas (HRWA) against the Federative Republic of Brazil (hereinafter "the State" or "Brazil"). Subsequently, the Rio de Janeiro Section of the *Grupo Tortura Nunca Mais* [Torture Never Again Group] (GTNM/RJ) and the *Comissão de Familiares de Mortos e Desaparecidos Políticos de São Paulo* [Committee of the Families of Those Who Died or Disappeared for Political Reasons] (CFMDP/SP) were added as co-petitioners. The petition relates to the disappearance of members of the Araguaia guerrilla movement from 1972 to 1975, and the State's failure, since that time, to investigate those facts. Julia Gomes Lund and 21 others were presumably killed during military operations conducted in the Araguaia region, in the south of the state of Pará. Since 1982, family members of these 22 persons have been trying, by means of proceedings brought in Federal Court, to obtain information on the circumstances of the disappearances and deaths of the guerrillas, and to recover their bodies.

2. The petition alleges that the facts described constitute violations of rights guaranteed under Article I (right to life, liberty, and personal security); Article XXV (right of protection from arbitrary arrest); and Article XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration" or "the Declaration"), and of Article 4 (Right to Life); Article 8 (Right to a Fair Trial); Article 12 (Freedom of Conscience and Religion); Article 13 (Freedom of Thought and Expression); and Article 25 (Right to Judicial Protection), as well as Article 1(1) (Obligation to Respect Rights) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention").

3. The State responded by alleging that the available domestic remedies had not been exhausted and that, owing to the enactment of a law that provides for the investigation of and reparation in cases involving those who disappeared for political reasons, the petition no longer has substance, as reparation has already been made for the alleged violations, and that the responsibility of the State for the facts has already been acknowledged.

4. After analyzing the petition, and concluding that the requirements for application of the Convention had been met, the Commission decided to reject the claim that the grounds for the petition lack substance and to declare the case admissible.

II. PROCESSING BY THE COMMISSION

5. On August 7, 1995, the Commission received a communication from the petitioners. On December 12, 1995, the pertinent parts of the file were transmitted to the State, and at the same time the State was requested to provide information regarding the case.

6. On May 20, 1996, the Commission received a communication from the petitioners containing two new pieces of information. The first relates to the enactment by the State of a law¹ acknowledging the responsibility of the Brazilian State for the disappearances arising from political activity that took place from September 1961 to August 1979, and providing for indemnification of the families of the victims. The second piece of information was that in several newspaper articles, individuals who participated in events in the Araguaia region identified places where the bodies of guerrillas were buried and provided secret documents and

* As prescribed in Article 19(2)(a) of the Commission's Regulations, Member of the Commission Hélio Bicudo, of Brazilian nationality, did not participate in the discussions or the voting on this case.

¹ Law Nº 9140 of December 15, 1995.

photographs of the operations carried out. On May 22, 1996, the Commission sent a copy of the aforementioned material to the State for its evaluation and comment.

7. On June 26, 1996, the Inter-American Commission received the reply from the State. The reply discussed the remedies available in Brazil to resolve the dispute and, at the same time, argued that domestic remedies had not been exhausted and that the petition no longer had substance. On July 16, 1996, the Commission forwarded a copy of the Government's reply to the petitioners for comment.

8. On August 23, 1996, the Commission received the petitioners' comments on the Government's reply. To summarize, they allege that the slow and unproductive judicial process is proof that the State does not intend to clarify the facts regarding the guerrillas' disappearance. They also allege that Law N° 9140 of 1995 is inadequate. On September 19, 1996, these observations were forwarded to the State.

9. On October 7, 1996, a hearing was held with the participation of the parties, at which the petitioners and the State presented their arguments regarding the petition's admissibility.

10. In a letter received on December 9, 1996, the petitioners requested information regarding the State's interest in seeking a friendly settlement in several cases in which it was involved, including this case. On December 13, 1996, the IACHR Secretariat reported that the State had not taken a decision regarding the possibility of reaching a friendly settlement in the aforementioned cases.

