INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF FAVELA NOVA BRASILIA *V.* BRAZIL

JUDGMENT OF FEBRUARY 16, 2017

(Preliminary objections, merits, reparations and costs)

In the case of *Favela Nova Brasilia,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") composed of the following judges:[1]

Eduardo Ferrer Mac-Gregor Poisot, acting President
Eduardo Vio Grossi, acting Vice President
Humberto Antonio Sierra Porto, Judge
Elizabeth Odio Benito, Judge
Eugenio Raúl Zaffaroni, Judge, and
L. Patricio Pazmiño Freire, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers this judgment, structured as follows:

[1] Judge Roberto F. Caldas, a Brazilian national, did not take part in the deliberation of this judgment, in accordance with Articles 19(2) of the Court's Statute and 19(1) of the Rules of Procedure.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On May 19, 2015, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Court the case of Cosme Rosa Genoveva, Evandro de Oliveira *et al.* (*Favela Nova Brasilia) against the Federative Republic of Brazil* (hereinafter "the State" or "Brazil"). The case refers to the deficiencies and delays in the investigation and punishment of those responsible for the presumed "extrajudicial execution of 26 persons during two police raids in Favela Nova Brasilia by the Civil Police of Río de Janeiro on October 18, 1994, and May 8, 1995." It is alleged that the police authorities justified these deaths by registering the incidents as "resisting arrest." In addition, it is alleged that, during the raid of October 18, 1994, one woman and two girls had been victims of torture and acts of sexual violence committed by police agents. Lastly, it is alleged that the investigation into the said acts had presumably been conducted with the aim of stigmatizing and revictimizing those who had died because it had focused on their guilt and not on verifying the legitimacy of the use of force.

2. *Procedure before the Commission.* The processing of the case by the Inter-American Commission was as follows:

a) *Petitions.* On November 3, 1995, and July 24, 1996, the Commission received petitions lodged by the Center for Justice and International Law (CEJIL) and Human Rights Watch Americas,[2] and assigned them case numbers 11,566 and 11,694.

b) *Admissibility Reports.* On September 25, 1998, and February 22, 2001, respectively, the Commission issued Admissibility Reports Nos. 11,566 and 11,694. Subsequently, when issuing its Merits Report, the Commission decided to joinder these two cases, assigning them the case number 11,566, and process them together under Article 29(1) of its Rules of Procedure, given that both cases relate to similar facts and appear to reveal the same pattern of conduct.

c) *Merits Report.* On October 31, 2011, the Commission issued Merits Report No. 141/11, pursuant to Article 50 of the American Convention (hereinafter "the Merits Report"), in which it reached a series of conclusions and made several recommendations to the State.

i) *Conclusions.* The Commission reached the conclusion that the State was internationally responsible for:

a. Violation of the rights recognized in Article 4(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Alberto dos Santos Ramos; Fabio Henrique Fernandes; Robson Genuino dos Santos; Adriano Silva Donato; Evandro de Oliveira; Sergio Mendes Oliveira; Ranilson José de Souza; Clemilson dos Santos Moura; Alexander Batista de Souza; Cosme Rosa Genoveva; Anderson Mendes; Eduardo Pinto da Silva; Anderson Abrantes da Silva; Marcio Felix; Alex Fonseca Costa; Jacques Douglas Melo Rodrigues; Renato Inacio da Silva; Ciro Pereira Dutra; Fabio Ribeiro Castor and Alex Sandro Alves dos Reis.

b. Violation of the rights recognized in Articles Articles 4(1) and 19 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of André Luiz Neri da Silva, Alex Vianna dos Santos, Alan Kardec Silva de Oliveira, Macmiller Faria Neves, Nilton Ramos de Oliveira Junior and Welington Silva.

[2] Subsequently, the Instituto de Estudos da Religião (ISER) was admitted as a representative in the proceedings before the Commission.

c. Violation of the rights recognized in Articles 5(2) and 11 of the American Convention, in relation to Article 1(1) of this instrument, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of L.R.J.

d. Violation of Articles 5(2), 11 and 19 of the American Convention, in relation to Article 1(1) of this instrument, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of C.S.S. and J.F.C.

e. Violation of Articles 5(1), 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the victims identified in paragraph 191 of the Merits Report.[3]

f. Violation of Articles 5(1), 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument and Article 7 of the Convention of Belém do Pará, to the detriment of L.R.J., C.S.S. and J.F.C.

ii) *Recommendations*. Consequently, the Commission made the following recommendations to the State:

a. Ensure that judicial authorities, who are independent of the police, conduct a thorough, impartial and effective investigation into the violations described in the Merits Report, within a reasonable time, in order to determine the truth and punish those responsible. The investigation should take into account the connections that exist between the human rights violations described in the Report and the pattern of excessive use of lethal force by the police. It should also consider the possible omissions, delays, negligence and obstruction of justice caused by State agents.

b. Adopt all necessary measures to ensure adequate and complete compensation for both the pecuniary and non-pecuniary damage arising from the violations described in the Report for L.R.J., C.S.S., J.F.C. and the victims named in paragraph 191 of the report.

c. Eliminate immediately the practice of automatically recording deaths perpetrated by the police as "resisting arrest."

d. Erradicate the impunity of police violence in general, adapting domestic laws, administrative regulations, procedures and operational plans of institutions with competence in public safety policies, in order to ensure that they are able to prevent, investigate and punish any human rights violation resulting from acts of violence committed by State agents.

e. Establish internal and external systems of control and accountability to enforce the obligation to investigate, with a gender and ethno-racial perspective, all cases in which law enforcement officials use lethal force and/or sexual violence, and reinforce the institutional capacity of independent oversight bodies, including forensic services, to tackle the pattern of impunity in cases of extrajudicial executions by the police.

[3] Otacilio Costa, Beatriz Fonseca Costa; Bruna Fonseca Costa; Pedro Marciano dos Reis, Hilda Alves dos Reis; Rosemary Alves dos Reis; Geraldo José da Silva Filho; Georgina Abrantes; Maria da Gloria Mendes; Paulo Cesar da Silva Porto; Valdemar da Silveira Dutra; Geni Pereira Dutra; Waldomiro Genoveva, Ofélia Rosa, Rosane da Silva Genoveva; the son of Cosme Rosa Genoveva; Daniel Paulino da Silva; Georgina Soares Pinto; Cesar Braga Castor, Vera Lucia Ribeiro Castor; "Michele"; the son of Fabio Ribeiro Castor; José Rodrigues do Nascimento, Dalvaci Melo Rodrigues, Mônica Rodrigues, Evelin Rodrigues, Pricila da Silva Rodrigues, Samuel da Silva Rodrigues, Lucas Abreu da Silva, Cecília Cristina do Nascimento Rodrigues, Adriana Melo Rodrigues; Roseleide Rodrigues do Nascimento; Paulo Roberto Felix; Nilton Ramos de Oliveira, Maria da Conceição Sampaio de Oliveira; Vinicius Ramos de Oliveira; Ronaldo Inacio da Silva, Shirley de Almeida; Catia Regina Almeida da Silva; Vera Lucia Jacinto da Silva; Norival Pinto Donato; Celia da Cruz Silva; Zeferino Marques de Oliveira, Aline da Silva; Efigenia Margarida Alves; Alcidez Ramos, Cirene dos Santos, "Graça", Thiago Ramos, Alberto Ramos, Maria das Graças Ramos da Silva, Rosiane dos Santos; Vera Lúcia dos Santos de Miranda; Diogo Vieira dos Santos, Helena Vianna, Adriana Vianna dos Santos, Sandro Vianna dos Santos; Alessandra Vianna dos Santos; João Batista de Souza; Josefa Maria de Souza; Lucia Helena Neri da Silva; Joyce Neri da Silva Dantas; João Alves de Moura; Eva Maria dos Santos Moura; Nilcéia de Oliveira; Valdenice Fernandes Vieira, Neuza Ribeiro Raymundo; Eliane Elene Fernandes Vieira; Edson Faria Neves, Edna Ribeiro Raimundo Neves; Mac Laine Faria Neves; Francisco José de Souza, Martinha Martino de Souza, Luiz Henrique de Souza; Ronald Marcos de Souza; José Francisco Sobrinho, Maria de Lourdes Genuino, Rogério Genuino dos Santos, Jucelena Rocha dos Santos; Robson Genuino dos Santos Júnior; Sergio Rosa Mendes, and Sonia Maria Mendes.

f. Implement plans to modernize and professionalize the police forces, ensuring accountability for past abuses by the expulsion of known perpetrators from the State's security forces, and other positions of authority, and the adaptation of their institutional philosophy so as to comply with international human rights standards and public safety principles.

g. Provide appropriate training to police personnel on how to deal, effectively and efficiently, with members of the most vulnerable sectors of society, including children, women and residents of *favelas*, seeking to overcome the stigma that all poor people are criminals.

h. Regulate by law, in both form and substance, police procedures that involve a legitimate use of force, expressly stipulating that this may only be used as a last resort, and that the use of force must be based on principles of exceptionality, necessity and proportionality. In this regard, the State must take into account, *inter alia*, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Basic Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

d) *Notification of the State.* The Merits Report was notified to the State on January 19, 2012, granting it two months to report on compliance with the recommendations. After 12 extensions had been accorded, the Commission determined that the State had not made any specific progress in complying with the recommendations.

3. *Submission to the Court.* On May 19, 2015, the Commission submitted the facts and human rights violations described in the Merits Report to the jurisdiction of the Court "owing to the need to obtain justice."[4] Specifically, the Commission submitted to the Court the acts and omissions of the State that occurred and continued to occur after December 10, 1998, the date on which the State accepted the Court's jurisdiction,[5] without prejudice to the possibility that the State may accept the Court's jurisdiction to examine the whole case, pursuant to the provisions of Article 62(2) of the Convention.

4. *The Inter-American Commission's requests.* Based on the above, the Inter-American Commission asked the Court to declare the international responsibility of Brazil for the violations contained in the Merits Report and to order the State, as measures of reparation, to comply with the recommendations included in that report (*supra* para. 2).

II
PROCEEDINGS BEFORE THE COURT

5. *Notification of the State and the representatives.* The Commission's submission of the case was notified to the State and the representatives on June 12, 2015.

6. *Brief with pleadings, motions and evidence.* On August 17, 2015, the representatives presented their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief") pursuant to Articles 25 and 40 of the Court's Rules of Procedure.[6] In this brief,

[4] The Inter-American Commission appointed Commissioner Felipe González and Executive Secretary Emilio Álvarez Icaza L. as delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, Executive Secretariat lawyer, as legal advisers.

[5] Those acts and omissions included: (1) The unsatisfactory way in which the investigations were conducted holding the dead victims responsible and failing to comply with the duty to verify the legitimacy of the use of lethal force; (2) Failure to comply with the obligations of due diligence and a reasonable time with regard to the investigation and punishment of the death of the 26 persons during the two police raids, and the acts of torture and sexual violence suffered by three victims during the first raid; (3) Omissions on reopening the investigations into the acts of torture and sexual violence regarding which a statute of limitations for a criminal action had come into effect despite the fact that these were egregious human rights violations.

[6] The representatives asked the Court to declare the international responsibility of the State based on: (1) the violation of the rights to judicial guarantees and judicial protection protected by Articles 25 and 8 of the Convention, in relation

the representatives agreed with the allegations made by the Commission and presented additional allegations with regard to the violation of Article 22(1) of the American Convention, in relation to Article 1(1) of this instrument to the detriment of L.R.J., C.S.S. and J.F.C. Also, through their representatives, the presumed victims requested access to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Legal Assistance Fund").

7. *Answering brief.* On November 9, 2015, the State presented its brief with preliminary objections, answering the submission of the case, and with observations on the brief with pleadings, motions and evidence (hereinafter "the answering brief")[7] pursuant to Article 41 of the Court's Rules of Procedure. The State filed seven preliminary objections and contested the alleged violations.

8. *Access to the Legal Assistance Fund.* In an order of the acting President of the Court for this case (hereinafter "the President") of December 3, 2015, the request filed by the presumed victims, through their representatives, to access the Legal Assistance Fund was declared admissible.[8]

9. *Observations on the preliminary objections.* On January 12, 2016, the representatives and the Commission presented their observations on the preliminary objections and asked the Court to reject them.

10. *Public hearing.* In orders of the President of the Court of August 4, 2016,[9] and September 16, 2016,[10] and the order of the Court of October 10, 2016,[11] the parties and the Commission were called to a public hearing on preliminary objections and eventual merits, reparations and costs, to receive the final oral arguments of the parties and observations of the Commission. Also, two presumed victims and three expert witnesses proposed by the representatives, the State, and the Commission were required to appear to present their statements. In addition, in the said orders, 18 presumed victims, one witness and 12 expert witnesses proposed by the parties and the Commission were required to forward their

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to Articles 1(1) and 2 of this instrument, to the detriment of the next of kin of the victims who died in relation to the facts of this case. The State's responsibility should be aggravated based on violations committed following the Commission's Merits Report, as well as for the actions that hindered the victims' right of access to international justice; (2) the violation of the right to personal integrity recognized in Article 5 of the Convention in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the direct victims; they asked that the responsibility should be considered aggravated owing to the suffering caused by the State following the Commission's Merits Report; (3) the violation of the rights to judicial protection, judicial guarantees and personal integrity established in Articles 25, 8 and 5 of the Convention, in relation to Articles 1(1) and 2 of the Convention and 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and Article 7 of the Convention of Belém do Pará, to the detriment of L.R.J., C.S.S and J.F.C., due to the impunity of the acts of sexual torture; they asked that this responsibility should be classified as aggravated in relation to the rights of the child (Article 19 of the Convention, in relation to Article 1(1) of this instrument), to the detriment of the girls C.S.S. (15 years) and J.F.C. (16 years), and (4) the violation of the obligation to ensure rights in relation to the right to freedom of movement and residence (Article 22(1) of the Convention, in relation to Article 1(1) of this instrument), to the detriment of L.R.J., C.S.S. and J.F.C.

[7] The State appointed Fernando Jacques de Magalhães Pimenta as its Agent for this case, and Pedro Marcos de Castro Saldanha, Bruna Mara Liso Gagliardi, Boni de Moraes Soares, Giordano da Silva Rosseto, Aline Alburquerque Sant' Anna de Oliveira, Rodrigo de Oliveira Morais, Luciana Peres, Felipe Derbli de Carvalho Baptista and Andrea Sepúlveda as deputy agents..

[8] *Cf. Case of Cosme Rosa Genoveva, Evandro de Oliveira et al. (Favela Nova Brasilia) v. Brazil*. Order of the acting President of the Inter-American Court of December 3, 2015. Available at: http://www.corteidh.or.cr/docs/asuntos/cosme_fv_15.pdf.

[9] Order of the acting President of the Inter-American Court of Human Rights of August 4, 2016, Available at: http://www.corteidh.or.cr/docs/asuntos/genoveva_04_08_16.pdf.

[10] Order of the acting President of the Inter-American Court of Human Rights of September 16, 2016, Available at: http://www.corteidh.or.cr/docs/asuntos/genoveva_16_09_16.pdf.

[11] Order of the Inter-American Court of Human Rights of October 10, 2016, Available at: http://www.corteidh.or.cr/docs/asuntos/genoveva_10_10_16.pdf.

statements by affidavit. The public hearing took place on October 12 and 13, 2016, during the fifty-sixth special session held in Quito, Ecuador.[12]

11. *Amici curiae.* The Court received four *amici curiae*, presented by: (1) the Office of the Brazilian Ombudsman[13] on the alarming levels of police violence against the poor Afro-descendant population in Brazil that violated several rights established in the American Convention and other instruments of the inter-American system; (2) the Human Rights Unit of the Pontifícia Universidade Católica do Rio de Janeiro[14] on the systematic pattern of sexual violence against women in Brazil; (3) the HEGOA Institute [Institute for International Cooperation and Development Studies], Universidad del País Vasco,[15] on the assessment of damages and measures of reparation in cases of sexual violence perpetrated by State agents in contexts of heightened vulnerability and cultural diversity; it also offered an analysis of the impact of sexual violence, the consequences of impunity for the victims, and the conditions to avoid their secondary victimization or revictimization in investigation and prosecution procedures, and (4) the Special Citizenship and Human Rights Unit of the Ombudsman's Office of the state of São Paulo[16] on the elements that reveal the existence of a pattern of human rights violations by the State, specifically through police violence and the excessive use of force.

12. *Final written arguments and observations.* On November 11, 2016, the representatives and the State forwarded their respective final written arguments, with annexes, and the Commission presented its final written observations.

13. *Observations of the parties and the Commission.* On November 15, 2016, the Court's Secretariat forwarded the annexes to the final written arguments and asked the State and the Commission to present any observations they deemed pertinent. In a communication of November 24, 2016, the State forwarded the observations requested. The Commission did not present observations.

14. *Disbursement in application of the Legal Assistance Fund.* On December 16, 2016, the Secretariat, on the instructions of the President of the Court, forwarded information to the State on the disbursement made in application of the Legal Assistance Fund in the instant case

[12] There appeared at this hearing: (a) for the Inter-American Commission: Commissioner Francisco Eguiguren Praeli and Executive Secretariat lawyer, Silvia Serrano Guzmán; (b) for the representatives of the presumed victims: Pedro Strozemberg, Antônio Pedro Belchior, Carolina Cooper, Viviana Krsticevic, Francisco Quintana, Alejandra Vicente, Beatriz Affonso, Helena Rocha, Erick Vieira and Elsa Meany, and (c) for the State: Pedro Murilo Ortega Terra, Boni Moraes Soares, Bruna Mara Liso Gagliardi and Luciana Peres.

[13] The brief was signed by Carlos Eduardo Barbosa Paz, Edson Rodrigues Marques, Pedro de Paula Lopes Almeida and Isabel Penido de Campos Machado. Regarding this brief, the State argued that the *amicus curiae* presented by the Office of the Brazilian Ombudsman undermined the *amicus curiae* mechanism, because the brief did not reflect an impartial technical analysis since it referred to the Court's temporal and material jurisdiction, the admissibility of the case, and the merits, as well as presenting requests. The Court observes that these issues are unfounded and, therefore, the said brief will be considered only to the extent that it provides the Court with "reasonings about the facts contained in the submission of the case or includes legal considerations on the subject-matter of the proceedings," as established in Article 2(3) of the Court's Rules of Procedure.

[14] The brief was signed by Márcia Nina Bernardes and Andrea Schettini.

[15] The brief was signed by Carlos Martín Beristain and Irantzu Mendia Azkue. Regarding this brief, the State alleged that the brief presented by the HEGOA Institute of the Universidad del País Vasco did not comply with Article 2(3) of the Court's Rules of Procedure because "one of the authors was invited to provide an expert opinion on the psychosocial impact of sexual violence on the victims." The Court will not take into consideration the brief presented as an *amicus curiae* by the HEGOA Institute because, indeed, one of its authors had been proposed as an expert witness by the representatives, a request that was rejected by the full Court. Also, the *amicus curiae* brief has the same purpose as the expert opinion offered by the representatives. Thus, the brief does not reflect a third party's interest in the proceedings; rather it appears to be an attempt to circumvent the full Court's decision not to accept the expert opinion proposed by the representatives.

[16] The brief was signed by Rafael Lessa Vieira de Sá Menezes, Carlos Weis, Davi Quintanilha Failde de Azevedo, Daniela Shromov de Albuquerque and Letícia Alves Bueno Pereira.

and, as indicated in article 5 of the Court's Rules for the Operation of the Fund, granted it a time frame for presenting any observations it considered pertinent. The State did not present observations within the time frame granted to this end.

15. *Supervening evidence*. On October 3, 2016, the representatives presented an annex as supervening documentary evidence.

16. *Deliberation of this case.* The Court began to deliberate this judgment on February 16, 2017.

III
JURISDICTION

17. The Inter-American Court has jurisdictionto hear this case under Article 62(3) of the Convention because Brazil has been a State Party to the American Convention since September 25, 1992, and accepted the contentious jurisdiction of the Court on December 10, 1998, without prejudice to the considerations analyzed in the following chapter.

IV
PRELIMINARY OBJECTIONS

18. In its answering brief, the State filed seven preliminary objections concerning: **A**. Inadmissibility of the case by the Court owing to the Commission's publication of the Merits Report; **B.** Lack of jurisdiction *ratione personae* with regard to victims who have not been identified or who are not represented; **C.** Lack of jurisdiction *ratione temporis* with regard to facts prior to the date of acceptance of the Court's jurisdiction and to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará); **D.** Lack of jurisdiction *ratione materiae* owing to violation of the principle of the subsidiarity of the inter-American system (fourth instance doctrine); **E.** Lack of jurisdiction *ratione materiae* with regard to supposed violations of human rights established in the Inter-American Convention to Prevent and Punish Torture, and the Convention of Belém do Pará; **F.** Failure to exhaust domestic remedies, and **G.** Failure to respect a reasonable time to submit to the Court the request for a criminal investigation.