11. On January 10, 1997, the Commission received further documents and a request from the petitioners to include as co-petitioners the Committee of the Families of Those Who Died or Disappeared for Political Reasons of the *Instituto de Estudos da Violência do Estado* [Institute for the Study of State Violence] (IEVE) and Mrs. Angela Harkavy, sister of Pedro Alexandrino Oliveira, who disappeared in the Araguaia region.

12. On February 25, 1997, the Government forwarded further observations on the case, alleging that it should be closed as the State had already made reparation for the injury caused by the alleged violation. This information was forwarded to the petitioners on April 18, 1997.

13. On March 4, 1997, another hearing was held with the participation of the parties. At this hearing, arguments regarding the admissibility of the petition were again presented, and Mrs. Angela Harkavy, the sister of one of those who disappeared and a co-petitioner in this case, testified. The Commission placed itself at the disposal of the parties in seeking a friendly settlement, and gave 30 days for the parties to decide whether they wished to seek such a settlement. On that occasion, the petitioners presented written statements on the case, requesting it to be declared admissible. They added that the main demand of the families of the disappeared –to find out the circumstances in which they disappeared and where their bodies were buried– was not addressed by the measures taken by the State.

14. On March 6, 1997, the State transmitted further observations on the case, in the terms of its oral statement during the March 4 hearing and in reply to the petitioners' communication of that date. In its reply, the State requests that the case be closed. On March 19, 1997, copies of these State pleadings were sent to the petitioners.

15. On May 23, 1997, the petitioners submitted their reply to the observations of the State. They also attached the statements of one of the new co-petitioners, the Torture Never Again Group of Rio de Janeiro. The pertinent observations and documents were forwarded to the Government on June 3, 1997. The Government's reply was received on July 25, 1997, and forwarded to the petitioners on July 29, 1997.

16. On July 25, 1997, a note was received from the Government containing additional pleadings regarding the petition's admissibility and merits. In summary, it was also alleged that the State did not have more information than that supplied to the Special Commission established through Law N° 9140 of 1995, that it had not violated its obligations arising under the American Convention, and that the State was "minimizing the effects" of the past violations.

17. On November 4, 1997, the Commission received further information from the petitioners, including the deposition of one of the survivors of the "Araguaia guerrilla movement." These documents were forwarded to the State on November 17, 1997.

18. In further communications received on April 14 and 22, 1998, the petitioners provide additional information about the existence of military documents containing precise information on the whereabouts of the persons who disappeared. This information was transmitted to the State on April 20, 1998.

19. The Government responded by note, received on August 31, 1998, alleging in essence that the violation had been remedied and for that reason, the case should be closed, pursuant to Article 48(1). This communication was forwarded to the petitioners on September 1, 1998.

20. In a letter received on February 3, 1999, the petitioners requested more time to present further information in connection with the case. On the same date, the Commission agreed to the extension. On March 5, 1999, the petitioners made their final submissions in this case, and the information was forwarded to the Government on March 11, 1999. On March 28, 2001, another hearing was held before the Commission, with the participation of representatives of the Government and the petitioners at which, after the parties had reaffirmed their original positions, the petitioners requested that the Commission move forward with the proceedings and that it take a decision on admissibility.

III. POSITION OF THE PARTIES

A. Position of the petitioners

21. The petitioners alleged that from 1972 to 1975, a series of military campaigns were conducted to eradicate a nucleus of rural guerrilla activity in the Araguaia region, in the southern part of the state of Pará. The "Araguaia guerrilla movement" was founded by militants of the Communist Party of Brazil (CPB) in 1966, and was mobilizing the local population to foment a revolution to overthrow the Brazilian military government, which had been in power since 1964.