19. To decide the objections filed by the State, the Court recalls that it will consider as preliminary objections, only and exclusively those arguments that have, or could have, this nature based on their content and purpose. In other words, if they were decided favorably, this would prevent the Court from continuing the proceedings and ruling on the merits.[17] It has been the Court's consistent criterion that a preliminary objection must present objections to the admissibility of a case or to its jurisdiction to examine a specific matter or part of it, due to either the person, matter, time or place.[18]

20. The Court will now examine these preliminary objections in the order in which the State presented them.

A. Inadmissibility of the case owing to the Commission's publication of the Merits Report

[17] *Cf. Case of Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 35, and *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of October 20, 2016. Series C No. 318, para. 18.

[18] *Cf. Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000, Series C No. 67, para. 34, and *Case of the Hacienda Brasil Verde Workers,* para. 18.

A.1. Arguments of the State, observations of the Commission and the representatives

21. The ***State*** indicated that the publication of Merits Report No. 141/11 of January 31, 2011, before submitting the case to the Court, violated Article 51 of the American Convention, because that article clearly authorized the Commission to issue the final report and, eventually, to publish it or to submit the case to the Court's jurisdiction but, in no way authorized it to publish the Report before submitting the case to the Court. Therefore, the State asked the Court to declare that the Commission had violated Articles 50 and 51 of the Convention and require it to remove the said report from its website.

22. The ***Commission*** observed that the State's argument did not constitute a preliminary objection, because it did not refer to matters of jurisdiction or to the admissibility requirements established in the Convention. It also indicated that the report issued under Article 50 of the American Convention constituted a preliminary report of a confidential nature that could result in two actions: the submission of the case to the Inter-American Court or its eventual publication. In the instant case, following the submission of the case to the Court, the Commission published the Final Report, an action that did not violate the Convention. Lastly, the Commission indicated that the State had not presented any evidence concerning this supposed undue publication.

23. The ***representatives*** indicated that the request to consider the case inadmissible based on the publication of the Merits Report did not constitute a preliminary objection; therefore, the Court should not examine it. They noted that, when raising an objection on this point, the State had failed to present any argument that would result in the possibility of excluding the Court's jurisdiction. They added that the Court had the authority to conduct a control of the legality of the Commission's actions whenever it had committed a serious error that might violate the right of defense of the parties. In that case, the party affirming the irregularity had to prove that it has been prejudiced, so that it was not sufficient to merely present a complaint or disagreement of opinion in relation to the Commission's actions.

A.2. Considerations of the Court

24. It has been the consistent interpretation of this Court that Articles 50 and 51 of the Convention refer to two different types of report; the first identified as a preliminary report and the second as the final report, so that each one corresponds to different stages.[19]

25. The preliminary report responds to the first stage of the procedure and is established in Article 50 of the Convention, which stipulates that, "if a settlement is not reached, the Commission shall [...] draw up a report setting forth the facts and stating its conclusions," and this will be forwarded to the State concerned. This document is of a preliminary nature; accordingly, it is forwarded to the State confidentially so that the State may adopt the Commission's proposals and recommendations and resolve the problem described. The fact that the document is preliminary and confidential means that the State is not authorized to publish it; therefore, based on the principles of equality and procedural balance between the parties, it is reasonable to consider that, neither legally nor substantially, may the Commission publish this preliminary report.[20]

26. The Court points out that once three months have passed, and the State to which the preliminary report was sent has not resolved the matter based on the proposals made therein,

[19] *Cf. Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights),* Advisory Opinion OC to 13/93, July 16, 1993. Series A No. 13, para. 53.

[20] *Cf. Advisory Opinion OC to 13/93*, para. 48.

the Commission may decide to present the case to the Court by submitting the report established in Article 50 of the Convention, or publish the report pursuant to Article 51.[21]

27. Accordingly, the report established in Article 50 may be published, provided this happens after the case has been submitted to the Court. This is because, at that stage of the procedure, the State is aware of its contents and has had the opportunity to comply with the recommendations. Thus, it cannot be considered that the principle of procedural balance between the parties has been violated. This has been the Commission's consistent practice for many years; particularly since the amendment of its Rules of Procedure in 2009.

28. In the instant case, the State has argued that the Commission published Report No. 141/2011 on its website prior to forwarding it to the Court. In this regard, the Court notes that the State cites an electronic link with access dated October 23, 2015; that is, after the case had been submitted to the Court on May 19, 2015. The State has not proved its assertion that the Merits Report in this case was published in a way that differed from that described by the Commission or contrary to the provisions of the American Convention.

29. Consequently, the Court considers that the State's argument is inadmissible.

B. Alleged lack of jurisdiction **ratione personae** *with regard to some presumed victims*

B.1. Arguments of the State, observations of the Commission and the representatives

30. The ***State*** argued that the petitioners had presented 38 powers of attorney of next of kin of presumed victims identified in Report No. 141/11. In some cases, there were inconsistencies between the names listed in that report and in the pleadings and motions brief and, in some cases, it was not possible to prove the relationship between the individual represented and the presumed victims. It added that the Court should examine the alleged facts in relation to the victims who were duly represented before the Court and listed in Report No. 141/11 (the State listed the names of presumed victims who it considered were duly identified or represented[22] and those where it considered that inconsistencies existed[23]).

[21] *Cf. Case of the Hacienda Brasil Verde Workers,* paras. 25 to 27.

[22] Next of kin of Alberto dos Santos Ramos: Vera Lucia Santos de Miranda (sister); Next of kin of Alex Vianna dos Santos: Helena Vianna (mother); Adriana Vianna dos Santos (sister); Alessandra Viana Vieira (mother); Next of kin of Andre Luiz Neri da Silva: Joyce Neri da Silva Dantas (sister); Next of kin of Clemilson dos Santos Moura: João Alves de Moura (father); Eva Maria dos Santos Moura (mother); Next of kin of Macmiller Faria Neces: Edson Faria Neves (father); Mac Laine Faria Neves (sister); Next of kin of Robson Genuino dos Santos: Robson Genuino dos Santos Junior [son]; Rogerio Genuino dos Santos (brother); supposed victim L.R.J.; Next of kin of Alex Fonseca Costa: Otacilio Costa (father); Beatriz Fonseca Costa (mother); Bruna Fonseca Costa (sister); Next of kin of Ciro Pereira Dutra: Geni Pereira Dutra (mother); Next of kin of Cosme Rosa Genoveva: Ocelia Rosa (mother); Rosane da Silva Genoveva (wife); Diego da Silva Genoveva (son); Next of kin of Fabio Ribeiro Castor: Cesar Braga Castor (father); Vera Lucia Ribeiro Castor (mother); William Mariano dos Santos (son); Next of kin of Jacques Duglas Melo Rodrigues: Dalvaci Melo Rodrigues (mother); Monica Santos de Souza Rodrigues (wife); Evelyn Santos de Souza Rodrigues (daughter), Adriana Melo Rodrigues (sister); Rosileide Rodrigues do Nascimento (sister); Cecilia Cristina do Nascimento Rodrigues (sister); Next of kin of Renato Inacio da Silva: Shirley de Almeida (mother), Catia Regina Almeida da Silva (sister).

[23] Maria das Graças da Silva (supposed companion of Alberto dos Santos Ramos): the representatives did not present any evidence of the affective relationship between Maria das Graças da Silva and the victim; Thiago da Silva (supposed son of Alberto dos Santos Ramos): there is no document establishing the family relationship; Alberto da Silva (supposed son of Alberto dos Santos Ramos): there is no document establishing the relationship; Roseane dos Santos (supposed sister of Alberto dos Santos Ramos): the name of the parents is absent so the relationship cannot be established; Jucelena Rocha dos Santos Ribeiro de Souza (supposed companion of Robson Genuino dos Santos): there is no document establishing the union with the supposed victim; Michelle Mariano dos Santos (supposed companion of Fabio Ribeiro Castor): there is no evidence of the union with the victim; Pricila da Silva Rodrigues (supposed companion of Jacques Douglas Melo Rodrigues): there is no evidence of the union with the victim; Samuel da Silva Rodrigues (supposed son of Jaques Douglas Melo Rodrigues): there is no evidence of the relationship.

31. The State also argued that the representatives should present the power of attorney granted by the person it represents or their next of kin, which should contain a clear indication of intention, identify the person to whom the power is given, and indicate precisely the purpose of the representation. It noted that, even though the representatives had met the minimum requirements required by the Court, problems persisted in relation to the identification of some supposed victims who were represented and that this lack of certitude gave rise to legal uncertainty.

32. The ***Commission*** indicated that matters relating to the identification of the presumed victims in a case did not constitute a preliminary objections. It recalled that in its Merits Report it had identified both the 26 victims killed extrajudicially and the three victims of sexual violence, as well as the 82 next of kin of the victims. It noted that, even though Article 35(1) of the Rules of Procedure determined that report should identify the victims, that rule was not absolute, because Article 35(2) indicated the existence of special situations in which this was not possible. It added that, according to Article 44 of the American Convention, the fact that a person has not given a power of attorney cannot be a reason for that person not to be identified and declared as a victim in an individual case. Lastly, it considered that it was for the Inter-American Court to determine whether it understood that the victims who had not granted a power of attorney were reasonably represented by the actual representatives or whether, at subsequent stages of the proceedings, it would be necessary to take a decision to resolve the issue of their representation by recommending the intervention of an inter-American public defender.

33. The ***representatives*** asserted that the inconsistencies regarding the names of the victims included in the Merits Report and the pleadings and motions brief did not constitute a preliminary objection *per se*, but rather a matter relating to the merits.[24] They argued that the Court's standard to identify a victim was that "he should be reasonably identified," which had been fully complied with in this case. In addition, they recalled the Court's consistent case law which considered that those victims referred to in a document issued by a competent authority, such as a birth certificate or official family record book presented to the Court were adequately identified. In addition, they indicated that the Court should take into account that, in this case, they had provided the official documents issued by Brazilian public bodies of most of the victims. Even though some of those documents contained deficiencies, these could be attributed to the State, which could not argue its own negligence to exclude the victims.

34. The representatives also indicated that it was not possible to identify some supposed victims of the facts, since the case referred to mass violations of a group. They indicated that the Court had applied this exception in several cases in which it had not been possible to individualize the victims owing, among other matters, to the nature of the violations. Lastly, they considered that owing to: (a) the time that had elapsed since the facts; (b) the collective nature of the violations, and (c) other contextual factors, Article 35(2) of the Rules of Procedure should be applied.

B.2. Considerations of the Court

35. The Court notes that the State has presented several objections to the list of 38 powers of attorney of presumed victims indicated in the Merits Report, and considered that only 30 presumed victims were identified, mentioned in that report, and duly represented.

[24] *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 282, para. 77.

36. Regarding the identification of the presumed victims, the Court recalls that Article 35(1) of its Rules of Procedure establishes that the case shall be presented by submission of the Merits Report, which must identify the presumed victims. Therefore, it is for the Commission to identify the presumed victims in a case before the Court precisely and at the proper procedural moment.[25] Consequently, new presumed victims cannot be added following the Merits Report, save in the exceptional circumstances contemplated in Article 35(2) of the Court's Rules of Procedure, according to which, when it can be justified that it has not been possible to identify some presumed victims of the facts of the case, because this relates to mass or collective violations, the Court shall decide, at the appropriate moment, whether to consider them victims based on the nature of the violation.[26]

37. Accordingly, the Court has evaluated the application of Article 35(2) of the Rules of Procedure based on the particular characteristics of each case,[27] and has applied it in mass or collective cases with difficulties to identify or contact all the presumed victims; for example, owing to the presence of armed conflict,[28] displacement,[29] or when the bodies of the presumed victims have been burned,[30] or in cases in which entire families have been disappeared so that no one could speak for them.[31] It has also taken into account the difficulty of accessing the area where the facts occurred,[32] the failure to register the inhabitants of the place,[33] and the

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[25] *Cf. Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*, para. 23.

[26] *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 48, and *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 50.

[27] It is worth noting that the Court has applied Article 35(2) of its Rules of Procedure in the following cases: *Case of the Río Negro Massacres v. Guatemala*. *Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012 Series C No. 250; *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251; *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012. Series C No. 252; *Case of the Afro-descendant Communities displaced from the Rio Cacarica Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2013. Series C No. 270; *Case of the Campesina Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299; *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of October 20, 2016. Series C No. 318, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 328. However, it rejected its application in the following cases: *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C No. 234; *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 283; *Case of García and family members v. Guatemala. Merits, reparations and costs*. Judgment of November 29, 2012. Series C No. 258; *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261; *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275; *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 14, 2014. Series C No. 285, and *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 288; *Case of Canales Huapaya et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of June 24, 2015. Series C No. 296; *Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2016. Series C No. 315, and *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329.

[28] *Cf. Case of the Río Negro Massacres v. Guatemala*, para. 48, and *Case of the Afro-descendant Communities displaced from the Rio Cacarica Basin (Operation Genesis)*, para. 41.

[29] *Cf. Case of Nadege Dorzema et al. v. Dominican Republic*, para. 30, and *Case of the Afro-descendant Communities displaced from the Rio Cacarica Basin (Operation Genesis)*, para. 41.

[30] *Cf. Case of the Massacres of El Mozote and neighboring places v. El Salvador*, para. 50.

[31] *Cf. Case of the Río Negro Massacres v. Guatemala*, para. 48.

[32] *Cf. Case of the Afro-descendant Communities displaced from the Rio Cacarica Basin (Operation Genesis)*, para. 41.

[33] *Cf. Case of the Massacres of El Mozote and neighboring places*, para. 50, and *Case of the Río Negro Massacres*, para. 48.

passage of time,[34] as well as specific characteristics of the presumed victims in the case; for example, when they are part of family clans with similar first and last names,[35] or in the case of migrants.[36] The Court has also considered the conduct of the State; for example, when it is argued that the absence of investigation contributed to the incomplete identification of the presumed victims,[37] and in a case of slavery.[38]

38. In the instant case, the Court notes that 26 deceased victims and three victims of sexual violence and rape were identified. However, problems existed in the identification of the presumed family members of some of the victims that could be justified owing to: (i) the context of the case; (ii) the collective nature of the human rights violations; (iii) the lack of identity documents; (iv) the 22 years that have passed since the first raid, and (v) some registration omissions that can be attributed to the State.

39. The Court considers that the representatives' arguments concerning the context, the collective violation, and the passage of time since the raids in 1994 and 1995 cannot be considered sufficient to apply the exception established in Article 35(2) of the Court's Rules of Procedure.

40. Regarding the nature of the violations, this case refers to the supposed violation of the rights to judicial guarantees and judicial protection and not to the extrajudicial executions and rape committed by public officials. The fact that the 1994 and 1995 raids resulted in the death of 26 individuals and the rape of three women has been accepted by the State, However, this does not exempt the representatives from identifying the next of kin of those victims, who, in their own right, would be presumed victims of violations of Articles 8 and 25 of the American Convention. It is inexcusable that 22 years after the facts took place and, following 21 years of the procedure before the Commission, it was only when presenting their pleadings and motions brief that the representatives submitted a more complete list of the next of kin. The fact that the procedure before the Commission took so long should have allowed them to gather this information and present it promptly to the Commission. In addition, the instant case does not reveal difficulties of such consequence that they could prevent, at the very least, the identification of the next of kin of those who died in 1994 and 1995. Based on the foregoing, the Court partially admits the State's preliminary objection and will consider as presumed victims in this case only the persons identified and listed in the Merits Report of the Inter-American Commission.

41. Nevertheless, the Court considers that the presumed victims' next of kin are reasonably represented by CEJIL and ISER; therefore, it does not admit the State's objection *rationae personae* regarding the supposed failure to grant powers of attorney to the representatives.

42. Lastly, the Court rejects the preliminary objection related to the supposed absence of a relationship to the facts of the case of some presumed victims, because this issue relates to the merits of the matter.

C. Lack of jurisdiction **ratione temporis** *with regard to facts prior to the date of acceptance of the Court's jurisdiction and to the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention for the Prevention,*

[34] *Cf. Case of the Río Negro Massacres*, para. 51, and *Case of the Afro-descendant Communities displaced from the Rio Cacarica Basin (Operation Genesis)*, para. 41.

[35] *Cf. Case of the Río Negro Massacres*, para. 48.

[36] *Cf. Case of Nadege Dorzema et al.*, para. 30.

[37] *Cf. Case of the Río Negro Massacres*, para. 48, and *Case of the Massacres of El Mozote and neighboring places*, para. 50.

[38] *Cf. Case of the Hacienda Brasil Verde Workers*, para. 48.

Punishment and Eradication of Violence against Women (Convention of Belém do Pará)

C.1. Arguments of the State, observations of the Commission and the representatives

43. The ***State*** indicated that it had officially acceded to the American Convention in 1992, and accepted the Court's jurisdiction on December 10, 1998. Therefore, the Court could only hear cases initiated after this acceptance. It indicated that the presumed violations of the American Convention on Human Rights, the Convention to Prevent and Punish Torture, and the Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) should be examined within the framework of the Brazilian State's declaration of acceptance of the Court's jurisdiction, considering that the acts denounced had instantaneous effects and the Court did not have jurisdiction *ratione temporis* to examine acts prior to December 10, 1998. It added that the interpretation made by the Commission and the representatives failed to take state sovereignty into consideration and violated the special system of declarations limiting the Court's temporal jurisdiction established in Article 62(2) of the American Convention.

44. According to the State, the lack of jurisdiction *ratione temporis* was more evident in relation to the Convention of Belém do Pará because the supposed crime of sexual violence had been committed on October 18, 1994, while the State had ratified that Convention on November 27, 1995, and it had entered into force on December 27, 1995. Therefore, applying this Convention to the case would entail a violation of the principle of non-retroactivity of treaties.

45. In addition, the State indicated that the representatives' allegation of the State's responsibility for the presumed continuing violation of judicial protection and judicial guarantees should be examined as of December 10, 1998, with regard to activities related to specific and autonomous violations of denial of justice, and not those initiated prior to that date.

46. The ***Commission*** stressed that it had been explicit that it was submitting the facts subsequent to December 10, 1998, to the consideration of the Inter-American Court. It pointed out that the Court understood that it had jurisdiction to rule on those possible independent violations that might have occurred during a judicial proceeding, even when this might have started before its jurisdiction was accepted. Also, in the case of temporal jurisdiction in relation to the Inter-American Convention to Prevent and Punish Torture and the Convention of Belém do Pará, the Commission reiterated that the violations of these instruments related to the obligation to investigate acts of torture and acts of violence against women under Articles 8 and 25 of the American Convention.

47. Regarding the investigations into the extrajudicial executions, the Commission considered that some deficiencies and irregularities occurred before the acceptance of the Court's jurisdiction, but the State had failed to rectify them after December 10, 1998. It also underscored that the State had failed to comply with the guarantee of a reasonable time.

48. The ***representatives*** indicated that, on several occasions, the Court had established that it had jurisdiction to examine facts that had commenced before States had accepted its jurisdiction and that subsisted or remained following that date. They indicated that they were aware of the temporal limit of the acceptance of the Court's jurisdiction by Brazil, and had therefore alleged violations in the actions of the authorities that had occurred and that persisted following December 10, 1998. They pointed out that the authorities had not been diligent in investigating the crimes, including in the investigations after December 10, 1998.

Consequently, they asked the Court not to consider the preliminary objection filed by the State.

C.2. Considerations of the Court

49. Brazil accepted the Inter-American Court's contentious jurisdiction on December 10, 1998, and in its declaration indicated that the Court would have jurisdiction for "matters arising after the time of th[at] declaration."[39] Based on this declaration and on the principle of non-retroactivity, the Court may not exercise its contentious jurisdiction to apply the Convention and to declare a violation of its provisions when the alleged acts, or the State's conduct that could engage its international responsibility, precede this acceptance of jurisdiction.[40] Consequently, the facts that occurred before Brazil accepted the Court's contentious jurisdiction fall outside the Court's jurisdiction.

50. However, the Court is able to examine and rule on the other alleged violations that occurred as of December 10, 1998. Accordingly, the Court has jurisdiction to examine the State's supposed acts and omissions that took place in the investigations and proceedings with regard to the 1994 and 1995 police raids that took place following Brazil's acceptance of the Court's contentious jurisdiction. The Court's analysis of alleged violations of the American Convention, the Inter-American Convention to Prevent and Punish Torture and the Convention of Belém do Pará will also be made with regard to facts that took place after December 10, 1998.

51. Based on the foregoing, the Court reaffirms its consistent case law on this issue and finds that the preliminary objection is partially substantiated.

D. Lack of jurisdiction ratione materiae owing to violation of the principle of the subsidiarity of the inter-American system

D.1. Arguments of the State, observations of the Commission and the representatives

52. The ***State*** argued that neither the Commission nor the Court have competence to assume the role of the domestic authorities and to act as a kind of appellate court of fourth instance in relation to internal decisions. It indicated that both Mônica Santos de Souza Rodrigues and Evelyn Santos de Souza Rodrigues had filed a claim for non-pecuniary damages against the state of Rio de Janeiro in order to obtain compensation for the death of a family member. This action had been declared inadmissible, owing to a statute of limitations on the action, to the detriment of Mônica Santos de Souza Rodrigues, because it had been filed after the reasonable time established in the laws of Brazil had expired. In the case of Evelyn Santos de Souza Rodrigues, it had been established that there was no causal nexus between the State's conduct and the harm suffered. Even though the action filed was declared inadmissible in first instance, the decision was not appealed before the Court of Justice as established in article 513 of the Code of Civil Procedure. The State argued that the presumed victims did not avail themselves of the right to appeal the decision and that, if the State were eventually

[39] The acceptance of jurisdiction declared by Brazil on December 10, 1998, indicates that: "[t]he Government of the Federative Republic of Brazil declares its recognition as binding, for an indefinite period of time, *ipso jure*, of the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the American Convention on Human Rights, according to Article 62 of that Convention, on the condition of reciprocity, and for matters arising after the time of this declaration." *Cf.* American Convention on Human Rights. Brazil, recognition of competence. Available at https://www.IACHR.oas.org/basicos/english/Basic4.Amer.Conv.Ratif.htm.

[40] *Cf. Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2010. Series C No. 219, para. 16.

sentenced to pay reparation, that would involve a violation of the principle of the subsidiarity of the inter-American system of human rights.

53. The ***Commission*** indicated that the State had based its arguments on the presumption that the domestic proceedings had not violated human rights, when it was precisely this issue that would be discussed when examining the merits of the matter. It also asserted that, pursuant to Article 63(1) of the American Convention, the Court must establish reparations without this being conditioned by the existence of domestic decisions in this regard,

54. The ***representatives*** added that, in the Court's understanding, for the fourth instance objection to be admissible, it would be necessary that the petitioners requested the Court to review the ruling of a domestic court owing to its incorrect assessment of the evidence, the facts or domestic law. In the instant case, they affirmed that they were not seeking a review of the domestic decisions on actions filed by Mônica Santos de Souza Rodrigues and Evelyn Santos de Souza Rodrigues, but a ruling on the violation of the State's obligation to offer effective judicial protection and judicial guarantees, which constitute specific violations of the American Convention on Human Rights and other inter-American treaties ratified by the State.

D.2 Considerations of the Court

55. The Court has established that the purpose of the international jurisdiction is reinforcing or complemtary,[41] and, therefore, it does not play the role of a court of "fourth instance" and is not a higher or appellate court to resolve the parties' disagreements concerning matters relating to the assessment of evidence or the application of domestic law on issues that are not directly related to compliance with international human rights obligations.[42]

56. The Court has also established that, for a fourth instance objection to the admissible, "it is necessary that the petitioner seek for the Court to review the ruling of a domestic court due to its incorrect assessment of the evidence, the facts or domestic law without, at the same time, alleging that the said ruling violated international treaties for which the Court has jurisdiction."[43] The Court has also established that, when evaluating compliance with certain international obligations, there may be an intrinsic interrelationship between the analysis of international law and domestic law. Therefore, the determination of whether the actions of judicial bodies constitute a violation of the State's international obligations may result in the Court having to examine the respective domestic proceedings to establish their compatibiulity with the American Convention.[44]

57. In the instant case, neither the Commission nor the representatives have asked the Court to review internal decisions relating to the assessment of the evidence or the facts, or the application of domestic law. The Court considers that one of the purposes of the

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[41] The preamble to the American Convention asserts that the international protection should "reinforc[e] or complement the protection provided by the domestic law of the American States." See also, *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights,* Advisory Opinion OC to 2/82, September 24, 1982. Series A No. 2, para 31; *The Word "Laws " in Article 30 of the American Convention on Human Rights,* Advisory Opinion OC to 6/86, May 9, 1986. Series A No. 6, para. 26; *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 61.

[42] *Cf. Case of García Ibarra et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 17, 2015. Series C No. 306, paras. 17 to 22; *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 16; and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of June 22, 2015. Series C No. 293, para. 174.

[43] *Case of Cabrera García and Montiel Flores*, para. 18, and *Case of the Hacienda Brasil Verde Workers*, para. 73.

[44] *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 22.

examination of the merits is to analyze the arguments on whether the domestic judicial proceedings were suitable and effective and whether the remedies were processed and decided appropriately.

58. Consequently, the Court rejects this preliminary objection.

E. Lack of jurisdiction **ratione materiae** *with regard to supposed violations of human rights established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*

E.1 Arguments of the State, observations of the Commission and the representatives

59. The ***State*** argued that the Court does not have jurisdiction to analyze the case in relation to supposed violations of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (ICPPT) because Articles 33 and 62 of the American Convention limit the Court's contentious jurisdiction. This is because Article 8 of the ICPPT establishes that the case may be submitted to the international courts after all the domestic remedies of the respective State have been exhausted. Thus, the Court would only have jurisdiction to analyze the supposed violations of the said treaty to the extent that the State has expressly accepted its contentious jurisdiction.

60. The State also argued the Court's lack of jurisdiction with regard to the presumed violation of the Convention of Belém do Pará because it does not grant contentious jurisdiction to the Court, since its Article 12 is clear in only authorizing the Commission to analyze any violations.

61. The ***Commission*** indicated that, in numerous cases, the Court has identified the situations in which it is pertinent to apply Articles 1, 6 and 8 of the ICPPT in order to establish the scope of the State's responsibility in cases relating to the failure to investigate acts of torture. In this context, both the Commission and the Court have declared violations of those articles in the understanding that Article 8(3) of the ICPPT includes a general clause on the competence accepted by the States when acceding to or ratifying this instrument. It considered that there was no reason for the Court to diverge from its consistent criteria, which accords with international law.

62. The Commission also indicated that the application of Article 7 of the Convention of Belém do Pará was pertinent in order to establish the scope of state responsibility in cases relating to the failure to investigate acts of violence against women. It noted that, in previous cases, the Court had applied Article 7(b) of the Convention of Belém do Pará directly and referred specifically to its substantive jurisdiction and the scope of the clause on jurisdiction in Article 12 of that instrument. The Commission considered that there was no reason for the Court to diverge from its consistent criteria, which accords with international law.

63. The ***representatives*** reiterated that the Court's case law has determined that the inter-American human rights treaties do not need to contain a specific provision granting competence to the Court, provided they establish a system of petitions subject to international oversight at the regional level. They indicated that the Court had reiterated that it had jurisdiction to interpret and to apply the ICPPT and had established that Article 12 of the Convention of Belém do Pará grants the Court competence in the case of a violation of Article 7 of that Convention by a State party.

E.2. Considerations of the Court

64. It is pertinent to recall that, in response to the argument made by some States that each inter-American treaty requires a specific declaration granting the Court jurisdiction, the Court has determined that it is able to exercise its contentious jurisdiction with regard to inter-American instruments other than the American Convention when they establish a system of petitions subject to international oversight at the regional level.[45] Therefore, the special declaration of acceptance of the Court's contentious jurisdiction according to the American Convention and pursuant to Article 62 of this instrument allows the Court to examine violations of both the Convention and other inter-American instruments that grant it jurisdiction.[46]

65. Even though Article 8 of the Convention against Torture[47] does not explicitly mention the Inter-American Court, this Court has referred to its competence to interpret and to apply that Convention based on supplementary means of interpretation, which are the preparatory works, in view of the possible ambiguity of that article.[48] Thus, in its judgment in the *Case of Villagrán Morales et al. v. Guatemala*, the Court referred to the historical reason for this article, which was that, when drafting the Convention against Torture, there were still some members of the Organization of American States who were not Parties to the American Convention; it indicated that the inclusion of a general clause on jurisdiction that did not make explicit and exclusive reference to the Inter-American Court opened the way to a greater number of States ratifying or acceding to the Convention against Torture. When adopting that Convention, it was considered important to attribute competence to apply the Convention against Torture to an international body, either an existing commission, committee or court or one created in the future.[49] Accordingly, the Commission, and consequently the Court, has competence to examine and declare violations of that Convention.

66. Based on the above considerations, the Court reiterates its consistent case law[50] to the effect that it has jurisdiction to interpret and to apply the Convention against Torture and to declare the responsibility of a State that has consented to be bound by that Convention, and has also accepted the jurisdiction of the Inter-American Court of Human Rights. In this understanding, the Court has had occasion to apply the Convention against Torture and assess the responsibility of various States owing to its alleged violation in more than 40 contentious cases.[51] Given that Brazil is a Party to the Convention against Torture and has recognized this

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[45] *Cf. Case of Las Palmeras v. Colombia. Preliminary objections*, para. 34, and *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 37.

[46] *Cf. Case of González et al. ("Cotton Field")*, para. 37.

[47] Regarding the competence to apply the Convention, this article establishes that "[a]fter all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State" to which the violation of this treaty has been attributed.

[48] *Cf. Case of González et al. ("Cotton Field"),* para. 51.

[49] *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, paras. 247 and 248, and *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 10, 2007. Series C No. 167, footnote 6.

[50] *Cf. Case of the "Street Children" (Villagrán Morales et al.)*. Merits, paras. 247 and 248; *Case of González et al. ("Cotton Field")*, para. 51; *Case of Las Palmeras*, para. 34, and *Case of Cantoral Huamaní and García Santa Cruz*, footnote 6.

[51] The Court has applied the Convention against Torture in the following cases: *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 136; *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, paras. 248 to 252; *Case of Cantoral Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69, paras. 185 and 186; *Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000. Series C No. 67, footnote 3; *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, paras. 218 and 219; *Case of Maritza Urrutia v. Guatemala. Merits, reparations and costs*. Judgment of November 27, 2003. Series C No. 103, para. 98; *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, paras. 117 and 156; *Case of Tibi v. Ecuador*. Preliminary objections, merits, reparations and costs. Judgment of September 7, 2004. Series C No. 114, para. 159; *Case of Gutiérrez Soler v. Colombia. Merits, reparations and costs*. Judgment of September 12, 2005. Series C No. 132, para. 54; *Case of*

Court's contentious jurisdiction, the Court has jurisdiction *ratione materiae* to rule in this case on the alleged responsibility of the State for violating that instrument.

67. Brazil ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women on November 16, 1995, without reservations or limitations. Article 12 of this treaty indicates the possibility of lodging "petitions" with the Commission with "denunciations or complaints of violations of [its] Article 7," establishing that "the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statute and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions." As the Court has repeatedly indicated in its case law, "it appears clear that the literal meaning of Article 12 of the Convention of Belém do Pará grants competence to the Court, by not excluding from its application any of the procedural norms and requirements for individual

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Blanco Romero et al. v. Venezuela. Merits, reparations and costs. Judgment of November 28, 2005. Series C No. 138, para. 61; *Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 162; *Case of Vargas Areco v. Paraguay. Merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 155, para. 86; *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 266; *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 10, 2007. Series C No. 167, footnote 6; *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of August 12, 2008. Series C No. 186, para. 53; *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 89; *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 54; *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 51; *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 131; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216; para. 174; *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2010. Series C No. 218, paras. 230 and 245; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, para. 182; *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, paras. 23, 137, 192 and 193; *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 18; *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229, paras. 30, 90 and 139; *Case of the Barrios Family v. Venezuela. Merits, reparations and costs. Judgment of November 24, 2011. Series C No. 237,* paras. 10 and 260; *Case of González Medina and family v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2013. Series C No. 240 paras. 47 and 62; *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, paras. 16 and 262; *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012 Series C No. 252, paras. 29, 246, 252 and 301; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 330; *Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations.* Judgment of May 14, 2013. Series C No. 260, paras. 50, 210, 236 and 343; *Case of García Lucero et al. v. Chile. Preliminary objections, merits and reparations.* Judgment of August 28, 2013. Series C No. 267 para. 138; *Case of the Afro-descendant Communities displaced from the Rio Cacarica Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2013. Series C No. 270, para. 16; *Case of García Cruz and Sánchez Silvestre v. Mexico. Merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 273, paras. 21, 25 and 70; *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 37; *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, paras. 437, 476 and 513; *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, paras. 18 and 196; *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297, para. 188; *Case of the Campesino Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2015. Series C No. 299, para. 269; *Case of Omar Humberto Maldonado Vargas et al. v. Chile. Merits, reparations and costs.* Judgment of September 2, 2015. Series C No. 300, paras. 177 and 178; *Case of Quispialaya Vilcapoma v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2015. Series C No. 308, para. 129; *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2016. Series C No. 317 paras. 18 and 103; *Case of Pollo Rivera et al. v. Peru. Merits, reparations and costs*. Judgment of October 21, 2016. Series C No. 319, para. 153, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of November 30, 2016. Series C No. Judgment of November 30, 2016. Series C No. 328, para. 215.

petitions."[52] The Court finds no evidence that would justify diverging from its case law. Therefore, it rejects the preliminary objection of lack of jurisdiction filed by the State.

F. Failure to exhaust domestic remedies

F.1 Arguments of the State, observations of the Commission and the representatives

68. The ***State*** rejected the Commission's allegation that it had not made explicit mention of the exhaustion of domestic remedies, which had allegedly resulted in the tacit waiver of its right to file this objection when submitting its answering brief. In the State's opinion, form cannot prevail over substance and, therefore, the fact that it had not mentioned the issue did not signify that this had a specific meaning. It argued that, during the admissibility stage of the case, the Commission had acknowledged that Brazil had advised it that police investigations were underway at the time the petition was lodged; consequently, the State considered that it did not have to refer to any other matters. On this basis, it should not be understood that the State failed to mention this issue.

69. The State argued that the representatives were claiming the payment of compensation for supposed pecuniary and non-pecuniary damage suffered by the victims. However, this aspect could not be admitted by the international court, because, with the exception of Mônica Santos de Souza Rodrigues and Evelyn Santos de Souza Rodrigues, none of the supposed victims had had recourse to the Judiciary to request that type of monetary reparation. Moreover, the State had not prevented the victims from requesting monetary reparations, and domestic legislation established that legal possibility through an action claiming the State's civil responsibility.

70. The State clarified that the civil action for compensation to redress pecuniary and non-pecuniary damage did not depend on the conclusion of the investigations and criminal proceedings, based on the principle of jurisdictional independence. Consequently there was no reason why the victims or their representatives had not had recourse to the domestic courts, even assisted by a public defender. The State also indicated that the existence of an unjustified delay in light of Article 46(2)(c) of the Convention could only occur before the petition was lodged before the international protection body.

71. The ***Commission*** indicated that the American Convention did not establish that additional mechanisms had to be exhausted for victims to be able to obtain a reparation related to facts regarding which the domestic remedies had been exhausted. It noted that the Court understood that an objection to the exercise of its jurisdiction based on the supposed failure to exhaust domestic remedies should be filed at the appropriate procedural moment, during the admissibility stage before the Commission. In addition, it was incumbent on States to state clearly before the Commission the arguments supporting the preliminary objection, which should correspond to the arguments submitted to Court.

72. The Commission indicated that the instant case was the result of two petitions lodged before it, the admissibility of which was examined separately. Regarding case 11,694 (the events of October 18, 1994), the State had not expressly referred to the failure to exhaust domestic remedies; therefore, the preliminary objection in relation to that case was

[52] *Cf. Case of González et al. ("Cotton Field")*, para. 41. In this regard, the Court indicated that, when "formulating" Article 12 of the Convention of Belém do Pará "no provision of the American Convention was excluded, so that it must be concluded that the Commission will act in the petitions concerning Article 7 of the Convention Belém do Pará 'pursuant to the provisions of Articles 44 to 51 of [the American Convention],' as established in Article 41 of that Convention. Article 51 of the Convention "[…] refers […] expressly to the submission of cases to the Court." Likewise, see *Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2015. Series C No. 307, footnote 6.

totally time-barred. Regarding case 11,566 (the events of May 8, 1995), the objection of failure to exhaust domestic remedies in relation to the claims for monetary reparation were time-barred, because it was not presented as such at the appropriate procedural moment; that is, during the admissibility stage before the Commission. The Commission also indicated that, in the Admissibility Reports on the two cases, it had ruled on the requirement of exhaustion of domestic remedies, applying the exception of an unjustified delay established in Article 46(2)(c) of the American Convention, taking into account that, in case 11,566 three years had passed since the facts took place without any substantive progress in the investigations; while, in case 11,694, six years had passed in the same situation.

73. The Commission indicated that the requirement of exhaustion of domestic remedies established in Article 46(1) of the American Convention related to the facts that had allegedly violated human rights. The representatives' request that the Court order reparations arose from the declaration of the international responsibility of the State concerned, and derived automatically from that declaration of responsibility.

74. The ***representatives*** agreed with the Commission and indicated that the Court should conduct a control of the legality of the actions of the Commission only when there has been a serious error that violated the right to defense of the parties or when the right of defense of one of the parties had been violated.

75. Considering that the party making an allegation has the burden of proof, the representatives indicated that the State had not proved that the Commission had committed a serious error or prejudiced its right of defense. They argued that, in both cases (11,694 and 11,566), the Commission had given the State the opportunity to present the preliminary objection, at which time the State had merely made a general reference to the investigations underway. Lastly, they indicated that the supposition that the victims must necessarily exhaust the domestic remedies in order to access the international jurisdiction was erroneous and the Court was not barred from hearing the instant case.

F.2. Considerations of the Court

76. The Court has developed clear standards to analyze an objection based on a presumed failure to comply with the requirement of exhaustion of domestic remedies. First, the Court has interpreted the objection as a defense available to the State and, as such, the State is able to waive it either expressly or tacitly. Second, this objection must be filed at the appropriate moment so that the State may exercise its right of defense. Third, the Court has affirmed that the State that files this objection must specify the domestic remedies that have not yet been exhausted and demonstrate that those remedies are applicable and effective.[53]

77. The Court has indicated that Article 46(1)(a) of the Convention establishes that, admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 of the Convention is subject to the remedies under domestic law having been pursued and exhausted in accordance with generally recognized principles of international law.[54]

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[53] *Cf. Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 30; *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, para. 88; *Case of the Saramaka People v. Suriname. Preliminary objection, merits, reparations and costs*. Judgment of November 28, 2007. Series C No. 172, para. 43, and *Case of Salvador Chiriboga v. Ecuador. Preliminary objection and merits*. Judgment of May 6, 2008. Series C No. 179, para. 40.

[54] *Cf. Case of Maldonado Ordoñez v. Guatemala, Preliminary objection, merits, reparations and costs*. Judgment of May 3, 2016, paras. 21 and 22; *Case of Quispialaya Vilcapoma*, para. 20.

78. Therefore, in view of the need to safeguard the principle of procedural equality between the parties that must govern any proceedings before inter-American system, the State must specify clearly the remedies that, in its opinion, have not yet been exhausted during the admisibility stage of a case before the Commission.[55] As the Court has established repeatedly, it is not the task of this Court or of the Commission to identify *ex officio* the domestic remedies that are pending exhaustion, because it is not incumbent on the international organs to rectify the lack of precision of the State's arguments.[56] Furthermore, the arguments that support the preliminary objection filed by the State before the Commission during the admissibility stage must correspond to those submitted to the Court.[57]

79. The Court notes that, when answering the petition before the Commission regarding the events of 1994, the State did not mention the exhaustion of domestic remedies. Moreover, in the case of the petition regarding the events of 1995, when presenting its answering brief to the Commission, the State did not offer a complete response and merely advised the Court that "even though, in its answering brief, the Brazilian State has not presented a section on this matter, that does not mean that it has not made any mention of it." However, the Court repeats its opinion that the State must specify clearly the remedies that, in its opinion, have not yet been exhausted during the admissibility stage of the processing of the case before the Commission.[58]

80. The Court considers that the State's briefs before the Commission did not comply with the requirements for a preliminary objection of failure to exhaust domestic remedies. This is because it did not specify the domestic remedies that remained to be exhausted or that were underway, or explain the reasons why it considered that they were appropriate and effective. Therefore, the Court rejects the preliminary objection.