22. The petitioners further allege that in the course of these military operations, almost 60 guerrillas disappeared. They alleged that they were killed in battle with Brazilian armed forces, or arrested, tortured, and then killed. However, none of the individuals was acknowledged as dead, remaining in the status of persons who had disappeared for political reasons. The regime, allege the petitioners, would have concealed the entire existence of the conflict, including the guerrillas' disappearance.

23. When democracy was restored, that is, in 1982, family members of 22 of the disappeared persons brought proceedings in the Federal Court of Rio de Janeiro, asking for the whereabouts of the disappeared persons to be established and their remains located so that they could be given a decent burial and their death certificates could be registered. At first, the national courts processed the case in the usual way, requesting documents from Executive Branch officials, and summoning witnesses. However, on March 27, 1989, after the judge responsible for the case was replaced, the case was dismissed without ruling on the merits, on the grounds that it was legally and physically impossible to comply with the request. Similarly, the judge considered that what the plaintiffs were requesting –to be able to obtain civil documents showing the absence of the persons who had disappeared– was covered by the Amnesty Act and did not require any other judicial action².

24. The petition indicates that the plaintiffs in the case before the Federal Court appealed the decision to dismiss the case and, on August 17, 1993, obtained a ruling from the Regional Federal Court (Federal Court of Appeals), which reversed the decision of the lower court, and returned the case to the same judge for finding of fact and a ruling on the merits. On March 24, 1994, the Federal Government filed requests for clarification³ against the Federal Court's

² The Amnesty Act, Law N° 6.683 of August 28, 1979, allowed family members of persons who disappeared for political reasons during the military regime to request a "declaration of absence," which generated a presumption that the individual who had disappeared was dead.

³ This remedy seeks to clarify the interpretation of an obscure or ambiguous ruling, rather than to modify its content.

ruling. However, the petitioners did not supply this information in their statements. The State itself alleged –in its note received on March 4, 1997– that the aforementioned appeal was not heard by the Court, based on a unanimous decision of the Regional Court itself on March 12, 1996. The Government lodged a special appeal⁴ against this decision, which was also ruled inadmissible by the Regional Federal Court. On the basis of the interlocutory appeal, the Government again lodged an appeal against this decision⁵, which is still pending according to the most recent information submitted by the parties. To summarize, the petitioners allege that the lack of a ruling on the merits in the lower court after so many years have passed is proof that domestic remedies are ineffective and that the State is not committing itself to determining its responsibilities nor to punishing the perpetrators.

25. The petitioners acknowledge that the enactment of Law N° 9140 of December 4, 1995, was an important step taken by the Brazilian State in making reparation for the violations reported. Through this law, in addition to acknowledging its responsibility for the disappearances, the State established a special commission “empowered to acknowledge the deaths of individuals who disappeared by virtue of their participation, or accusation of participation, in political activities between September 2, 1961 and August 15, 1975.” The same law provides for indemnification for persons who disappeared and were deemed to be dead. On the basis of evidence, the aforementioned Commission is also empowered to conduct searches for the guerrillas' bodies. However, the petitioners note that the State never gave any indication of burial sites, although it had military documents –confidential reports on operations carried out– that would enable graves to be located. Similarly, the law would be inadequate to the extent that it did not contemplate determination of the circumstances of death, nor identification and sanctioning of the perpetrators. Therefore, although the petitioners acknowledge the progress that enactment of this law implies, they consider it inadequate reparation. In particular, they consider that the combined application of the Amnesty Act and Law N° 9140/95 institutionalizes impunity, and therefore contravenes the standards of the inter-American system for the protection of human rights.

26. The petitioners allege that the Government's lack of interest in establishing the facts alleged is demonstrated by various facts: first, the slow processing and lack of cooperation on the part of the State in the judicial process, in which it never submitted any of the confidential documents setting forth the facts that occurred from 1972 to 1975 in the Araguaia region. Secondly, they allege that all information about the Araguaia guerrilla movement supplied to the Special Commission established through Law N° 9140/95 and to the Inter-American Commission comes from unofficial sources, although the documents are in fact official. Thirdly, it is alleged that when the State receives judicial instructions to supply confidential information that they are withholding regarding individuals who were subjects of action by the Brazilian intelligence services, it does not do so, or submits false or incomplete information. Fourth, the State still has on the books laws that prevent the establishment of the alleged facts, and does not now acknowledge the right of the victims' families and society in general to know the truth.

27. Based on the facts described above, the petitioners allege multiple violations of the Declaration and the American Convention.⁶ In the petitioners' view, from 1972 to 1975, a military operation was carried out by the Brazilian State that led to the disappearance of over 60 guerrillas. They also alleged that, in not investigating said disappearances, nor identifying and punishing those responsible for the disappearances, the State created a situation of impunity contravening the American Convention. In terms of legal analysis, the allegations of the petitioners are:

a. In conducting military operations from 1972 to 1975, the State was responsible for the disappearance of the victims and violated Article I (right to life, liberty, and personal security), Article XXV (right of protection from arbitrary arrest), and Article XXVI (right to due process of law) of the Declaration. In addition, the persisting lack of information regarding the whereabouts of the victims constitutes a continuing violation, which in turn

4 Appeal against a ruling that challenges a federal law demonstrating discrepancy in jurisprudence at subconstitutional level among the various regions.

5 Appeal against an interlocutory decision, reviewed by the higher court, in this case the Higher Court of Justice. In this case, the appeal sought to reverse the decision of the Regional Federal Court that had declared the special appeal inadmissible.

6 Brazil ratified the Convention on September 25, 1992.

implies violation of Article 4 of the Convention, which entered into force for Brazil on September 25, 1992;

b. To the extent that Brazil failed to submit information on the individuals who disappeared and to allow events to be clarified, the State violated the right to establish the truth (Articles 8, 13, and 25 of the Convention);

c. In failing to determine the criminal responsibility of those responsible for the violations, the State violated Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection);

d. As concerns the impossibility of locating the bodies so as to bury them properly, the petitioners also allege violation of Article 12 (Freedom of Conscience and Religion);

e. The indemnification made and steps taken to locate and identify the bodies of the guerrillas, measures taken pursuant to Law N° 9140 of 1995, do not discharge the State of its responsibility to investigate the circumstances in which the disappearances occurred and to punish those responsible. For this reason, the Amnesty Act and the aforementioned Law N° 9140/95 constitute separate violations of Articles 8 and 25 of the Convention.

f. With respect to all the rights enshrined in the Convention that have allegedly been violated, a separate violation of Article 1(1) of the American Convention is also alleged. In that article, the States Parties undertake to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any form of discrimination.

28. The petitioners consider that the conditions for the petition's admissibility have been met. With respect to exhaustion of domestic remedies, it is alleged that there was unwarranted delay in rendering judgment under existing remedies, implying that the exception provided for in Article 46(2)(c) of the Convention applies. They allege that the excessive length of judicial proceedings and the State's refusal to submit information available to it are the sources of the unwarranted delay.

29. In view of the foregoing allegations, the petitioners request that the case be declared admissible and that a report be drawn up in the terms of Article 50 of the Convention, finding that the State is in violation of Article I, Article XXV, and Article XXVI of the American Declaration, and of Articles 1(1), 8, 12, 13, and 25 of the American Convention.

B. Position of the State

30. From its first submission in the proceedings, received on June 26, 1996, the Government of Brazil did not contest the facts mentioned in the initial petition regarding the existence of armed conflict between the guerrillas and the Brazilian armed forces in the Araguaia region. On the contrary, in subsequent communications,⁷ the Government clearly states that in enacting Law N° 9140 of 1995, the State acknowledged the civil and administrative responsibility of its agents for the facts reported.

31. However, the Government alleges that there are available domestic remedies that were not exhausted by the petitioners. First, it is alleged that although the federal judicial proceedings, instituted in 1982, have lasted many years, they are proceeding normally, in accordance with Brazilian legal procedure. Secondly, with respect to the information that the petitioners wish to obtain from the Government, the State alleged that it may be obtained through a writ of *habeas data*, as provided for in the Federal Constitution, as well as through the usual judicial process.