G. Failure to respect a reasonable time when submitting the case to the Commission

G.1 Arguments of the State, observations of the Commission and the representatives

81. The ***State*** argued that the Commission had analyzed the unjustified duration of the domestic judicial proceedings incorrectly when examining the admissibility of the petitions, because it took into account the period between the date on which the events occurred and the Admissibility Reports (five years for the events of 1994 and three years for the events in 1995), without taking into consideration that the unjustified delay, as in the case of the exhaustion of domestic remedies should be examined in relation to the time that has elapsed between the occurrence of the events and the lodging of the petition before the Commission, because petitions cannot be lodged before the Commission without previously having exhausted the domestic remedies. According to the State, if the Court admitted the Commission's criterion, this would, first, prejudice the victims, because it would make it possible to submit petitions to the Commission without prior exhaustion of domestic remedies, and would reverse the order of the principle of complementarity between the domestic and the inter-American system for the protection of human rights. It would also prejudice the Commission, because it would condition the processing of petitions to a final analysis to be

[55] *Cf. Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 28.

[56] *Cf. Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2015. Series C No. 307, para. 24.

[57] *Cf. Case of Furlan and family members v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012 Series C No. 246, para. 29, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of October 14, 2014. Series C No. 284, para. 21.

[58] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, paras. 88 and 89, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members,* para. 21.

added to the admissibility report verifying compliance with that requirement, thus prejudicing the functioning of the human rights protection system.

82. The State also argued that, when the petitions were lodged, the Commission should not have accepted the petitioners' allegation that the legal deadline to complete the investigations had passed or even been exceeded because they had interpreted domestic law erroneously. It indicated that, when presenting their petitions, the petitioners had not proved that they had previously exhausted the domestic remedies and this made it evident that the requirements established in Article 46(2)(c) had not been met since there had been no delay in the actions of the police at the date of the petitions.

83. The ***Commission*** observed that the State had repeated some of the arguments made in relation to the failure to exhaust domestic remedies. It added that the analysis of the exhaustion of domestic remedies, including the possible application of exceptions to this requirement, should be made in light of the situation that existed when ruling on the admissibility of the petition. To safeguard the State's right of defense, the bilateral nature of the proceedings, and procedural equality, any information received by the Commission following the initial petition was strictly subject to the adversarial principle.

84. The ***representatives*** indicated that the analysis of the requirements of Articles 46 and 47 of the American Convention takes place when the Commission examines the factual and legal arguments presented by the parties and rules on admissibility and not when the initial petition is lodged by the petitioners. Therefore, the State's argument concerning the failure to exhaust domestic remedies when the initial petition is lodged or before the petition is notified to the State is not substantiated. They also stressed that the rule of prior exhaustion of domestic remedies was conceived to allow the State to avoid responding legally in the international jurisdiction before having the opportunity to deliver justice by its own means. In this regard, the procedural history of this case reveals that adequate measures to redress the reported violations had not been considered, either when the initial petitions were lodged in 1994 and 1995, or when the admissibility reports were issued.

G.2. Considerations of the Court

85. The Court notes that the State's arguments are mainly addressed at contesting the Commission's criterion for examining the exhaustion of domestic remedies and, consequently, the unjustified delay in deciding them, by taking into account the time that has passed between the moment the facts occurred and the moment at which the admissibility of the petition is examined. In the case of Wong Ho Wing v. Peru, the Court indicated that Article 46(1)(a) of the American Convention, which establishes that admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 of the Convention is subject to the remedies under domestic law having been pursued and exhausted, should be interpreted in the sense that it requires the exhaustion of those remedies at the time a decision is taken on the admissibility of the petition and not when it is lodged.[59]

86. Similarly, the Court recalls that the rule of prior exhaustion of domestic remedies is conceived in the interest of the State because it seeks to exempt it from responding before an international organ for acts attributed to it before it has had the opportunity to rectify them by its own means.[60] This signifies that not only should such remedies exist formally, but they must also be adequate and effective, given the exceptions established in Article 46(2) of the

[59] *Cf. Case of Wong Ho Wing*, para. 25, and *Case of Duque v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of February 26, 2016. Series C No. 310, para. 34.

[60] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 61, and *Case of Duque,* para. 35.

Convention.[61] Moreover, the fact that the analysis of compliance with the requirement of exhaustion of domestic remedies is made based on the situation that exists when deciding on the admissibility of the petition does not affect the complementary character of the inter-American system. To the contrary, if any domestic remedy is pending, the State has the opportunity to resolve the alleged situation during the admissibility stage.[62]

87. In addition, taking into account the characteristics of this case and the arguments made by the parties in this regard, the Court considers that a preliminary analysis of the availability or effectiveness of the investigations would entail an evaluation of the State's actions in relation to its obligations to respect and to ensure the rights recognized in the international instruments that it is alleged have been violated; a matter that should not be examined at a preliminary stage but when examining the merits of the dispute.

88. Consequently, the Court understands that the State's right of defense has not been infringed and that, therefore, there is no reason to diverge from the decision taken by the Commission during the procedure before it. The State's lack of specificity at the appropriate procedural moment before the Commission as regards the adequate domestic remedies that had not been exhausted, as well as the absence of arguments on their availability, suitability and effectiveness, mean that the objection filed before the Court in this regard is time-barred. Accordingly, the Court rejects the objection filed by the State.

V
EVIDENCE

A. Documentary, testimonial and expert evidence

89. The Court received diverse documents presented as evidence by the representatives, the State and the Commission attached to their principal briefs and final written arguments (*supra* paras. 1, 4 and 7). In addition, the Court received the affidavits made by presumed victims Bruna Fonseca Costa, Diogo da Silva Genoveva, Evelyn Santos de Souza Rodrigues, Geni Pereira Dutra, Helena Viana dos Santos, João Alves de Moura, Joyce Neri da Silva Dantas, Maria das Graças da Silva, Michelle Mariano dos Santos, Mônica Santos de Souza Rodrigues, Otacilio Costa, Pricila da Silva Rodrigues, Robson Genuino dos Santos Junior, Samuel da Silva Rodrigues, Tereza de Cássia Rosa Genoveva and William Mariano dos Santos, as well as the testimony of Ignácio Cano. It also received the opinions of expert witnesses Caetano Lagrasta Neto, Cecília Coimbra, Daniel Sarmento, Débora Diniz, Jan Michael-Simon, João Batista Damasceno, João Tancredo, João Trajano, José Pablo Baraybar, Marlon Alberto Weichert, Michel Misse and Christof Heyns. In the case of the evidence provided during the public hearing, the Court received the statements of presumed victims L.R.J. and Mac Laine Faria Neves proposed by the representatives, and the opinions of expert witnesses Patricia Viseur-Sellers, Marlon Weichert and Claude Jacques Chambriard, proposed by the Commission, the representatives and the State, respectively.

90. Lastly, the Court received various documents presented by the representatives with their final written arguments.

B. Admission of the evidence

[61] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 63, and *Case of Duque,* para. 35.

[62] *Cf. Case of Wong Ho Wing*, para. 27, and *Case of Duque,* para. 35.

91. The Court admits those documents presented at the appropriate procedural moment by the parties and the Commission whose admissibility was not contested or refuted.[63]

92. In the case of documents indicated by electronic links, the Court has established that, if a party or the Commission provides, at least, the direct electronic link to the document that it cites as evidence and it is possible to access it, neither legal certainty nor procedural balance is affected because it can be found immediately by the Court and by the other parties.[64] Consequently, the Court finds it pertinent to admit the documents that were indicated by electronic links in the instant case.

93. With regard to the newspaper articles forwarded by the Commission and the representatives, the Court has considered that they may be assessed when they refer to well-known public facts or statements by State officials or when they corroborate aspects related to the case.[65] The Court decides to admit those documents that are complete or that, at least, allow their source and date of publication to be verified.[66]

94. Regarding the audio statement recorded by presumed victim Michelle Mariano dos Santos, this was not made before a notary public. The representatives justified that it was not possible to authenticate the statement by Ms. dos Santos because she was hospitalized in an intensive care unit owing to a serious health condition. The Court notes that the State did not contest either its admissibility or its authenticity and that, subsequently, the representatives forwarded this presumed victim's death certificate. The Court acknowledges the special circumstances that made it impossible for Michelle Mariano dos Santos to make her statement before notary public and finds it appropriate to admit this evidence pursuant to Article 58(a) of the Rules of Procedure.

95. In addition, on October 3, 2016, the representatives sent, as supervening evidence, a copy of the proceedings in action for damages No. 2002.001.085895-0, filed by presumed victims Mônica Santos de Souza Rodrigues and Evelyn Santos de Souza Rodrigues in the domestic jurisdiction. This evidence was forwarded to the State, which did not contest it. The Court notes that the information presented was subsequent to the brief with pleadings, motions and evidence and therefore admits this documentation.[67]

96. Regarding the documents on costs and expenses forwarded by the representatives with their final written arguments, the Court will only consider those that refer to new costs and expenses incurred as a result of the proceedings before this Court; that is, those incurred after the presentation of the pleadings and motions brief. Consequently, it will not consider invoices dated prior to the presentation of the pleadings and motions brief because these should have been presented at the appropriate procedural moment.[68] With regard to certain documents forwarded by the representatives together with their final writtn arguments relating to parts of the case file before the Inter-American Commission, in particular minutes of meetings between the State and the representatives to try and reach a friendly settlement,

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[63] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 140, and *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs.* Judgment of December 1, 2016. Series C No. 330, para. 16.

[64] *Cf. Case of Escué Zapata v. Colombia. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal*, para. 67.

[65] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 146*, and Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of June 22, 2016. Series C No. 314, para. 54.

[66] *Cf. Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 26, 2012. Series C No. 244, para. 17 *and Case of Tenorio Roca et al.,* para. 38.

[67] *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212, para. 53, and *Case of I.V.*, para. 45.

[68] *Cf. Case of Tenorio Roca et al.,* para. 41.

the Court considers that this evidence was not presented at the appropriate procedural moment before the Court and, therefore, finds it inadmissible.

97. In addition, under Article 58(a) of its Rules of Procedure, "[t]he Court may, at any stage of the proceedings: (a) Obtain, on its own motion, any evidence it considers helpful and necessary." In the instant case, the Court found it useful to corroborate information concerning the context and incorporates, *ex officio*, the book "*Pensando a Segurança Pública, Segurança Pública e Direitos Humanos: temas transversais.*" Published by the Brazilian Ministry of Justice in 2014.

C. Assessment of the evidence

98. In keeping with Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure, as well as its consistent case law concerning evidence and its assessment, the Court will examine and assess the documentary evidence forwarded by the parties and the Commission, the statements, testimony and expert opinions, when establishing the facts of the case and ruling on the merits. To this end, it will abide by the principle of sound judicial discretion, within the corresponding legal framework, taking into account the whole body of evidence and the arguments made in the case.[69] Also, pursuant to the Court's case, law, the statements made by the presumed victims cannot be assessed in isolation, but must be evaluated together with all the evidence in the proceedings, insofar as they may provide further information on the presumed violations and their consequences.[70]

VI
FACTS

99. In this chapter, the Court will describe the context of the case and the facts that fall within its temporal jurisdiction.

100. The facts prior to the date of Brazil's ratification of the Court's contentious jurisdiction (December 10, 1998) will only be included as part of the context and background for a better understanding of the case.

A. Acknowledgement by the State

101. During the public hearing in this case, the State made an acknowledgement of some of the facts as follows: "the actions perpetrated by public agents during the 1994 and 1995 police raids of Favela Nova Brasilia, specifically consisting in the homicide of 26 persons and sexual violence against another three, represent violations of Articles 4(1) and 5(1) of the American Convention on Human Rights, even though these facts do not fall within the Court's temporal jurisdiction. […] The Brazilian State once again affirms that it acknowledges that its agents are responsible for 26 homicides and three crimes of sexual violence, and acknowledges the pain and suffering that the victims experienced as a result of these facts." Furthermore, in its final written arguments, the State asserted that "the acts perpetrated by public agents during the police raids on Favela Nova Brasilia on October 18, 1994, and May 8, 1995, which specifically resulted in the homicide of 26 persons and sexual violence against three others, represent violations of Articles 4(1) and 5(1) of the American Convention, even though these facts do not fall within the Court's temporal jurisdiction."

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[69] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*, para. 76, and *Case of Andrade Salmón*, para. 22.

[70] *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of I.V.,* para. 60.

B. Context

B.1. Police violence in Brazil

102. According to information provided by State agencies, police violence represents a human rights problem in Brazil, in particular in Río de Janeiro.[71] No data is available on the deaths that occurred during police operations in 1994 and 1995. Starting in 1998, the Río de Janeiro Public Safety Secretariat began to compile these statistics. In 1998, 397 people died as a result of police actions in that state. By 2007, the number had increased to 1,330; in 2014, 584 victims died from police raids and, in 2015, this number increased to 645.[72]

103. It is considered that most fatal victims of police violence are youths, blacks, the poor and the unarmed.[73] According to official data, "nowadays, homicides are the main cause of death among youths from 15 to 29 years of age in Brazil, and it is young black men who live peripheral and metropolitan areas of urban centers who are particularly affected. Data from the SIM/Datasus of the Health Ministry reveal that more than half the 52,000 deaths from homicide in Brazil were youths (27,000 or 52%), of whom 71% were black (black and mulatto) and 93% were male."[74] In the city of Rio de Janeiro, approximately 65% of those who died in 2015 were black (black and mulatto).[75] In the state of Rio de Janeiro, studies indicate that the

[71] *Cf.* UNESCO, *Map of Violence IV*: *Brazilian youth* (Brasilia, 2004), pp. 57 and 58; IACHR, Report on the Situation of Human Rights in Brazil, OEA/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997, Chapter III, paras. 8, 11, 13; Concluding observations of the Human Rights Committee: Brazil, U.N.Doc. CCPR/C/79/Add.66, July 24, 1996, paras. 6 and 8; Summary record of the 1506th meeting of the Human Rights Committee, July 16, 1996. UN Doc. CCPR/C/SR.1506, para. 5; Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and intolerance, UN Doc. E/CN.4/2006/16/Add.3, February 28, 2006, paras. 33, 36 and 38; Report on Mission to Brazil, Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/HRC/11/2/Add.2, March 23, 2009, III, Extrajudicial executions by police, paras. 7 and 8; Follow to up to country recommendations – Brazil, Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/HRC/14/24/Add. 4, May 28, 2010; Americas Watch, *Police Abuse in Brazil: Summary Executions and Torture in São Paulo and Rio de Janeiro*. New York, 1987, pp. 19 to 32 and 41 to 45; Human Rights Watch, *Fighting Violence with Violence: Human Rights Abuse and Criminality in Rio de Janeiro*, 1996; Human Rights Watch, *Police Brutality in Urban Brazil*, 1997; Amnesty International*, Rio de Janeiro 2003: Candelária and Vigário Geral 10 years on*, 2003; Justiça Global, *Relatório RIO: violência policial e insegurança pública*, 2004; Amnesty International, *"They come in shooting": Policing socially excluded communities,* 2005; Amnesty International, *Picking up the Pieces: Women's experience of urban violence in Brazil*. Madrid, 2008; Human Rights Watch, *Lethal Force: Police Violence and Public Security in Rio de Janeiro and São Paulo*, 2009; Amnesty International, *You killed my son: Homicides by military police in the city of Rio de Janeiro*, 2015. See also written opinion provided by expert witness Marlon Weichert on September 30, 2016 (evidence file, folio 14541).

[72] Foro Brazileño de Seguridad Pública, *Anuario Brazileño de Seguridad Pública 2015*. São Paulo, 2015 (evidence file, folios 14344 and 14354), and Data from the Public Security Institute presented by the State with its final arguments (merits file, folio 1158).

[73] *Cf.* Federal Senate, Final report of the Parliamentary Commission to Investigate Youth Assassinations (Brasilia, 2016) cited in the written opinion provided by expert witness Marlon Weichert on September 30, 2016 (evidence file, folio 14595 to 14598); Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and intolerance, UN Doc. E/CN.4/2006/16/Add.3, February 28, 2006, paras. 33, 36 and 38; UNESCO, Map of Violence IV: Brazilian youth (Brasilia, 2004), pp. 57 and 58, documents cited in the affidavit provided by expert witness Caetano Lagrasta Neto on September 30, 2016 (evidence file, folios 16537); Affidavit provided by expert witness Michel Misse on September 16, 2016 (evidence file, folios 14513, 14524 to 14525); Americas Watch, Police Abuse in Brazil: Summary Executions and Torture in São Paulo and Rio de Janeiro. New York, 1987, pp. 19 to 32 and 41 to 45, and Amnesty International, *"They come in shooting": Policing socially excluded communities,* 2005, p. 38.

[74] Julio Jacobo Waiselfisz, *Map of Violence 2014: Brazilian Youth,* General Secretariat of the Presidency of the Republic, National Secretariat for Youth and Secretariat for Policies to Promote Racial Equality, Brasilia, 2014, p. 9. See also, Chamber of Representatives, Final Report of the Parliamentary Commission to Investigate Homicides of Youths, Blacks and the Poor (Brasilia, July 2015) (evidence file, folios 14994 and 15017). See also written opinion provided by expert witness Marlon Weichert on September 30, 2016 (evidence file, folio 14570).

[75] Public Security Institute of Rio de Janeiro. Available at: https://public.tableau.com/profile/instituto.de.seguran.a.p.blica.isp#!/vizhome/LetalidadeViolenta/Resumo Accessed on November 22, 2016.

chance of a young black man dying due to police action is almost 2.5 times higher than that of a young white man.[76]

104. In 1996, Brazil acknowledged before the Human Right Committee that it was necessary to implement initiatives to combat the impunity of human rights violations attributed to police authorities owing to an excessively slow functioning of the wheels of justice, and also on many occasion to the State's inability to conduct an effective police investigation.[77]

105. For its part, the Inter-American Commission has indicated that deaths during police operations are recorded as legitimate defense even though the autopsies performed on the victims usually reveal that they died from shots fired at vital parts of their bodies.[78] In this regard, in 1996, the United Nations Human Rights Committee expressed its deep concern due to cases of summary and arbitrary executions committed by security forces and death squads, in Brazil, frequently involving members of security forces against individuals belonging to particularly vulnerable groups.[79]

106. Cases of summary and arbitrary executions are seldom properly investigated and freqeuntly go unpunished.[80]

107. One of the factors that hinders investigations is the "resisting arrest" forms which are issued before an investigation is opened into a homicide committed by the police. Before the police conduct is investigated and corroborated, many investigations make a serious effort to determine the profile of the deceased victim and the investigation is closed considering that he was possibly a criminal.[81]

108. In her 2003 Report on Mission to Brazil, the former United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, indicated that "[a] closer analysis reveals

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[76] Written opinion provided by expert witness Marlon Weichert on September 30, 2016 (evidence file, folio 14570). See also, Jacqueline Sinhoretto et al., *A Filtragem Racial na Seleção Policial de Suspeitos: Segurança Publica e Relações Raciais,* in Cristiane do Socorro Loureiro Lima, Gustavo Camilo Baptista and Isabel Seixas de Figueiredo, *Pensando a Segurança Pública, Segurança Pública e Direitos Humanos: temas transversais,* Ministry of Justice: Brasilia, 2014, p. 132.

[77] *Cf.* Summary record of the 1506th meeting of the Human Rights Committee, July 16, 1996. UN Doc. CCPR/C/SR.1506, para. 5.

[78] *Cf.* IACHR, Report on the Situation of Human Rights in Brazil, OEA/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997, Chapter III, paras. 8, 11, 13; Expert opinion provided by affidavit by Ignacio Cano on September 27, 2016 (evidence file, folio 15554 to 15555); Expert opinion provided by affidavit by Jan Michael-Simon on September 29, 2016 (evidence file, folio 15828).

[79] *Cf.* Concluding observations of the Human Rights Committee: Brazil, UN Doc. CCPR/C/79/Add.66, July 24, 1996, paras. 6 and 8. See also expert opinion provided by affidavit by Michel Misse on September 30, 2016 (evidence file, folios 14515 to 14517, and 14519).

[80] Concluding observations of the Human Rights Committee: Brazil, UN Doc. CCPR/C/79/Add.66, July 24, 1996, paras. 6 and 8; Expert opinion provided by affidavit by Ignacio Cano on September 27, 2016 (evidence file, folio 15557); IACHR, Report on the Situation of Human Rights in Brazil, OEA/Ser.L/V/II.97 Doc. Rev.01 (September 29, 1997) cited in the Expert opinion provided by affidavit by Jan Michael-Simon on September 29, 2016 (evidence file, folio 15827); Human Rights Watch, *Lethal Force: Police Violence and Public Security in Rio de Janeiro and São Paulo* (New York, 2009), p. 5. See also Report on Mission to Brazil, Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/HRC/11/2/Add.2, March 23, 2009, and Expert opinion provided by affidavit by Michel Misse on September 16, 2016 (evidence file, folios 14510 and 14514 to14522).

[81] *Cf.* IACHR, Report No. 26/09, Case 12,440, Wallace de Almeida (Brazil), March 20, 2009, paras. 81 and 82. Human Rights Watch, *Lethal Force: Police Violence and Public Security in Rio de Janeiro and São Paulo* (New York, 2009) p. 105; Expert opinion provided by affidavit by Caetano Lagrasta Neto on September 30, 2016 (evidence file, folios 16529 and 16601); Expert opinion provided by affidavit by Michel Misse on September 16, 2016 (evidence file, folio 14523); Report on Mission to Brazil, Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/HRC/11/2/Add.2, March 23, 2009, para. 13; Expert opinion provided by affidavit by Marlon Weichert on September 30, 2016 (evidence file, folios 14545 to 14548).

that police killings are often poorly disguised extrajudicial executions."[82] In the report on the 2007 mission to Brazil, and in the report on the follow-up to country recommendations, the Special Rapporteur reiterated that most cases of executions committed by on-duty police were registered as "resistance" killings or cases of "resistence followed by death"; in other words, the police themselves determine whether the case relates to an extrajudicial execution or a death that conformed to the law. On rare occasions these classifications made by the police are investigate genuinely and few of the perpetrators are prosecuted or convicted.[83]

109. This information has been reiterated by non-governmental organizations and also in the expert opinions provided in the instant case.[84]

110. Lastly, even though most of the fatal victims of police operations in Brazil are men, the female residents of communities where "confrontations" take place generally experience a special type of violence and are threatened, assaulted, injured, insulted and even subjected to sexual violence by the police.[85]

111. Among the legislative measures that exist to confront this problem, one of the competences of the Public Prosecution Service, defined in article 129 of the 1988 Federal Constitution, is responsibility for the external control of police activities.[86]

112. In addition, Law No. 12,030/2009 guarantees the technical, scientific and functional autonomy of criminal experts, and the 45th Constitutional Amendment establishes the mechanism for transfer of competence in cases of human rights violations from the state to the federal jurisdiction, at the request of the Head of the Public Prosecution Service.

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[82] *Cf.* Report on Mission to Brazil, Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/2004/7/Add.3, January 28, 2004, para. 40. See also Expert opinion provided by affidavit by Ignacio Cano on September 27, 2016 (evidence file, folios 15556 to 15558).

[83] *Cf.* Report on Mission to Brazil, Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/HRC/11/2/Add.2, March 23, 2009; Follow to up to country recommendations – Brazil, Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/HRC/14/24/Add.4, May 28, 2010. See also Expert opinion provided by affidavit by Ignacio Cano on September 27, 2016, (evidence file, folios 15557 and 15558); Expert opinion provided by affidavit by Caetano Lagrasta Neto on September 30, 2016 (evidence file, folios 16553 to 16555, 16561, 16562, 16586 and 16587), and Expert opinion provided by affidavit by Michel Misse on September 16, 2016 (evidence file, folios 14514, 14515 and 14519 to 14521).

[84] *Cf.* UNESCO, *Map of Violence IV: Brazilian youth*, Brasilia, 2004, pp. 57 and 58; IACHR, Report on the Situation of Human Rights in Brazil, OEA/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997, Chapter III, paras. 8, 11, 13; Concluding observations of the Human Rights Committee: Brazil, U.N.Doc. CCPR/C/79/Add.66, July 24, 1996, paras. 6 and 8; Summary record of the 1506th meeting of the Human Rights Committee, July 16, 1996. UN Doc. CCPR/C/SR.1506, para. 5; Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and intolerance, UN Doc. E/CN.4/2006/16/Add.3, February 28, 2006, paras. 33, 36 and 38; Report on Mission to Brazil, Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/HRC/11/2/Add.2, March 23, 2009, III – Extrajudicial executions by the police, paras. 7 and 8; Follow to up to country recommendations – Brazil, Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/HRC/14/24/Add. 4, May 28, 2010. See also Americas Watch, *Police Abuse in Brazil: Summary Executions and Torture in São Paulo and Rio de Janeiro.* New York, 1987, pp. 19 to 32 and 41 to 45; Human Rights Watch*, Fighting Violence with Violence: Human Rights Abuse and Criminality in Rio de Janeiro*, 1996; Human Rights Watch, *Police Brutality in Urban Brazil*, 1997; Amnesty International*, Rio de Janeiro 2003: Candelária and Vigário Geral 10 years on*, 2003; Justiça Global, *Relatório RIO: violência policial e insegurança pública*, 2004; Amnesty International, *"They come in shooting": Policing socially excluded communities,* 2005; Amnesty International, *Picking up the Pieces: Women's experience of urban violence in Brazil*. Madrid, 2008; Human Rights Watch, *Lethal Force: Police Violence and Public Security in Rio de Janeiro and São Paulo*, 2009; Amnesty International, *You killed my son: Homicides by military police in the city of Rio de Janeiro*, 2015. See also written opinion provided by expert witness Marlon Weichert on September 30, 2016 (evidence file, folio 14541).

[85] *Cf.* Amnesty International, *Picking up the Pieces: Women's experience of urban violence in Brazil*. Madrid, 2008, pp. 38 and 42.

[86] The jurisdiction of the Public Prosecution Service is defined in article 129, paragraphs VI, VII and VIII of the Brazilian Federal Constitution, in Supplementary Law No. 75/1993 and in Resolutions Nos. 13/06 and 23/06 issued by the Nation Council of the Public Prosecution Service (CNMP).

B.2. Background

Police raid of October 18, 1994[87]

113. On the morning of October 18, 1994, a police raid was carried out in Favela Nova Brasilia by a group of between 40 and 80 Military and Civil Police[88] from several districts of the city of Río de Janeiro.[89] Only 28 police officers were identified in the investigation.[90]

114. During the operation, the police raided at least five houses and proceeded: (i) to shoot the occupants and take away the bodies, covered in blankets, to the main square of the community, or (ii) to arrest the occupants amd then to take them away and, subsequently, kill them and deposit their bodies in the square of the community.[91]

115. In two of the houses raided, the police interrogated and committed acts of sexual violence against three young women, two of whom were 15 and 16 years of age.[92]

116. As a result of this raid,[93] the police killed 13 male residents of Favela Nova Brasilia, four of whom were underage: Alberto dos Santos Ramos, 22 years (three bullet wounds in his chest and one in his left arm); André Luiz Neri da Silva, 17 years (one bullet wound in his back, one in the left side of his abdomen, one in his left hand, one in his right wrist and one in his right arm); Macmiller Faria Neves, 17 years (one bullet wound in the back of the head, one in his left temple, one in the face, and one in his left shoulder); Fabio Henrique Fernandes, 19 years (eight bullet wounds in the nape of his neck, six bullet wounds in the back of his right leg and one bullet wound in his left thigh); Robson Genuino dos Santos, 30 years (two bullet wounds, in his abdomen and his chest); Adriano Silva Donato, 18 years (three bullet wounds in his back, his right temple, and his right arm); Evandro de Oliveira, 22 years (one bullet wound in his back and one in each eye); Alex Vianna dos Santos, 17 years (two bullet wounds, in his ear and chest); Alan Kardec Silva de Oliveira, 14 years (two bullet wounds, in his right temple and right thigh); Sergio Mendes Oliveira, 20 years (nine bullet wounds, in his mouth, neck, right abdomen, left shoulder, right thigh, left hip, right buttock, and two in his left buttock); Ranilson José de Souza, 21 years (three bullet wounds, in his left eye, his left cheek, and in the back of his head); Clemilson dos Santos Moura, 19 years (two bullet wounds in his right temple, and one in his right arm), and Alexander Batista de Souza, 19 years (one bullet wound in his back and two in his right shoulder).[94]

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[87] The State acknowledged that the acts committed by public officials during the police raids in Favela Nova Brasilia in 1994 and 1995 resulted in the killing of 26 individuals and sexual violence against three women.

[88] Report of the DIVAI of December 3, 1995. Summary inquiry No. 460/95 (evidence file, folio 4992).

[89] Testimony provided by Cesar Augusto Bento Leite, Jorge Luiz Andrade e Silva, Luiz Carlos Pereira Pinto, Carlos Alberto Figueroa Borges, Janse Theobald, Paulo Cannabrava Barata and Alonso Ferreira Neto before the Special Police Department on Torture and Abuse of Authority (evidence file, folios 230 to 245); witness statement of Gilton Machado Macarenhas (evidence file, folio 4362); witness statement of Jorge Luiz Andrade E. Silva (evidence file, folio 4363), and witness statement of Augusto Bento Leite (evidence file, folio 4365).

[90] List of police officers who took part in the operation (evidence file, folios 9471 to 9473).

[91] *Cf.* Newspaper articles and letter form the journalist, Fernanda Botelho Portugal (evidence file, folios 144 and 145).

[92] Witness statement of L.R.J. of November 12, 1994, before the State Secretariat for the Civil Police (evidence file, folios 154 to 158), and Witness statement of C.S.S. of November 12, 1994 before the State Secretariat for the Civil Police (evidence file, folios 160 to 164); Witness statement of J.F.C. of November 12, 1994 before the State Secretariat for the Civil Police (evidence file, folios 166 to 171).

[93] During the public hearing and in its final written arguments, the State acknowledged that "the acts perpetrated by public agents during the police raids in Favela Nova Brasilia on October 18, 1994, and May 8, 1995, resulting, specifically, in the homicide of 26 (twenty-six) persons and in sexual violence against 3 (three) others, represent violations of Articles 4(1) and 5(1) of the American Convention, even though those facts do not fall within the Court's temporal jurisdiction" (merits file, folio 1182).

[94] Autopsy report No. 8517/94 (evidence file, folios 32 to 39); Autopsy report No. 8518/94 (evidence file, folios 41 to 48); Autopsy report No. 8519/94 (evidence file, folios 50 to 53); Autopsy report No. 8520/94 (evidence file, folios 55 to 61); Autopsy report No. 8521/94 (evidence file, folios 63 to 69); Autopsy report No. 8522/94 (evidence file, folios

Police raid of May 8, 1995[95]

117. On May 8, 1995, at around 6 a.m., a group of 14 Civil Police, supported by two helicopters, entered Favela Nova Brasilia. The operation was presumably conductd in order to seize a consignment of weapons to be delivered to drug-traffickers living there.[96] According to witness statements, there was an intense exchange of fire between the police and supposed drug-traffickers which caused panic in the community.[97]

118. As a result of the police raid, three police officers were injured[98] and 13 men from the community were killed.[99] According to the autopsy reports, the forensic examinations revealed numerous bullet wounds in the bodies of the 13 victims, with the impact usually found in the chest, near the heart, and in the head.[100] Moreover, documents from the Getúlio Vargas Hospital indicated that the 13 individuals were dead when they arrived at the hospital.[101]

119. Those who died were: Cosme Rosa Genoveva, 20 years (three bullet wounds in his chest, one in his knee, one in his foot and one in his thigh); Anderson Mendes, 22 years (one bullet wound in his right buttick, and two in the left side of his thorax); Eduardo Pinto da Silva, 18 years (various bullet wounds in his chest); Nilton Ramos de Oliveira Junior, 17 years (two bullet wounds in his chest); Anderson Abrantes da Silva, 18 years (one bullet wound in his right temple); Marcio Felix, 21 years (one bullet wound in his chest, two in his left thigh, two in his back, one in his left shoulder, two in his lower right back, one in his right hand and one in his left hand); Alex Fonseca Costa, 20 years (one bullet wound in his neck, one in his left chest, one in his right thigh, one in his right knee); Jacques Douglas Melo Rodrigues, 25 years (one bullet wound in his right frontal area, one in his chin, one in his upper right chest and one in his right shoulder); Renato Inacio da Silva, 18 years (one bullet wound in his left temple and one in his chest); Ciro Pereira Dutra, 21 years (one bullet wound in his back near his left shoulder); Welington Silva, 17 years (one bullet wound in his chest and one in his right shoulder); Fabio Ribeiro Castor, 20 years (one bullet wound in his neck, two in his chest and one in his abdomen), and Alex Sandro Alves dos Reis, 19 years (two bullet wounds in his chest and one in his left arm).[102]

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71 to 77); Autopsy report No. 8523/94 (evidence file, folios 79 to 86); Autopsy report No. 8524/94 (evidence file, folios 73 to 80); Autopsy report No. 8526/94 (evidence file, folios 97 to 104); Autopsy report No. 8527/94 (evidence file, folios 106 to 113); Autopsy report No. 8528/94 (evidence file, folios 115 to 122); Autopsy report No. 8529/94 (evidence file, folios 124 to 131), and Autopsy report No. 8525/94 (evidence file, folios 133 to 138).

[95] The State acknowledged that the acts committed by public officials during the police raids in Favela Nova Brasilia in 1994 and 1995 resulted in the killing of 26 persons and sexual violence against three women.

[96] Incident report No. 000252/95 of May 8, 1995 (evidence file, folios 323 to 332), and Letter of Police Chief Marcos Alexandre C. Reimão of May 8, 1995 (evidence file, folios 320 and 321).

[97] Incident report No. 000252/95 of May 8, 1995 (evidence file, folios 323 to 332).

[98] Letter of Police Chief Marcos Alexandre C. Reimão of May 8, 1995; Letter of journalist Fernanda Botelho Portugal (evidence file, folios 144 to 145), and Communication SJU/GAB of December 1, 1994 (evidence file, folios 320 and 321).

[99] The State acknowledged that "the acts perpetrated by public agents during the police raids in Favela Nova Brasilia on October 18, 1994, and May 8, 1995, resulting, specifically, in the homicide of 26 (twenty to six) persons and in sexual violence against 3 (three) others, represent violations of Articles 4(1) and 5(1) of the American Convention, even though those facts do not fall within the Court's temporal jurisdiction" (merits file, folio 1182).

[100] Report of forensic expert Tania Donati Paes Rio of September 25, 2000 (evidence file, folios 576 to 578).

[101] Records of removal of corpses completed by Paulino Soares M. Filho (on duty in the Getúlio Vargas Hospital) on May 8, 1995 (evidence file, folios 487 to 549).

[102] Autopsy report No. 891 (evidence file, folios 356 to 361); Autopsy report No. 00892/95 (evidence file, folios 363 to 368); Autopsy report No. 893 (evidence file, folios 370 to 374); Autopsy report No. 894/95 (evidence file, folios 376 to 382); Autopsy report No. 895 (evidence file, folios 384 to 389); Autopsy report No. 896/95 (evidence file, folios 391 to 396); Autopsy report No. 897/95 (evidence file, folios 398 to 403); Autopsy report No. 898/95 (evidence file, folios 405 to 411); Autopsy report No. 899/95 (evidence file, folios 413 to 418); Autopsy report No. 900/95 (evidence file, folios 420 to 424); Autopsy report No. 901/95 (evidence file, folios 426 to 431); Autopsy report No. 902/95 (evidence file, folios 433 to 439), and Autopsy report No. 903 (evidence file, folios 441 to 445).

Investigations into the police raid of October 18, 1994

120. The first investigation into what happened on October 18, 1994, was conducted by the Narcotics Control Division (DRE) of the Civil Police of Río de Janeiro and was recorded in Incident Report No. 523, on the same day as the police raid.[103] This police investigation was recorded as IP No. 187/94 and the 13 deaths were registered as "resisting arrest resulting in the death of those concerned." The record of the investigation included a list of weapons and drugs together with the statements of six DRE police officers who took part in the operation, which described confrontations with armed individuals. They all mentioned that they had removed the bodies of those "resisting arrest" from the site of their death in an attempt to save lives.[104]

121. In addition, on November 10, 1994, the Internal Affairs Division of the Civil Police of the state of Rio de Janeiro (DIVAI) opened an administrative investigation as the result of a letter from the journalist, Fernanda Botelho Portugal, concerning on-site research she had carried out in Favela Nova Brasilia.[105] In this letter, the journalist advised that she had visited two houses in which six young men had been executed and had spoken to two young women who had witnessed the violent acts of the police. One of them reported that the police had taken her companion away alive and handcuffed, but that he had later appeared dead, while the other reported that she had been subjected to sexual violence by the police.[106] These same houses were examined by criminal forensic experts on November 17, 1994, without conclusive results. In their report, the experts noted that the examination was being carried out one month after the events; that the sites had not been protected, and that the journalist Portugal – who had accompanied the experts – indicated that the houses appeared totally different from what she had been able to verify one month previously.[107]

122. In parallel to the DRE police investigation and the DIVAI administrative investigation, on October 19, 1994, the Governor of the state of Rio de Janeiro established a Special Commission of Inquiry composed of the State Secretary of Justice, the Internal Affairs Office of the Civil Police, the Director General of the Specialized Police Directorate, and two representatives of the National Conference of Brazilian Bishops (CNBB).[108]

123. On November 12, 1994, the Special Commission of Inquiry took the testimonies of L.R.J., C.S.S. and J.F.C., the three presumed victims of sexual violence. L.R.J. and C.S.S. stated that a group of around 10 police officers entered their house, firing their weapons, and kicked and beat them on their ears, stomach and legs; the officers made them lie face down and began to beat their butticks with a piece of wood. They also stated that: (i) they had been victims of verbal and physical abuse while they were questioned regarding a drug dealer's whereabouts; (ii) one police officer began to squeeze their buttocks and legs and forced C.S.S. to take off her blouse to see her breasts, and then told her that "she was good enough to eat"; (iii) another police officer, having seen her breats, took C.S.S. to the bathroom, threatened to kill her and forced her to undress and have anal sex with him,[109] and (iv) a police officer, called "*Turco*" forced L.R.J.to enage in oral sex with him, grabbing her by the hair to bring her head down to his penis, and then masturbated and ejaculated in her face.

[103] Incident Report No. 523 of October 18, 1994 (evidence file, folios 6 to 20).

[104] Incident Report No. 0000523 of October 18, 1994 (evidence file, folios 6 to 20).

[105] Merits Report No. 141/11 (para. 89).

[106] Letter of journalist Fernanda Botelho Portugal (evidence file, folios 144 and 145).

[107] Crime scene report OC No. 3,420 - A/94/SPH Report No 1156011 of November 17, 1994 (evidence file, folios 147 to 152).

[108] Communication SJU/GAB of December 1, 1994 (evidence file, folio 201).

[109] Witness statement of C.S.S. on November 12, 1994, before the State Secretariat for the Civil Police (evidence file, folios 160 to 164).

Lastly, they stated that, when the police officers left, they went to the Salgado Filho Hospital to get medical help and then, accompanied by "André" they tried to seek refuge somewhere else that same night.[110]

124. Meanwhile, J.F.C. testified that she was sleeping in a house in Favela Nova Brasilia with her boy friend André Luiz Neri da Silva, also known as "*Paizinho*," who was a drug-trafficker and had a hand grenade and a rifle. At around 5 a.m. on October 18, 1994, they were awakened by around 10 police officers who raided their house and rapidly restrained them, seized her boy friend's weapons, and began to beat them. J.F.C. reported that they kicked their legs and stomach while asking about the whereabouts of a drug-trafficker called "*Macarrão*" and that one police officer groped her breasts while the other looked on. J.F.C. stated that the police officers handcuffed and thrashed André and eventually took him away alive. However, his body was later found among the 13 corpses removed following the police operation.[111]

125. On November 14, 1994, L.R.J., C.S.S. and J.F.C. underwent forensic medical examinations in the Institue of Forensic Medicine to verify their physical and sexual injuries. However, the results were inconclusive as too much time had passed.[112] On November 18, 1994, the three victims took part in a procedure to identify the Military and Civil Police officers who were the presumed perpetrators. L.R.J. recognized José Luiz Silva dos Santos as one of the men who had raided the house and abused her, and noted some similarity between Rubens de Souza Bretas and one of the intruders.[113] C.S.S. identified Plinio Alberto dos Santos Oliveira as the man who forced her to have anal sex with him, and Rubens de Souza Bretas and Marcio Mendes Gomes as two of the intruders who had abused her.[114] J.F.C. identified Carlos Coelho Macedo as one of the officers who had handcuffed André Luiz Neri da Silva; she recognized Rubens de Souza Bretas and Wagner Castilho Leite as two of the assaillants and noted a similarity between Reinaldo Antonio da Silva Filho and Reinaldo Borges Barros and her assaillants.[115]

126. On November 22, 1994, the Secretary of State for the Civil Police requested that the file of investigation IP No. 187/94 be sent to the Special Police Department on Torture and Abuse of Authority (DETAA), that would be reponsible for continuing the investigations; however, it was several years before this request was executed.[116]

127. On December 1, 1994, the Special Commission of Inquiry issued its final report and presented it to the Governor of the state of Rio de Janeiro.[117] In this document, the Secretary of Justice at the time asserted that, based on the evidence collected, there were strong indications that at least some of the dead had been subjected to summary execution.[118] In view of this, and the strong indications of "sexual abuse" against underage girls, the State Secretary of Justice specifically asked that a member of the Public Prosecution Service

[110] Witness statement of L.R.J. on November 12, 1994, before the State Secretariat for the Civil Police (evidence file, folios 154 to 158).