32. The State alleges that in enacting Law N° 9140, the State acknowledged its responsibility and made reparation for the violation through indemnification of the victims' families.

⁷See the note from the Government, received on March 6, 1997, and the note from the *Conselho de Defesa dos Direitos da Pessoa Humana* [Council for the Defense of Human Rights], dated February 25, 1997, transmitting that note.

Allegedly, the Law does not limit itself to monetary compensation, but also involves investigation into the circumstances and places of the deaths. However, it is only possible to locate the bodies and investigate the circumstances of the guerrillas' death if evidence is available in the area to be investigated. In the absence of such evidence, it is impossible to locate the bodies and hence to identify them and determine the circumstances of death. For such purposes, the State denies that it has complete military reports in which the burial sites of these individuals and the circumstances in which they died may be systematically set forth. Based on these allegations, the State considers that the Commission should order the file closed, pursuant to Article 48(1)(b) and (c) of the Convention.

33. With respect to the petitioners' allegation that comprehensive reparation of the violation requires the investigation thereof and punishment of the perpetrators, the State alleges that such punishment is rendered impossible by the existence of the Amnesty Act enacted in 1979, which remains in force. It underscores the fact that the Law was "extremely important in the process of replacing the military regime and restoring the country to democracy [and] it was enacted owing to the existence of broad national political consensus." The State adds that the Amnesty Act benefited both sides of the Araguaia conflict.

34. In a note received on August 31, 1998, the Government presented its final arguments. To summarize, the State alleged that: (1) Law N° 9140/95 represented adequate response to the issue of the disappearances through its acknowledgement of State responsibility, indemnification, acknowledgement that those who disappeared were dead, and its attempt to locate and identify their bodies; (2) secret documents must be submitted in accordance with the provisions governing classification of secret documents, and these documents may be requested through the judicial process; (3) regarding investigation of the circumstances of the deaths, the Amnesty Act extinguished the individual criminal responsibility of the persons involved on both sides of the conflict; (4) the aforementioned law is the result of broad national consensus in the sense that it enabled democracy to be restored in the early 1980s. In conclusion, the Government requests that the case be ordered closed, pursuant to Article 48(1) of the American Convention.

35. With respect to the violations alleged by the petitioners, the State acknowledges its responsibility for the deaths of the guerrillas, but it considers that the petitioners have the means to obtain adequate reparation for these violations through the application of Law N° 9140/95. The State denies that the Amnesty Act and Law No. 9140/95 foster impunity in Brazil.

36. To summarize, with respect to the petition's admissibility requirements, the State alleges that domestic remedies were not exhausted and that new facts –mainly the enactment of Law N° 9140 and the work of the Special Commission established by it– imply that the alleged violations can no longer be characterized as such. Based on these arguments, the State requests that the case be ordered closed or declared inadmissible. In terms of the merits, the State alleges that it has made adequate reparation for the violations and that it is not infringing upon the right to truth nor fostering impunity.

IV. ANALYSIS OF ADMISSIBILITY

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

37. The Commission has jurisdiction in this case by reason of the matter involved because the facts described, if their veracity is confirmed, would constitute violations of the American Declaration and the American Convention, as is discussed below.

38. The facts described took place from 1972, a time when the State had not ratified the American Convention. However, all member states of the Organization of American States⁸ are subject to the jurisdiction of the Commission which, pursuant to Article 20 of its Statute, shall examine communications that deal with alleged violations of the American Declaration.

⁸ Brazil is a founding member of the OAS, as it signed the Charter of the Organization in 1948 and deposited its instrument of ratification in 1950.

In view of this, the Commission has competence *ratione temporis* to decide whether in the period prior to September 25, 1992, date of ratification of the Convention by the State, there were violations of Article I, Article XXV, and Article XXVI of the American Declaration.