[111] Witness statement of J.F.C. on November 12, 1994, before the State Secretariat for the Civil Police (evidence file, folios 166 to 171).

[112] Forensic examinations of L.R.J., C.S.S. and J.F.C. No. 12242/94 of November 14, 1994 (evidence file, folios 173 to 177).

[113] Record of individuals identified by L.R.J. on November 18, 1994 (evidence file, folios 179 to 182).

[114] Record of individuals identified by C.S.S. on November 18, 1994 (evidence file, folios 184 to 187).

[115] Record of individuals identified by J.F.C. on November 18, 1994 (evidence file, folios 189 to 196).

[116] Incident Report No. 209 of November 22, 1994 (evidence file, folio 203).

[117] Communication SJU/GAB of December 1, 1994 (evidence file, folios 198 to 201).

[118] Communication SJU/GAB of December 1, 1994 (evidence file, folio 201).

continue the police investigations.[119] This request was implemented by the appointment of two prosecutors by the head of the Public Prosecution Service.[120]

128. As a result of the administrative investigation by the Special Commission of Inquiry, the Head of the DETAA asked that a new police and administrative investigation be opened to investigate the events of October 18, 1994.[121] This police investigation was initiated on December 5, 1994, as investigation IP No. 52/94.[122]

129. In the context of investigation IP No. 52/94, nine DRE officers testified before the Chief of Police in charge of the investigation between December 19 and 26, 1994. Two officers stated that they had not taken part in the operation[123] and the other seven acknowledged that they had participated in it, stating that the raid had been conducted under the leadership of Police Chief José Secundino. However, they stated that they had not witnessed or taken part in any act of torture or abuse and that they only realized that people had been killed when they saw the corpses in a street of the favela before they were taken to the hospital.[124] On December 30, 1994, the Head of the DETAA requested further measures.[125] Nevertheless, according to the evidence that has been presented, no progress was made in the investigations between 1995 and 2002.

Investigation into the police raid of May 8, 1995

130. The second police raid in Favela Nova Brasilia was reported to the Chief of Police in charge of the Department for the Prevention of Theft and Robbery of Financial Establishments (DRRFCEF) of the Civil Police of Rio de Janeiro on May 8, 1995.[126]

131. On the same date, two officers of the Civil Police who had taken part in the raid recorded the events in Incident Report No. 252/95, classifying the facts as "drug-trafficking, and armed gang, and resistance following by death" and provided the names of the police officers who had taken part in the raid.[127]

132. The police investigation was registered as IP No. 061/95, initially headed by the DRRFCEF.[128] On May 8, 1995, a police officer testified before this police authority,[129] and also six residents of Favela Nova Brasilia.[130]

133. On May 15, 1995, the officer in charge of investigation decided to take the following measures: to request the result of the tests on the material seized; to consolidate the records

[119] Communication SJU/GAB No. 1057/94 (evidence file, folio 140).

[120] Communication CPGJ No. 821 (evidence file, folio 142).

[121] Decision of the Head of the DETAA of November 28, 1994 (evidence file, folios 205 to 208).

[122] DETAA decision of December 5, 1994 (evidence file, folio 25).

[123] Witness statement of Rogério Pereira da Silva and José Lino da Costa (evidence file, folios 227 to 228).

[124] Witness statement of Cesar Augusto Bento Leite, Jorge Luiz Andrade and Silva, Luiz Carlos Pereira Pinto, Carlos Alberto Figueroa Borges, Janse Theobald, Paulo Cannabrava Barata and Alonso Ferreira Neto before the Special Police Department on Torture and Abuse of Authority (evidence file, folios 230 to 245).

[125] Decision of the Head of the DETAA of December 30, 1994 (evidence file, folios 247 to 249).

[126] Letter of Police Chief Marcos Alexandre Reimão of May 8, 1995 (evidence file, folios 320 and 321).

[127] Incident report No. 252/95 of May 8, 1995 (evidence file, folios 323 to 332).

[128] *Cf.* Merits Report No. 141/11, para. 110.

[129] Witness statement of Moises Pereira Castro on May 8, 1995, before the Superintendence of Judicial Police (evidence file, folios 336 and 337).

[130] Witness statement of Jorge Luiz de Sales and Marcio Lima on May 8, 1995, before the Superintendence of Judicial Police (evidence file, folios 339 to 341); Witness statements of Everton Eugênio Gonçalves Silva, Fabiano Bessa and Ubiraci Silva de Jesus on May 8, 1995, before the Superintendence of Judicial Police (evidence file, folios 343 to 348); Witness statement of Raimundo Edilson Reis on May 8, 1995, before the Superintendence of Judicial Police (evidence file, folios 350 and 351).

of the autopsies of the attackers who died in the confrontation; to identify and prosecute Wanderley Messias do Nascimento for drug possession; to identify and investigate "*Macinho V.P*" as the alleged leader of the drug-trafficking gang, and to open a summary procedure to "promote for acts of bravery" all the police officers involved in the operation.[131]

134. On May 23, 30 and 31, 1995, 19 officers who took part in the police raid testified as witnesses to the events. In general, all the officers reiterated their previous testimony and stated that: (i) there had been a confrontation and a heavy exchange of fire; (ii) drugs and weapons had been seized; (iii) three police officers had been injured, and (iv) the members of the community who had been injured were removed and taken to the hospital.[132] Between June and September 1995, investigations were conducted into the criminal records of the 13 people killed.[133]

135. On June 29, 1995, prosecutor Maria Ignez C. Pimentel requested various measures, including: summoning the driver of the vehicle who had transported the presumed victims to the hospital.[134] Accordingly, on July 6, 1995, the deponent advised that he was unaware of whether or not the persons he had taken to the hospital were already dead.[135]

136. On September 21, 1995, the police officer in charge of the investigation issued his final report in which he stated that the police operation had been addressed at intercepting the delivery of a consignment of weapons; however, owing to the attack carried out by the inhabitants of the favela, the police had reacted. As a result of the operation, 13 individuals were injured and did not survive, and drugs and weapons were seized without identifying to whom they belonged. The officer decided that no additional probative procedure was necessary and decided to forward the file to the Public Prosecution Serivce.[136]

137. On January 29, 1996, prosecutor Maria Ignez Pimentel requested that the next of kin of the 13 victims be summoned to testify.[137] Some of these family members testified on February 16, and March 1, 8, 22 and 29, 1996.[138] Almost four years passed without any relevant measure being taken in the investigation of IP No. 061/95.

C. Facts within the Court's temporal jurisdiction

Investigation of the police raid of October 18, 1994

138. According to the evidence in the case file, there was no relevant procedural activity between 1995 and 2002. On August 27, 2002, investigation IP No. 52/94 (initiated by the

[131] Decision of the police authority of May 15, 1995 (evidence file, folio 353).

[132] Witness statements of Police Chief Marcos Alexandre Cardoso Reimão, and of officers Carlos Alberto Gonçalves Vieira, Vitor Pereira Júnior, Gustavo Barbosa Lima, Cesar Ulisses C. Machado, Newton Fróes de Azevedo Filho, Renato José Lopes, Alfredo Silva Neto, Carlos Alberto Donato da Cruz, Márcio Mendes Gomes, Alcides Pereira de Carvalho Filho, Adonis Lopes de Oliveira, Renato Babaiof, Flavio Martins Molina, Lucio Desidério de Assumpção, Alfredo Pereira dos Santos, Paulo Marcio de Bragança Teixeira, Flávio Noronha and Mauro José Gonçalves on May 23, 30 and 31, 1995, before the Superintendence of Judicial Police (evidence file, folios 447 to 483).

[133] *Cf.* Merits Report No. 141/11, para. 114.

[134] Decision of the prosecutor, Maria Ignez Pimentel, on June 29, 1995 (evidence file, folios 551 and 552).

[135] Witness statement of Marcos Luiz Rodrigues on July 6, 1995, before the State Secretariat for the Civil Police (evidence file, folios 554 and 555).

[136] Report with conclusions on IP No. 061/95 at September 21, 1995 (evidence file, folios 557 to 560).

[137] Decision of the prosecutor, Maria Ignez Pimentel, on January 29, 1996 (evidence file, folio 562).

[138] Witness statements of the victims' next of kin on February 16, and March 1, 8, 22 and 29, 1996, before the Prosecutor for Criminal Investigations (evidence file, folios 563 to 574).

DETAA) was renumbered No. 141/02 by the Internal Affairs Office[139] of the Civil Police (COINPOL).[140]

139. On December 15, 2003, COINPOL renumbered investigtion IP No. 187/94 (initiated by the DRE) as investigation IP No. 225/03. From January 22, 2004, to February 26, 2007, several requests were made for extra time to comply with measures that had been ordered.[141]

140. Even though the Secretary of State of the Civil Police had asked that IP No. 187/94 be forwarded to the DETAA on November 22, 1994 (*supra* para. 126), it was not until 2007 that IP No. 187/94 (renumbered as IP No. 225/03 by COINPOL)[142] was combined with IP No. 52/94 (renumbered as IP No. 141/02 by COINPOL). Both files were combined as IP No. 141/02 by the Internal Affairs Office of the Police.[143]

141. Following the consolidation of the two investigation files, two measures were adopted: on February 15, 2008, the Chief of Police who was in charge of the police raid of October 18, 1994, was summoned to provide his version of the events[144] and on September 19, 2008, a search order was issued to find the next of kin of the supposed victims who had been killed.[145]

142. On April 30 and August 13, 2009, further time was requested to take pending measures.[146] On August 14, COINPOL issued its final report indicating that the criminal action had extinguished, in application of the statute of limitations owing to the passage of time.[147] On August 18, 2009, the final report was sent to the Public Prosecution Service.[148]

143. On October 1, 2009, the Public Prosecution Service asked that the case be closed "owing to the inevitable extinction of punishment based on the statute of limitations."[149] On November 3, 2009, the judge of the 31st Criminal Court of the Court of Justice of the state of Rio de Janeiro, based on the considerations of the Public Prosecution Service, decided to close file IP No. 141/02.[150]

144. As a result of the issue of Merits Report No. 141/11 by the Inter-American Commission on Human Rights and its forwarding to the Public Prosecution Service of Rio de Janeiro, on March 7, 2013, the Deputy Prosecutor General (Head of the Public Prosecution Service of the state of Rio de Janeiro) requested the re-opening of the inquiry into the "slaughter" that took place on October 18, 1994. Among the grounds for this request, the Deputy Prosecutor General indicated that the original inquiry (IP No. 141/94) referred to crimes of "abuse of authority, assault, torture, as well as other criminal offenses," and not to the homicides that had, in fact, occurred on that date.[151] Furthermore, neither the Chief of Police, nor the prosecutor or the judge who intervened in the investigation file had made any mention of the crimes that were, in fact, perpetrated that day in Favela Nova Brasilia. In this regard, the

[139] Office of Internal Affairs.

[140] Cover page of file renumbered 141/02 (evidence file, folio 27).

[141] Request for extra time to comply with measures (evidence file, folios 270 to 298).

[142] Certification of mailing to COINPOL on December 15, 2003 (evidence file, folios 22 to 23).

[143] Certification of consolidation of investigation files on August 13, 2007 (evidence file, folios 29 to 30).

[144] Summons to José Secundino (evidence file, folio 308).

[145] Search warrant in IP No. 141/02 (evidence file, folio 310).

[146] File IP No. 141/02, communication of April 30, 2009 (evidence file, folio 5099); File IP No. 141/02, communication of August 13, 2009 (evidence file, folio 5101).

[147] File IP No. 141/02, communication of August 14, 2009 (evidence file, folios 5102 and 5103).

[148] File IP No. 141/02, communication of August 18, 2009 (evidence file, folio 5104).

[149] File IP No. 141/02, communication of October 1, 2009 (evidence file, folios 5105 to 5107).

[150] File IP No. 141/02, decision of the judge of the 31st Criminal Court of Justice of the State of Rio de Janeiro of November 3, 2009 (evidence file, folios 5108 to 5109).

[151] Request to re-open the investigation of March 7, 2013 (evidence file, folio 6409).

report adopted by the Deputy Prosecutor General underlined that homicides had, indeed, occurred and even larceny, as well as sexual violence, torture and abuse of power.[152] In addition, the document indicated that the crimes of sexual violence had prescribed and could not be investigated again.[153]

145. Subsequently, on May 16, 2013, the Public Prosecution Service of the state of Rio de Janeiro, through the Special Group to Combat Organized Crime (GAECO), filed a criminal action against six individuals involved in the operation in Favela Nova Brasilia for the homicide of the 13 victims.[154]

146. On May 21, 2013, the 1st Criminal Court admitted the complaint and ordered that several measures be taken.[155] From June to August 2013, the accused presented their repsonses to the criminal action.[156] On December 18, 2013, a hearing was held in the presence of the six defendants.[157] On Januaryn 17, 2014, the Public Prosecution Service required that J.F.C, C.S.S. and L.R.J. be located.[158] On July 7, 2014, the hearing continued in the absence of one of the defendants and of the witnesses offered by the Public Prosecution Service.[159]

147. On September 1, 2014, the Public Prosecution Service again required that steps be taken to find J.F.C, C.S.S. and L.R.J., who it had not been possible to locate.[160] On October 23, 2014, L.R.J. was contacted by telephone and confirmed her address.[161] On March 27, 2015, the Public Prosecution Service required that a summons be sent to L.R.J. at the address she had provided, and also that communications be sent with the CPF [civil registration number] of C.S.S.,[162] and on April 8, 2015, an order was given to process these requests.[163] At a hearing held on August 2, 2016, the statement of the victim C.S.S. was received; L.R.J. presented a medical certificate to justify her failure to appear and J.F.C had not been located.[164]

148. The investigations have not clarified the deaths of the 13 presumed victims and no one has been punished for the alleged facts. With regard to the sexual violence committed against C.S.S., L.R.J and L.F.C., the public authorities have never investigated those specifice acts.

Investigation of the police raid of May 8, 1995

149. On September 25, 2000, at the request of the prosecution, forensic expert Tania Donati Paes Rio presented a report on the autopsies of the alleged victims.[165]

150. The expert indicated that, according to information in both the press and in the procedural documents, as well as in medical literature, situations of a heavy exchange of gunfire are mostly the result of an attempt to eliminate the adversary, rather than merely to

[152] Request to re-open the investigation of March 7, 2013, folios 6427, 6430.

[153] Request to re-open the investigation of March 7, 2013, folios 6427, 6431.

[154] Initial petition of the Public Prosecution Service of May 13, 2013 (evidence file, folios 6438 and 6439)

[155] Decision of the judge of the 1st Criminal Court of May 21, 2013 (evidence file, folio 6447).

[156] File of Proceedings No. 2009.001.272489-7 (evidence file, folios 6477 to 6478, 6483 to 6485, 6487 to 6490, 6491 to 6495, 6497 to 6498, 6517 to 6524, 6525 to 6528).

[157] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6658).

[158] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6665).

[159] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6780).

[160] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6837).

[161] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6841).

[162] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6853).

[163] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6855).

[164] Expert opinion provided by affidavit by Caetano Lagrasta Neto on September 30, 2016 (evidence file, folio 16588).

[165] Report of forensic expert Tania Donati Paes Rio of September 25, 2000 (evidence file, folios 576 to 578).

try and respond to an attack.[166] She added that the fact that the victims' bullet wounds were mostly to the chest, near the heart, and to the head, and that six of the individuals died from one or two shots, indicated a high degree of lethal effectiveness. Also, seven corpses showed signs of injuries caused by blunt objects and fractures.[167]

151. On October 3, 2000, the prosecutor requested several measures.[168] On August 10, 2000, the police investigation was renumbered IP No. 120/01.[169] Subsequently, on January 31, 2003, the prosecutor issued an order related to numerous police investigations that could be related to the events of the 1995 police raid, including the police operation conducted in Favela Nova Brasilia in October 1994.[170]

152. Between February 2003 and October 2004 there was a misunderstanding concerning the identification number of the files. Finally, on November 30, 2004, once the misunderstanding had been overcome, the Chief of the Civil Police submitted investigation IP No. 120/01 to the jurisdiction of COINPOL.[171] On December 29, 2004, this police investigation was renumbered: IP No. 217/04.[172]

153. On January 27, 2005, the COINPOL Chief of Police in charge of the investigation resumed activities and requested a judicial search of whether or not civil proceedings had been filed against the state of Río de Janeiro between 1995 and 2000 by the next of kin of the victims who had died.[173] That request was repeated on February 13, 2006.[174]

154. The deadline for completing the police investigation expired on numerous occasions between April 2006 and June 2008, and was extended successively withou any progress being made on the requests.[175] Finally, on September 23, 2008, the Police Chief in charge of the investigation issued a report concluding that, "after almost 13 years, the investigation file indicates that there was an armed confrontation during which, owing to the complexities inherent in a 'war,' some people were killed or injured."[176]

155. On October 2, 2008, the file was forwarded to the Public Prosecution Service,[177] which requested that it be closed on June 1, 2009.[178] On June 18, 2009, the judge of the 3rd Criminal Court decided to close the case.[179]

156. On October 31, 2012, the Public Prosecution Service presented a report on the possibility of re-opening the investigation, indicating that flaws had existed in the way it had been conducted.[180] On December 11, 2012, the judge of the 3rd Criminal Court decided that it was not possible to reopen the investigationn.[181] Nevertheless, on January 10, 2013, the

[166] Report of forensic expert Tania Donati Paes Rio of September 25, 2000 (evidence file, folio 577).
[167] Report of forensic expert Tania Donati Paes Rio of September 25, 2000 (evidence file, folio 578).
[168] Opinion of the prosecutor, Stephan Stamm, on October 2, 2000 (evidence file, folio 580).
[169] Renumbering of IP No. 061/95 as IP 120/01 (evidence file, folios 312 to 315).
[170] Order of the prosecutor, Daniel Lima Ribeiro, of January 31, 2003 (evidence file, folios 585 to 586).
[171] Decision of November 30, 2004 (evidence file, folio 656).
[172] Renumbering of IP No. 120/01 as IP No. 217/04 (evidence file, folios 317 and 318).
[173] Statement by Police Officer Fernando Albuquerque on January 27, 2005 (evidence file, folios 658 and 659).
[174] Statement by Police Officer Fernando Albuquerque on February 13, 2016 (evidence file, folios 661).
[175] Request to extend deadline to comply with measures (evidence file, folios 663 to 693).
[176] Report of the Civil Police of Río de Janeiro (evidence file, folios 5740 to 5745).
[177] Communication of COINPOL (evidence file, folios 5746 and 5747).
[178] Communication of the Public Prosecution Service of Rio de Janeiro (evidence file, folios 5751 and 5752).
[179] Communication of the 3rd Criminal Court (evidence file, folio 5753).
[180] Communication of the Public Prosecution Service of Rio de Janeiro (evidence file, folios 7740 to 7742).
[181] Decision del 3rd Criminal Court (evidence file, folios 7757 to 7761).

Prosecutor General accorded the Public Prosecution Service competence to investigate.[182] On July 9, 2013, the Homicide Division opened a new police investigation.[183]

157. As part of this police investigation, on July 11, 2013, the Arms and Explosives Control Division (DFAE) was asked to send an analysis of the weapons used during the raid.[184] On August 1, 2013, three analyses were remitted[185] and on November 18, 19 and 20, several witnesses of the events of May 8, 1995, testified.[186]

158. On October 21, 2014 the Public Prosecution Service presented the report on the weapons analysis.[187] Between November 2014 and May 2015 several measures were taken in relation to the weapons used during the police raid.[188] Finally, on May 7, 2015, the Court of Justice of the state of Río de Janeiro issued its decision determining that the criminal action be closed, and also the inadmissibility of the evidence produced by the Public Prosecution Service following the reopening of the file because it contradicted the ruling of the Judiciary. The Court of Justice also considered that the defendants could be suffering from "psychological torture" due to the "investigation having persisted" for 19 years.[189]

159. The investigation into the 13 deaths during the police raid of May 8, 1995, remains incomplete to date.

Action to claim reparation filed by Mônica Santos de Souza Rodrigues and Evelyn Santos de Souza Rodrigues against the state of Río de Janeiro

160. On July 15, 2002, Mônica Santos de Souza Rodrigues and Evelyn Santos de Souza Rodrigues – respectively, permanent companion and daughter of Jacques Douglas Melo Rodrigues – filed a civil action against the state of Rio de Janeiro, seeking acknowledgement of the state's responsibility for his death and pecuniary compensation.[190] On September 27, 2004, it was declared that the claim of Mônica Santos de Souza Rodrigues had prescribed.[191] On February 23, 2005, it was decided that Evelyn Santos de Souza Rodrigues' claim was inadmissible on the grounds that it had not been proved that the death of Jacques Douglas Melo Rodrigues had been caused due to the action of a police officer.[192]

[182] Communication of the Prosecutor General (evidence file, folio 7769).