Similarly, the Commission has competence by reason of the time involved with respect to the alleged violations of Articles 1(1), 4, 8, 12, 13, and 25 of the American Convention, as the alleged violations of these articles would be in the nature of *continuing violations*.⁹

39. There is no doubt or disagreement among the parties that the facts described in the petition took place within Brazilian territory, in an area subject to the territorial jurisdiction of the State. Therefore, the Commission has competence *ratione loci*.

40. Regarding the passive competence *ratione personae* [by reason of the person concerned], the petitioners attribute the violations to a State Party, in this case, Brazil. With respect to the Commission's active competence *ratione personae* [by reason of person], the petitioners allege that the aforementioned violations were committed to the detriment of the direct victims of those violations, that is, those who disappeared or died, their families, and Brazilian society. Regarding the active aspect of the Commission's competence *ratione personae*, Article 44 states that any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization may lodge petitions with the Commission. It was not disputed that the petitioning entities are so recognized or that they may therefore lodge petitions on behalf of the victims in this case.

B. Other admissibility requirements

a. Exhaustion of domestic remedies

41. The ancillary nature of the protection afforded by the inter-American system makes it necessary, before processing a petition, to establish whether the petitioners attempted to obtain reparation of the violation within the domestic law of the State challenged. In this case, both parties have submitted substantive allegations with respect to the exhaustion of domestic remedies.

42. From the documents submitted in the process, it is evident that the families of 22 of those who disappeared attempted to obtain information on the whereabouts of those individuals through judicial proceedings instituted in 1982. They based their request on natural law and on instruments of international humanitarian law. They requested information to be produced on the guerrilla war and the circumstances involving the disappearance of the 22 guerrillas, and referred to the existence of an armed forces report that would have been completed on January 5, 1975, and would contain the information required to clear up the case.

43. In these judicial proceedings, the Government made five preliminary objections, which were rejected by Judge Volkmer de Castilho on September 24, 1982. The State denied the existence of the conflict, the disappearances, and the requested documents. It added that if such documents existed, they could not be produced owing to their secrecy. Having rejected these objections, the judge proceeded –from 1982 to 1985– to question witnesses and request documents in the Governments' possession.

44. On March 27, 1989, the same court, now presided over by Judge Leal de Araújo, dismissed the case without ruling on the merits, on the grounds that it was physically and legally impossible to respond to the request¹⁰. The judge also considered that as the Amnesty Act of 1979¹¹ made it possible to apply for a "declaration of absence" in the case of those who disappeared, this specific legal remedy precluded the invocation of another more general remedy.

9 See the jurisprudence of the Inter-American Court of Human Rights in this area: the case of *Velásquez Rodríguez*, Judgment of July 29, 1988, Series C, No. 4, paras. 155-157; the case of *Godínez Cruz*, Judgment of January 20, 1989, Series C, No. 5, paras. 163-165; the case of *Fairén Garbí and Solís Corrales*, Judgment of March 15, 1989, Series C, No. 6, paras. 147-150; and the case of *Blake* (Preliminary Objections), Judgment of July 2, 1996, Series C, No. 27, para. 35.

10 The request would be physically impossible as it is not feasible to look for bodies in the Amazon jungle after so many years; it would be legally impossible because no legal provision obliges the State to indicate where anyone is buried.

11 Law N° 6683/79.

45. On April 18, 1989, the petitioners lodged an appeal against this ruling, alleging that the scope of the petition went beyond mere “acknowledgement of absence” of the persons who had disappeared, the only measure provided for in the Amnesty Act, and that it was premature to rule that it was legally impossible to respond to the request. They further alleged that the request for information did not intend merely to clarify whether the individuals were permanently absent for civil legal purposes, but to clarify the exact circumstances in which these persons had disappeared.