[183] File of Proceedings IP No. 901-008992/2013 (evidence file, folio 7109).

[184] File of Proceedings IP No. 901-008992/2013 (evidence file, folios 7807 to 7819).

[185] File of Proceedings IP No. 901-008992/2013 (evidence file, folios 7820 to 7838).

[186] File of Proceedings IP No. 901-008992/2013 (evidence file, folios 7853 to 7858).

[187] Communication of the Public Prosecution Service of Rio de Janeiro (evidence file, folios 8163 to 8169).

[188] File of Proceedings IP No. 901-008992/2013 (evidence file, folios 8226, 8231 to 8251, 8252, 8282 to 8288, 8289 and 8291 to 8320).

[189] Decision of the 3rd Criminal Court (evidence file, folios 8321 to 8337).

[190] Proceeding No. 0087743-75.2002.819.0001 (evidence file, folios 9497 to 9504).

[191] Proceeding No. 0087743-75.2002.819.0001 (evidence file, folios 9497 to 9504).

[192] Proceeding No. 0087743-75.2002.819.0001 (evidence file, folios 9497 to 9504).

VII
MERITS

VII-1
RIGHTS TO JUDICIAL GUARANTEES[193] AND TO JUDICIAL PROTECTION[194]

161. In this chapter, the Court will develop legal considerations concerning the alleged violation of the rights to judicial guarantees and judicial protection. To this end, it will make its analysis as follows: (a) the alleged violation of the judicial guarantees and judicial protection of the next of kin of the victims who died in the 1994 and 1995 raids, and (b) due diligence and judicial protection in the case of the sexual violence committed against L.R.J., C.S.S. and J.F.C..

A. Arguments of the parties and of the Commission

162. The ***Commission*** indicated that the time that had passed without even a preliminary decision on the legality of the use of lethal force by the police that resulted in the death of 26 victims was unacceptable. The Commission alleged that the time that had elapsed was sufficient to declare that the State was responsible for the violation of Articles 8(1) and 25(1) in relation to Article 1(1) of the Convention.

163. The Commission underlined that the police investigations were conducted by the same Civil Police departments that had carried out the raids. Also, that they were initiated based on "resisting arrest" records registered by the police officers who had taken part in the raids, in keeping with the practice of registering all deaths caused by the police as legitimate, which

[193] Article 8. Right to a Fair Trial. 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.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

b) prior notification in detail to the accused of the charges against him;

c) adequate time and means for the preparation of his defense;

d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

g) the right not to be compelled to be a witness against himself or to plead guilty; and

h) the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a non to appealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

[194] Article 25. Right to Judicial Protection. 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.

was frequently used to transfer police responsibility to the victims. Therefore, the Commission considered that, due to the lack of independence of the authorities in charge of the investigation and the biased nature of the police investigations Articles 8(1) and 25(1), in relation to Article 1(1) of the American Convention, had been violated.

164. The Commission recalled that, even though Brazil had ratified the Convention of Belém do Pará after the facts of the case, the obligation to investigate acts of violence against women recognized in Article 7 of that Convention, is of a continuing nature; in other words, it remains in force until the facts are adequately clarified and the guilty parties are duly punished, as appropriate. Accordingly, in light of this continuing nature, this obligation is applicable even when the alleged facts occurred prior to the date on which the State in question deposited its instrument of ratification. Therefore, the Commission considered that the State had violated Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument and Article 7 of the Convention of Belém do Pará, to the detriment of L.R.J. C.S.S. and J.F.C..

165. The ***representatives*** indicated that the investigating authorities were not independent and impartial, and did not act with due diligence or within a reasonable time, impeding the victims' access to justice. They were not diligent in their actions due to the long periods of inactivity in the investigation procedures, the excessive number of deadline extensions requested and granted at the investigation stage, and the failure to conduct the procedures ordered by those authorities.

166. The representatives also mentioned that the investigation into the facts of this case was jeopardized by their registration as "resisting arrest." The concept of "resisting arrest" means that the victims are treated as "adversaries," which results in the establishment of a single line of investigation aimed at seeking their possible criminal records and proving their guilt for some offense that has occurred in the context of the events investigated.

167. Additionally, the representatives argued that there was a lack of diligence in the context of the reopening of the investigations in this case in 2013, and ballistic tests were not performed on the correct weapons. Regarding the action for reparation filed by Mônica Santos de Souza Rodrigues and Evelyn Santos de Souza Rodrigues, the representatives pointed out that there were no adequate and effective remedies to protect and to guarantee the rights of the victims in this case.

168. The representatives asked the Court to declare the State responsible for violating the right to judicial guarantees and judicial protection established in Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the next of kin of the victims who died as a result of the facts of this case.

169. Regarding the situation of L.R.J., C.S.S. and J.F.C., the representatives mentioned that they were only examined almost a month after the violent acts and that, for more than 20 years, nothing was done to investigate, prosecute and punish those responsible for the acts of sexual violence committed against them.

170. The representatives asked the Court to declare that the State was responsible for violating the rights to judicial protection, judicial guarantees and personal integrity contained in Articles 25, 8 and 5 of the American Convention, in relation to Articles 1(1) and 2 of this instrument; 1, 6 and 8 of the ICPPT, and 7 of the Convention of Belém do Pará, to the detriment of L.R.J., C.S.S. and J.F.C., based on the impunity of the acts they endured and the effects on their personal integrity owing to the frustration and anguish that this has caused them up until the present day. Additionally, they asked that this responsibility be classified as aggravated based on the rights of the child, established in Article 19 of the American

Convention, in relation to Article 1(1) of this instrument, with regard to C.S.S., who was 15 years of age at the time of the facts of this case, and of J.F.C., who was 16 years of age.

171. The ***State*** did not make specific reference to the alleged violations of Articles 8 and 25 of the Convention. However, it made some observations on judicial guarantees and judicial protection, as part of its arguments concerning the right to personal integrity. In this regard, the State considered that a violation of Article 25 of the Convention could not, simultaneously, be a violation of Article 8 of this instrument because they protected different rights, and the representatives were asking the Court to declare that the State was simultaneously responsible for the violation of both articles of the Convention based on the same fact.

B. Considerations of the Court

172. The Court reiterates that its contentious jurisdiction in this case is limited to the judicial actions that took place after December 10, 1998, the date on which the State accepted its jurisdiction. Thus, in order to determine the State's responsibility in this case, the Court will only examine the actions taken following that date.

173. Before examining the investigations related to the raids on October 18, 1994, and May 8, 1995, the Court will rule on: (i) the standards for due diligence and a reasonable time in cases of alleged extrajudicial execution; (ii) the standards for the independence of the investigating agencies in cases of deaths as a result of police interventions, and (iii) the effect of the "resisting arrest" records on the investigations. The Court will then make a specific analysis of: (iv) due diligence and a reasonable time in the investigations related to the 1994 and 1995 raids, and (v) the effectiveness of the remedies for the protection of the rights of the next of kin of the victims who died in the 1994 and 1995 raids. Subsequently, the Court will: (vi) rule on the standards for due diligence in cases of rape, and (vii) analyze the State's response to the rape of L.R.J., C.S.S. and J.F.C.

B.1. Standards for due diligence and a reasonable time in cases of alleged extrajudicial execution

174. The Court has repeatedly indicated that States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be substantiated pursuant to the rules of due process of law (Article 8(1)), all within the general obligation of these same State to ensure the free and full exercise of the rights recognized in the Convention to every person subject to their jurisdiction (Article 1(1)).[195]

175. The obligation "to ensure" rights entails the positive obligation of the State to adopt a series of measures depending on the specific substantive right in question.[196]

176. That general obligation is particularly pronounced in cases of the lethal use of force by state agents. As soon as a State becomes aware that law enforcement agents have used their weapons with lethal consequences, it is obliged to determine whether the deprivation of life was arbitrary. This obligation constitutes a fundamental and conditioning factor for the protection of the right to life that has been annulled in such circumstances.[197]

177. In cases in which it is alleged that extrajudicial executions have occurred, it is essential that States conduct an effective investigation into the arbitrary deprivation of the right to life

[195] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections,* para. 91, and *Case of I.V.,* para. 292.

[196] *Cf. Case of Cantoral Huamaní and García Santa Cruz,* para. 101, and *Case of Cruz Sánchez*, para. 347.

[197] *Cf. Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166*,* para. 88, and *Case of Valencia Hinojosa et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 29, 2016. Series C No. 327, para. 133.

recognized in Article 4 of the Convention aimed at determining the truth and the pursuit, capture, prosecution and eventual punishment of the perpetrators of the acts.[198] This obligation is increased when state agents who hold the monopoly of the use of force are or could be involved.[199] In addition, if acts that have violated human rights are not investigated seriously, in some way this would mean they had been supported by the public authorities, and this would engage the international responsibility of the State.[200]

178. The obligation to investigate is an obligation of means and not of results that must be assumed by the State as an inherent legal duty and not as a mere formality preordained to be unsuccessful, or as simple action taken by private interests that depends on the procedural initiative of the victims or their next of kin, or on the contribution of probative elements by private individuals.[201]

179. In the context of the guarantees of due process, compliance with the obligation to undertake a serious, impartial and effective investigation into what has occurred has also involved an examination of the time taken by that investigation[202] and of "legal measures available"[203] to the next of kin of the deceased victim to ensure that they are heard and that they may take part in the investigation procedure.[204]

180. The Court has established that, in order to ensure its effectiveness, the investigation of human rights violations must avoid omissions in the gathering of evidence and in following up on logical lines of investigation.[205] In this regard, the Court has specified that, when the facts relate to the violent death of an individual, the investigation that is opened must be conducted in a way that can guarantee due analysis of the resulting hypotheses as to the perpetrators.[206] On this point, it should be recalled that it is not for the Court to analyze the hypotheses as to the perpetrators that have been examined during the investigation into the facts and, consequently, to determine individual responsibilities – this corresponds to the domestic criminal courts. Rather, the Court must evaluate the acts or omissions of state agents based on the evidence presented by the parties.[207] Likewise, it is not incumbent on the Court to act as a substitute for the domestic jurisdiction by establishing the specific methods for investigating and prosecuting a particular case to obtain a better or more effective result, but rather to verify whether or not any of the State's international obligations derived from Articles 8 and 25 of the American Convention have been violation during the measures taken at the domestic level.[208]

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[198] *Cf. Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140*,* para. 143, and *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2016. Series C No. 325, para. 280.

[199] *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, para. 156, and *Case of Quispialaya Vilcapoma,* para. 162.

[200] *Cf. Case of the Pueblo Bello Massacre,* para. 145, and *Case of Cruz Sánchez*, para. 348.

[201] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 177, and *Case of I.V.*, para. 315.

[202] *Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30*,* para. 77, and *Case of Cruz Sánchez*, para. 352.

[203] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits,* para. 173, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal*, para. 288.

[204] *Cf. Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196*,* para. 109, and *Case of Cruz Sánchez*, para. 352.

[205] *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 158, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal*, para. 212.

[206] *Case of Kawas Fernández*, para. 96, and *Case of Yarce et al.*, para. 307.

[207] *Case of Cantoral Huamaní and García Santa Cruz*, para. 87, and *Case of the Human Rights Defender et al.*, para. 214.

[208] *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits*. Judgment of November 28, 2006. Series C No. 161, para. 80, and *Case of Velásquez Paiz et al.*, para. 165.

181. The Court recalls that a lack of diligence results in the passage of time unduly affecting the possibility of obtaining and presenting pertinent evidence that will clarify the facts and determine the corresponding responsibility and, consequently, the State contributes to impunity.[209]

182. Furthermore, due diligence in a forensic investigation of a death requires safeguarding the chain of custody of each piece of forensic evidence.[210] This consists in keeping a precise written record supplemented, when necessary, by photographs and other graphic elements to document the history of the piece of evidence that passes through the hands of different investigators in charge of the case.[211]

B.2. Standards for the independence of the investigating bodies in cases of deaths as a result of police interventions

183. With regard to the role of the bodies responsible for the investigation and the criminal proceedings, the Court recalls that all the bodies that exercise functions of a jurisdictional nature have the duty to adopt just decisions based on full respect for the guarantees of due process of law established in Article 8 of the American Convention.[212]

184. The Court has established that, depending on the circumstances of the case, it may have to analyze the procedures that relate to and constitute judicial proceedings, particularly the investigation on whose results the initiation and progress of the proceedings depends.[213]

185. All the requirements of due process established in Article 8(1) of the Convention, as well as criteria of independence and impartiality, also extend to the non-judicial bodies responsible for the investigation prior to the judicial proceedings, and that is conducted to determine the circumstances of a death and the existence of sufficient evidence to file a criminal action. If these requirements are not met, the State will be unable, subsequently, to exercise its prosecutorial powers and the courts will be unable to conduct the judicial proceedings that this type of violation calls for.[214]

186. The United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (known as the Minnesota Protocol)[215] and its Principles establish that "[i]n cases where government involvement is suspected, an objective and impartial investigation may not be possible unless a special commission of inquiry is established." Factors that support a belief that state agents were involved in the execution and that should trigger the creation of a special impartial investigation commission include: where the victim was last seen alive in police custody or detention; where the modus operandi

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[209] *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010 Series C No. 217, para. 172, and *Case of Yarce et al.,* para. 282. The Court has defined impunity as the total absence of investigation, pursuit, capture, prosecution and conviction of those responsible for human rights violations. *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Preliminary objections.* Judgment of January 25, 1996. Series C No. 23, para. 173, and *Case of Manuel Cepeda Vargas v. Colombia,* footnote 184.

[210] *Cf.* United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol). UN Doc. E/ST/CSDHA/.12 (1991), *and Case of the Campesina Community of Santa Bárbara*, para. 228.

[211] *Cf. Case of González et al. ("Cotton Field")*, para. 305, and *Case of Velásquez Paiz et al.*, para. 153.

[212] *Cf. Case of YATAMA v. Nicaragua*. *Preliminary objections, merits, reparations and costs*. Judgment of June 23, 2005. Series C No. 127, para. 149; *Case of Flor Freire*, para. 166.

[213] *Cf. Case of the "Street Children" (Villagrán Morales et al.). Merits*, para. 222, and *Case of Fernández Ortega et al.*, para. 175.

[214] *Cantoral Huamaní and García Santa Cruz*, para. 133, and *Case of García Ibarra et al.*, para. 135.

[215] United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol).

is recognizably attributable to government-sponsored death squad; where persons in the government or associated with the government have attempted to obstruct or delay the investigation of the execution, and where the physical or testimonial evidence essential to the investigation becomes unavailable. In such circumstances, paragraph 11 of the said Principles indicates that an independent commission of inquiry or similar procedure should also be established. The investigators, in those cases, must be impartial, competent and independent.

187. In this regard, the Court considers that the essential element of a criminal investigation into a death resulting from a police intervention is the guarantee that the investigating agency is independent of the agents involved in the incident. That independence entails the absence of any institutional or hierarchical relationship, as well as independence in practice.[216] In this regard, when there are indications of presumed serious crimes in which "*prima facie*" it appears that police personnel are potentially involved, the investigation must be conducted by an independent body, distinct the police force involved in the incident, such as a judicial authority or the Public Prosecution Service, assisted by police, criminalistic and administrative personnel unrelated to the law enforcement body to which those who are possibly involved belong.

188. The European Court of Human Rights has established various situations in which the independence of the investigators may be compromised in cases of a death resulting from state intervention.[217] Among these, the Court stresses situations in which: (i) the investigators themselves were potential suspects; (ii) they were direct colleagues of the person subject to investigation; (iii) they were in a hierarchical relationship with the potential suspects; (iv) the specific conduct of the investigative bodies indicated a lack of independence, such as the failure to carry out certain measures that were called for in order to elucidate the case and, if appropriate, punish those responsible; (v) the excessive weight given to the suspects' statements; (vi) the failure to explore certain lines of inquiry which were clearly required, or (vii) excessive inertia.

189. This "does not require the investigative body to enjoy absolute independence, but rather that it is sufficiently independent of the persons and structures whose responsibility is likely to be engaged" in the specific case. "The adequacy of the degree of independence is assessed in the light of the circumstances of each case."[218]

190. When the independence or impartiality of the investigative body is open to question, this will call for stricter scrutiny on the part of the Court to verify whether the investigation has been carried out in an independent and impartial manner. Thus, it is necessary to examine whether, and to what extent, the alleged lack of independence and impartiality has compromised the investigation's effectiveness and its ability to shed light on what happened

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[216] *Cf.* ECHR, *Case of Mustafa Tunc and Fecire Tunc v. Turkey*, No. 24014/05, Judgment of April 14, 2015, para. 230.

[217] *Cf.* ECHR, *Case of Mustafa Tunc and Fecire Tunc v. Turkey*, No. 24014/05. Judgment of April 14, 2015, para. 222; *Case of Bektaş and Özalp v. Turkey,* No. 10036/03. Judgment of April 20, 2010, para. 66, *and Case of Orhan v. Turkey,* No. 25656/94. Judgment of June 18, 2002, para. 342; *Case of Ramsahai and Others v. The Netherlands*, No. 52391/99. Judgment of May 15, 2007, paras. 335 to 341; *Case of Emars v. Latvia,* No. 22412/08. Judgment of November 18, 2014, paras. 85 and 95, *Case of Aktaş v. Turkey*, No. 24351/94. Judgment of April 24, 2003, para. 301; *Case of Şandru and Others v. Romania*, No. 22465/03. Judgment of December 8, 2009, para. 74, and *Case of Enukidze and Girgvliani v. Georgia*, No. 25091/07. Judgment of April 26, 2011, para. 247 and *ff; Case of Sergey Shevchenko v. Ukraine*, No. 32478/02. Judgment of April 4, 2006, paras.72 and 73; *Case of Kaya v. Turkey*, No. 22535/93. Judgment of February 19, 1998, para. 89, and *Case of Grimailovs v. Latvia*, No. 6087/03. Judgment of June 25, 2013, para. 114; *Case of Oğur v. Turkey*, No. 21594/93. Judgment of May 20, 1999, paras. 90 and 91; *Case of Rupa v. Romania (no. 1)*, No. 58478/00. Judgment of December 16, 2008, paras. 123 and 124; *Case of Armani da Silva v. The United Kingdom*, No. 5878/08, Judgment of March 30, 2016, para. 233, and Case of *Al-Skeini and Others v. The United Kingdom [GS],* No. 55721/07. Judgment of July 7, 2011, para. 173.

[218] *Cf.* ECHR, *Case of Ramsahai and Others. v. The Netherlands*, No. 52391/99. Judgment of May 15, 2007, paras. 343 and 344, and *Case of Mustafa Tunc and Fecire Tunc v. Turkey*, No. 24014/05. Judgment of April 14, 2015, para. 223.

and to punish those responsible.[219] Some essential interrelated parameters should be observed to assess the effectiveness of the investigation in those cases: (i) the adequacy of the investigative measures; (ii) the promptness of the investigation,; (iii) the involvement of the deceased person's family, and (iv) the independence of the investigation.[220] Also, in cases of death as a result of the intervention of a police officer, to be effective, the investigation must be able to reveal whether or not the use of force was justified owing to the circumstances. In that type of case, the domestic authorities must make a particularly strict scrutiny during the investigation.

191. Lastly, regarding the intervention of bodies to oversee the investigation or the actions of the courts, it should be noted that, on some occasions, the shortcomings in the investigation may be remedied, but this is not always possible given the advanced stage of the investigation and the magnitude of the flaws in the work of the investigating body.[221]

B.3. The effect of the "resisting arrest" records on the investigations

192. The Court recalls that the investigations into the events of the two police raids (of October 1994 and May 1995) in Favela Nova Brasilia began with the elaboration of "resisting arrest records" to register the deaths of the individuals who had lost their life during the raids (*supra* paras. 120 and 131). Although those facts fall outside the Court's temporal jurisdiction, the effect of the "resisting arrest records" had an impact on the whole investigation, with consequences that persisted over time and that were decisive for the lack of due diligence in the investigations.