46. On September 11, 1991, the Office of the Public Prosecutor announced its support for the aforementioned appeal, stating that the right to information was enshrined as a fundamental right in the Federal Constitution, in Article 5, paragraph XXXIII thereof. It also stated that a family's right to bury its dead in accordance with its religious convictions, while a general principle of law, constituted a pertinent source of the law in this case. The Office of the Public Prosecutor's opinion also objects to the ruling on the grounds that the Amnesty Act does not satisfy the petitioners' claims.

47. On August 17, 1993, the Regional Federal Court (2nd tier of the Federal Courts) reversed the decision of the lower court judge and ruled that the merits of the case should be examined. The Court based its ruling on the right to look after one's dead in accordance with one's religious beliefs. It also ruled that secret documents may be requested and examined by the courts without being divulged. Requests for clarification¹² were lodged in connection with this ruling. The Court ruled unanimously on March 12, 1996, that this remedy was inadmissible. The State lodged a special appeal against this decision in the Higher Court of Justice, an appeal which, on November 20, 1996, was also ruled inadmissible. On December 19, 1996, the State again lodged an appeal against this last ruling, which –according to information in the files– in connection with which no ruling has yet been made¹³.

48. The petitioners allege that the extraordinary delay in the judicial process justifies the application of the provision contained in Article 46(2)(c) of the Convention. Under this Article, the provision regarding exhaustion of domestic remedies does not apply where there has been “unwarranted delay in rendering a final judgment under the aforementioned remedies.”

49. The State, for its part, alleges that although the processing is slow, it is following the usual procedure in force, the principles of the adversarial system of justice, and principles of legal defense. It also alleges that the Office of the Attorney General of Brazil is legally obliged to exhaust the appeals process against rulings that are not in the interest of the Federal Government, until they have passed in *rem judicatum*.

50. The Commission considers that in this case, a delay of over 18 years without a final ruling on the merits cannot be considered reasonable. Although the case may be complex, and many remedies may have been invoked, in view of the fact that there is not even a lower court ruling with respect to the admissibility of the petition and that, since 1994, the appeals lodged by the Government do not discuss the merits, but only the interpretation of an appeals court ruling, the Commission considers that it cannot be insisted that the requirement concerning exhaustion of domestic remedies be met. For these reasons, Article 46(2)(c) applies, and the requirement of exhaustion of domestic remedies is waived.

b. Period for lodging the petition

51. In view of the nature of this case, there was no “final judgment” of which the victims were informed. In addition, neither the State nor the petitioners took a position on this point. As the proceedings have been underway since 1982 without a final judgment, the requirement of six months contained in Article 46(1)(b) of the Convention does not apply in this case.

c. Duplication of proceedings

12 A remedy which seeks only to clarify the meaning and scope of a judicial decision, without attempting to modify its content. See Note 3.

13 On February 3, 1997, it was decided to summon the parties.

52. There is no evidence that this case is pending in another international proceeding for settlement. Neither does it represent, from a substantive standpoint, a reproduction of an appeal already examined by the Commission or another international entity. Therefore, the Commission finds that this requirement has been met.

d. Characterization of the facts

53. Article 47(b) of the Convention stipulates that if a petition does not state facts that tend to establish a violation of the rights guaranteed by the Convention, it shall be considered inadmissible. The petitioners allege that the State conducted military operations in the Araguaia region between 1972 and 1975, and that these operations resulted in the disappearance of 22 guerrillas. Since that time, the circumstances of the deaths of those who disappeared have not been investigated, nor have the persons involved been identified or punished, although the State has in fact acknowledged its involvement and responsibility and arranged for indemnification.

54. The petition alleges that the State violated the right of the petitioners and Brazilian society in general to obtain reliable information on the facts reported. Such a violation would emanate from two actions by the State. On the one hand, the Amnesty Act is presented as an impediment to access to the justice system and, consequently, the petitioners' and society's access to complete information on the facts and responsibilities in this case. On the other, problems in obtaining military documents relating to the facts on the grounds of national security, and the lack of evidence, etc., would preclude exercise of the right of access to information and the opportunity to bury the victims properly. All of this would violate rights enshrined in Articles 8, 13, and 25 of the Convention.¹⁴

55. In addition, the petition characterizes the facts as a violation of the right to freedom of conscience and religion, Article 12 of the Convention, as the forced disappearances would deprive the families of the victims of the right to bury their remains in accordance with their religious convictions.

56. The State alleged that with the enactment of Law N° 9140 of 1995 –which established a special commission with competence to investigate the disappearances, locate the bodies, and indemnify the families of those who disappeared for political reasons– further facts arose that render the petitioners' claims without substance. They allege that the aforementioned law acknowledged the State's administrative and civil responsibility, and indemnified the families of the victims. The State therefore alleges that the grounds for the petition no longer have merit.

57. The petitioners consider that indemnification is not full reparation of the violation and allege that the State cannot pretend to have made reparation, through indemnification, for the violation as a whole, as those responsible for it have yet to be identified and punished. The State, in turn, alleges that, in view of the Amnesty Act, it is impossible to investigate individual responsibility and to punish the agents of the State involved in the case. The Commission considers in this case it must examine whether the Amnesty Act enacted, where pertinent to the facts complained of, establishes a regime of impunity that would prevent the competent courts from trying and sentencing the possible perpetrators of the violations denounced.

58. The Commission considers that, at this stage of the proceedings, it cannot be stated with certainty whether the measures adopted by the State constitute "adequate reparation" for the alleged violations. In this case, it would not be possible for the Commission to determine what adequate reparation for the violations is, without first determining the existence and nature of the possible violations, which can only be determined in the merits phase. For these reasons, the Commission decides to disregard the State's position that the provisions of Article 48(b) and (c) of the Convention should apply.

14 See the following IACHR Reports: *Second Report on the Situation of Human Rights in Peru*, of June 2, 2000 (OEA/Ser. L/V/II.106, doc. 59 rev.), Chapter II, para. 215 ff; *Third Report on the Situation of Human Rights in Colombia*, of February 26, 1999 (OEA/Ser. L/V/II.102, doc. 9 rev.), Chapter IV, para. 345. In the context of individual cases, this principle was clearly affirmed in the following cases: Report N° 1/99, Case 10.480 (El Salvador), published in the *Annual Report of the IACHR 1998* (OEA/Ser.L/V/II.102, doc. 6 rev.); Report N° 36/96, Case 1843 (Chile), published in the *Annual Report of the IACHR 1996* (OEA/Ser.L/V/II.95, doc. 7); Report N° 28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.309, and 10.311 (Argentina) and 29/92, Cases 10.029, 10.036, 10.372, 10.373, 10.374, and 10.375 (Uruguay), published in *Annual Report of the IACHR 1992-1993* (OEA/Ser.L/V/II.83, doc. 14).

59. If their veracity is confirmed, the facts alleged in the petition constitute violations of Article I, Article XXV, and Article XXVI of the American Declaration, and of Articles 1(1), 4, 8, 12, 13, and 25 of the American Convention. The Commission considers that the exception contained in Article 47 (b) does not apply in this case.

V. CONCLUSIONS

60. For the foregoing reasons, the Commission concludes that it is competent to hear this case, and that it is admissible under Articles 46 and 47 of the American Convention and Article 1 and 20 of its Statute.

61. Based on the arguments of fact and law set forth above, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with regard to the alleged violations of Articles I, XXV, and XXVI of the American Declaration and Articles 1(1), 4, 8, 12, 13, and 25 of the American Convention.
2. To notify the parties of this decision.
3. To continue its analysis of the merits of the case, and
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington, D.C., on this 6th day of March 2001. (Signed): Claudio Grossman, Chairman; Juan Méndez, Vice-Chairman; Marta Altolaguirre, Second Vice-Chair; Robert K. Goldman, Julio Prado Vallejo, and Peter Laurie, Commissioners.