193. In this regard, several expert opinions and statements provided in this case have indicated – and the Ombudsman of the state of São Paulo mentioned in his *amicus curiae* brief – that, in Brazil it has become a usual practice that reports on deaths caused by the police are recorded as "resistance following by death," and that, in Río de Janeiro, the expression "resisting arrest" is used to refer to this. According to the Ombudsman, that is the ideal situation for the agents who try to confer an appearance of legality on the summary executions they carry out.[222]

194. Likewise, expert witness Caetano Lagrasta indicated that acts registered as "resisting arrest" are classified from the outset as the occurrence of a confrontation resulting in the death of an individual; in other words, they are based on the assumption that the police responded proportionately to a threat or attack by the victim who died. Deaths that are classified as "resisting arrest" are rarely investigated diligently; to the contrary, the investigations usually criminalize the victim because the investigations are often conducted in order to determine the crime that the person who died had supposedly committed. Even though there might be indications of summary executions, the authorities usually disregard them. Several Brazilian and international experts, human rights organizations and international agencies for the protection of human rights have referred to this phenomenon, as underlined by the Court in paragraphs 104 to 112 *supra*.

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[219] *Cf.* ECHR, *Case of Mustafa Tunc and Fecire Tunc v. Turkey*, No. 24014/05. Judgment of April 14, 2015, para. 224.

[220] *Cf.* ECHR, *Case of Mustafa Tunc and Fecire Tunc v. Turkey*, No. 24014/05. Judgment of April 14, 2015, para. 225.

[221] *Cf.* ECHR *Case of Mustafa Tunc and Fecire Tunc v. Turkey*, No. 24014/05. Judgment of April 14, 2015, para. 234.

[222] *Cf.* Among others, Report on Mission to Brazil, Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/HRC/11/2/Add.2, March 23, 2009; Expert opinion provided by affidavit by Michel Misse on September 16, 2016 (folios 14510 and 14511, 14515); Expert opinion provided by affidavit by Marlon Weichert on September 30, 2016 (folios 14545 to 14549); Expert opinion provided by affidavit by Ignacio Cano on September 27, 2016 (folios 15557 to 15561), and Expert opinion provided by affidavit by Caetano Lagrasta Neto on September 30, 2016 (folios 16529 to 16532, 16553, 16555, 16557 and 16558).

195. The Court notes that, in this case, the investigations into the deaths that occurred in the two raids began with the assumption that the police officers were acting legitimately, and that the deaths had been the result of confrontations during the raids. Also, the lines of investigation were addressed at determining the responsibility of those who had been executed, focusing on finding out if they had criminal records or were responsible for attacking or trying to kill the police officers, which is in keeping with the context in which the facts occurred (*supra* paras. 102 to 110) and the impunity in this type of case.

196. This tendency in the investigations resulted in considering that the individuals who had been executed might have been carrying out criminal activities that meant that the police needed to defend themselves and, therefore, used their weapons against them. This notion dominated the dynamic of the investigations, leading to a revictimization of the individuals executed and of their families, and to the fact that the circumstances of the deaths were never clarified.

197. Recording executions as "resisting arrest" had an evident effect on the investigations, on the seriousness accorded to the facts, and on the importance acorded to identifying and punishing those responsible. The Court will now assess how that situation had an impact on the investigations in relation to the facts that the State has acknowledged (*supra* para. 101).

B.4. The alleged violation of judicial guarantees and judicial protection of the next of kin of the victims who died in the 1994 and 1995 raids

B.4.1. Due diligence in the investigations relating to the police raids in 1994 and 1995

198. The Court recalls that, based on the evidence, no relevant action was taken in the investigation into these incidents between 1995 and 2002. On August 27, 2002, investigation IP No. 52/94 was renumbered 141/02 by the Internal Affairs Office of the Police (COINPOL).[223] On December 15, 2003, COINPOL renumbered investigation IP No. 187/94 as IP No. 225/03. Between January 22, 2004, and February 26, 2007, several requests were made to extend the deadlines for complying with different measures that had been ordered.[224]

199. In 2007, IP No. 187/94 and IP No. 52/94 were merged into COINPOL IP No. 141/02.[225] On February 15, 2008, the Police Chief who was in charge of the police raid was summoned to provide his version of the facts,[226] and on September 19, 2008, a subpoena was issued requiring the localization of the next of kin of the deceased victims.[227]

200. On August 18, 2009, the final report was sent to the Public Prosecution Service indicating that the criminal action had extinguished, owing to the application of the statute of limitations. [228] On October 1, 2009, the Public Prosecution Service required that the case be closed "due to the inevitable extinction of the possibility of punishment as a result of the statute of limitations."[229] On November 3, 2009, the judge of the 31st Criminal Court of the state of Rio de Janeiro, based on the considerations of the Public Prosecution Service, ordered the closure of file IP No. 141/02.[230]

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[223] Cover page of renumbered file 141/02 (evidence file, folio 27).

[224] Request for extended deadline to comply with measures (evidence file, folios 270 to 298).

[225] Certification of merger of files on August 13, 2007 (evidence file, folios 29 to 30).

[226] Summons to José Secundino (evidence file, folio 308).

[227] Subpoena in IP No. 141/02 (evidence file, folio 310).

[228] File IP No. 141/02, communication of August 14, 2009 (evidence file, folios 5102 and 5103).

[229] File IP No. 141/02, communication of October 1, 2009 (evidence file, folios 5105 to 5107).

[230] File IP No. 141/02, decision of the 31st Criminal Court of November 3, 2009 (evidence file, folio 5108).

201. As a result of the issue of Merits Report No. 141/11 by the Inter-American Commission and its notification to the Brazilian State, in March 2013, the Public Prosecution Service requested the reopening of the investigation into the 13 homicides that occurred on October 18, 2014. Subsequently, on May 16, 2013, the Public Prosecution Service filed a criminal action against six of those involved in the Favela Nova Brasilia operation. On May 21, 2013, the 1st Criminal Court admitted the complaint and ordered several measures.[231] On December 18, 2013, a trial hearing was held.[232] On January 17, 2014, the Public Prosecution Service requested the localization of J.F.C, C.S.S. and L.R.J.[233] On July 7, 2014, the continuation of the trial hearing took place.[234]

202. On September 1, 2014, the Public Prosecution Service again requested that measures be taken to find J.F.C, C.S.S. and L.R.J., who had not been located.[235] On October 23, 2014, L.R.J. was contacted by telephone.[236] On March 27, 2015, the Public Prosecution Service asked that a summons be sent to L.R.J. at the address she had provided, and that communications be sent with the CPF civil registration number of C.S.S.[237] On April 8, 2015, orders were issued to process these requests.[238] On August 2, 2016, a hearing was held at which C.S.S. testified as a witness and L.R.J. presented a medical certificate; J.F.C. had not been traced.

203. The Court notes that, to date, the investigations into the deaths of the 13 individuals who died during the 1994 operation have not clarified the events and no one has been punished. First, the Court underscores the prolonged periods during which there was no relevant activity in the investigations. Between 1996 and 2000 nothing was done; in 2000, one measure was ordered; in 2002 and 2003 the files were renumbered; between 2004 and 2007 several deadlines were extended; in 2007, the two cases that were being followed in parallel were merged; in 2008, some minor measures were taken and, finally, in 2009, the criminal action extinguished, owing to the statute of limitations. The reopening of the case file in 2013 has represented an important or even decisive step forward in the criminal investigation and proceedings.

204. The Court finds that there was a delay in the implementation of the procedures due, mainly to the authorities' lack of action, which resulted in long periods of inactivity in the investigations, and failure to execute measures that had been ordered. The State has not shown that there was any justification for the inactivity of its judicial authorities, or for the long period of time when there was no activity whatsoever.

205. The prolonged periods of time without any substantive progress in the investigation eventually led to its prescription, as the result of the lack of diligence of the judicial authorities responsible for taking all the necessary measures to investigate, prosecute and, as appropriate, punish those responsible;[239] therefore, this is a matter that can be attributed to the State. The reopening of the investigation in 2013, setting aside the prescription for substantive reasons, and the criminal action underway since then against six police officers may lead to the punishment of some of the perpetrators, but this is limited to just a few of the officers who took part in that raid.

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[231] Decision of the 1st Criminal Court of May 21, 2013 (evidence file, folio 6452 to 6453).

[232] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6658).

[233] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6665).

[234] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6780).

[235] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6837).

[236] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6841).

[237] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6853).

[238] File of Proceedings No. 2009.001.272489-7 (evidence file, folio 6855).

[239] *Cf. Case of Ximenes Lopes v. Brazil.* Judgment of July 4, 2006. Series C No. 149, para. 199, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal*, para. 210.

206. In the instant case, the Court notes that the body in charge of the investigations (DRE) is the same body that was in charge of the police raid of October 18, 1994. Thus, the DRE agents had to assess their own actions, which did not guarantee the true independence of the investigations and constituted a significant obstacle to their progress, because the agents had a vested interest and were directly involved in the alleged extrajudicial executions that they should have been investigating. The Court considers that this body did not have the necessary objectivity and was not the appropriate agency to ensure an independent and impartial investigation. It is inadmissible that it is the same police who are in charge of an investigation against themselves or their precinct or departmental colleagues. This had a direct impact on the investigation until it was transferred to the Internal Affairs Office of the Civil Police (COINPOL) in 2002, and has had negative repercussions up until the present owing to the lack of urgency and diligence in the initial investigation.

207. The specific lack of independence of the investigators is evident from the analysis of their direct relationship with the killers, their biased actions, and the excessive delay in the proceedings. The Civil Police was incapable of taking the minimum measures required to establish the truth about what happened and to file criminal proceedings against the killers. In this specific case, the Court has observed that a series of red flags were raised with regard to the integrity of the actions taken by the police officers; for example, in the conclusions of the Special Commission of Inquiry and, subsequently, the intervention of the Public Prosecution Service in 2013. Nevertheless, those actions were too tentative to overcome the flaws in the process from October 18, 1994, to March 2013. It is also important to note that the shortcomings and lack of independence of the Civil Police in the investigation into the facts could have been subject to oversight by the Internal Affairs Office of the Civil Police, the Public Prosecution Service and even the Judiciary, but those bodies took no steps to make an in-depth examination of the inefficient and biased actions of the police.

208. It is also important to note that, in a context of significant police violence with high fatality rates, the State had the obligation to act with greater diligence and determination in this case. The autopsies indicated a very high percentage of victim who had died from numerous shots fired at close range. In fact, one victim was killed by a shot in each eye.[240] The investigations conducted by the different departments of the Civil Police of Rio de Janeiro did not meet the minimum standards of due diligence for cases of extrajudicial executions and gross human rights violations.

209. Furthermore, even though the police actions were beset by omissions and negligence, other State organs had the opportunity to rectify the investigation and did not do so. First, the Internal Affairs Office of the Civil Police revealed itself incapable of carrying out the investigation as of 2002. In this regard, expert witness João Trajano stressed that there were strong indications that the said agency gave preference to the corporate spirit and focused on examining administrative or disciplinary problems, failing to give priority to reports of serious human rights violations and abuse of force in the performance of police duties. In short, the expert stated that internal affairs offices "are unable to carry out their mission to investigate and to punish."[241] Furthermore, the Public Prosecution Service did not fulfill its function of overseeing the police investigation activities and endorsed the investigation file without verifying the complete lack of diligence and independence in the investigation during more than 10 years. Meanwhile, the judge who was called on to decide on the closure of the

[240] Among others, see: Expert opinion provided by affidavit by Caetano Lagrasta Neto on September 30, 2016 (evidence file, folios 16558, 16564 and 16594); Expert opinion provided by affidavit by Jose Pablo Baraybar on August 4,2016 (evidence file, folios 16307, 16308 and 16343); Expert opinion of Tania Donati Paes Rio of September 25, 2000 (evidence file, folio 578), and Expert opinion provided by affidavit by Jan Michael-Simon on September 29, 2016 (evidence file, folio 15828).

[241] Expert opinion provided by affidavit by João Trajano Lima Sento-Sé on September 28, 2016 (evidence file, folio 16478).

investigation in 2009, failed to carry out an effective control of the investigation and merely indicated that he agreed with the prosecution. This was decisive for the impunity of the facts and the lack of judicial protection of the next of kin of those who died on October 18, 1994.

210. Regarding the investigation into the facts of the 1995 police raid, the Court notes that there was no relevant activity from 1995 to 2000, (*supra* paras. 130 to 137 and 149). On September 25, 2000, forensic expert Tania Donati Paes Rio presented an expert report on the autopsies of those executed.[242] Subsequently, from February 2003 to October 2004, a misunderstanding existed regarding the identification number of the files. Finally, on November 30, 2004, the Chief of the Civil Police submitted investigation IP No. 120/01 to the competence of COINPOL.[243] On December 29, 2004, this police investigation was renumbered IP No. 217/04.[244] On January 27, 2005, the COINPOL Chief of Police in charge of the investigation requested a judicial search as to whether the next of kin of the deceased victims had filed civil proceedings against the state of Rio de Janeiro.[245]

211. The deadline for completing the police investigation expired on numerous occasions between April 2006 and June 2008, and was renewed successively without any progress being made.[246] Finally, on September 23, 2008, the Police Chief in charge of the investigation issued a report concluding that "after almost 13 years, the investigation file indicates that there was an armed confrontation during which, owing to the complexities inherent in a 'war,' some people were killed or injured."[247] On October 1, 2008, the file was sent to the Public Prosecution Service,[248] which requested its closure on June 1, 2009.[249] On June 18, 2009, the judge of the 3rd Criminal Court decided to close the proceedings with a brief decision: "Case closed."[250]

212. On October 31, 2012, as a result of the issue of the Inter-American Commission's Merits Report No. 141/11 and its notification to the Brazilian State, the Public Prosecution Service presented a report on the possibility of reopening the investigation, indicating that there had been shortcomings in the way it had been conducted.[251] On December 11, 2012, the judge of the 3rd Criminal Court decided that it was not possible to reopen it.[252] Nevertheless, on January 10, 2013, the Prosecutor General accorded the Public Prosecution Service competence to investigate.[253] On July 9, 2013, the Homicide Division opened a new police investigation.[254]

213. As part of the police investigation, on July 11, 2013, the Arms and Explosives Control Division (DFAE) was asked to submit an analysis of the weapons used during the raids.[255] On October 21, 2014, the Public Prosecution Service received the report on the weapons analysis.[256] Between November 2014 and May 2015 several measures were taken in relation

[242] Report of forensic expert Tania Donati Paes Rio of September 25, 2000 (evidence file, folios 576 to 578).
[243] Decision of November 30, 2004 (evidence file, folio 656).
[244] Renumbering of IP No. 120/01 as IP 217/04 (evidence file, folios 317 and 318).
[245] Statement by Police Officer Fernando Albuquerque on January 27, 2005 (evidence file, folios 658 and 659).
[246] Request to extend deadline to comply with measures (evidence file, folios 663 to 693).
[247] Report of the Civil Police of Río de Janeiro (evidence file, folios 5740 to 5745).
[248] Communication of COINPOL (evidence file, folios 5746 to 5747).
[249] Communication of the Public Prosecution Service of Río de Janeiro (evidence file, folios 5751 and 5752).
[250] Decision of the 3rd Criminal Court (evidence file, folio 5753).
[251] Communication of the Public Prosecution Service of Río de Janeiro (evidence file, folios 7740 to 7755).
[252] Decision of the 3rd Criminal Court (evidence file, folios 7757 to 7761).
[253] Communication of the Prosecutor General (evidence file, folio 7769).
[254] File of Proceedings IP 901-008992/2013 (evidence file, folio 7109).
[255] File of Proceedings IP 901-008992/2013 (evidence file, folios 7807 to 7819).
[256] Communication of the Public Prosecution Service of Rio de Janeiro (evidence file, folios 8163 to 8169).

to the weapons used during the police raid.[257] Finally, on May 7, 2015, the 3rd Criminal Court decided to close the criminal action and that the evidence produced by the Public Prosecution Service following the reopening of the file was inadmissible because it contradicted the ruling of the Judiciary.[258] The investigation into the 13 deaths in the police raid of May 8, 1995, remains closed.

214. Regarding the investigation stage, the Court stresses the absence of relevant measures during the procedure and the negligence of the investigating agencies. The deadlines for carrying out measures expired on numerous occasions without any progress being made. The evidence was merely analyzed superficially and the authorities did not provide the necessary procedural momentum to the investigation. As a result of the lack of the minimum diligence, no police agent was accused or prosecuted based on the investigation.

215. Finally, as a result of the lack of progress, the Police Chief in charge of the investigation issued a report concluding that the case file indicated that there had been an armed confrontation during which, owing to the complexities inherent in a 'war,' some people were killed or injured (*supra* para. 211). This conclusion ended the series of actions taken to prove that the deaths had occurred in the context of a confrontation so that the police officers had not incurred in any responsibility.

216. Regarding the tendency in conducting investigations referred to above, as already indicated, the agency investigating a death resulting from a police intervention is required to have real and concrete independence in relation to the supposed perpetrators (*supra* paras. 183 to 191); therefore, it should be a judicial authority or the Public Prosecution Service, assisted by police, technical and administrative personnel unrelated to the law enforcement agency to which those who are possibly involved belong. In addition, the agents who intervene in the investigation must demonstrate sufficient guarantees of objectivity to inspire the necessary confidence in the parties to the case, as well as in the members of a democratic society.[259] In the case of the investigation into the 1995 raid – as in the investigation into the 1994 raid – the authority in charge of the investigation belonged to the same department that was responsible for the police operation. The same agent was in charge of investigating his colleagues of the same institution and of the same unit, and this represented a violation of the guarantee of independence and impartiality that was necessary for the investigation of the executions committed in Favela Nova Brasilia. Finally, even though a new investigation was opened in 2013, this was unable to rectify the flaws in the investigation initiated in 1995. The absence of relevant judicial actions continued and no substantive progress was made in the case file.

B.4.2. The reasonable time in the investigations into the 1994 and 1995 police raids

217. With regard to the promptness of the proceedings, this Court has indicated that the "reasonable time" referred to in Article 8(1) of the Convention should be assessed in relation to the total duration of the proceedings implemented until a final judgment has been handed down.[260] The right of access to justice signifies that the dispute should be resolved within a

[257] File of Proceedings IP 901-008992/2013 (evidence file, folios 8226, 8231 to 8251, 8252, 8282 to 8288).

[258] Decision of the 3rd Criminal Court (evidence file, folios 8321 to 8337).

[259] *Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of July 2, 2004. Series C No. 107, para. 171, and *Case of Duque,* para. 162.

[260] *Cf. Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case of Andrade Salmón,* para. 157.

reasonable time,[261] because a prolonged delay can, in itself, constitute a violation of the judicial guarantees.[262]

218. Regarding the presumed failure to comply with the judicial guarantee of a reasonable time in the criminal proceeding, the Court will examine the four pertinent criteria established in its case law: (i) the complexity of the matter; (ii) the procedural activity of the interested parties; (iii) the conduct of the judicial authorities, and (iv) the effects on the legal situation of the person concerned.[263] The Court recalls that it corresponds to the State to justify, on the basis of these criteria, the reason why it has required the time that has passed to process the case and, if it does not do so, the Court has broad attributes to form its own opinion in this regard.[264] The State did not present specific arguments on this alleged violation of the Convention.

219. In the instant case, the investigation into the raid on October 18, 1994, began the same day with DRE Incident Report No. 523 and concluded with the declaration of prescription in 2009, so that the procedure lasted approximately 15 years. Subsequently, the case file was reopened in 2013; however, up until the date of this judgment, no relevant procedural progress has been made. Consequently, the Court will now determine whether the time that passed was reasonable based on the criteria established in its case law.

220. Regarding the complexity of the matter, the Court has taken into account different criteria to determine the complexity of a case. These include the complexity of the evidence, the number of procedural subjects or victims, the time that has passed since the violation, the characteristics of the remedy established in domestic legislation, and the context in which the violation occurred.[265] In this case, the Court observes that the characteristics of the case were not particularly complex, considering that the victims who died, and those who had endured sexual violence, and also the police officers who had taken part in the raid could be identified. Also, the operation was planned, coordinated and carried out by public officials, who even reported the deaths that had occurred to their superior officers.

221. With respect to the procedural activity of the interested parties, the Court notes that there is no evidence that the next of kin had taken steps that might hinder the progress of the investigations undertaken as a result of the 1994 raid.

222. As regards the conduct of the judicial authorities, the Court considers that there were delays in the investigation owing to the inactivity of the authorities, the granting of deadline extensions, and the failure to carry out certain measures that had been ordered. All this is related to the lack of a diligent action and the absence of independence of the authorities in charge of the investigation. The Court considers that the authorities did not endeavor to ensure, diligently, that a reasonable time was respected in the investigation and the criminal proceedings.

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[261] *Cf. Case of Suárez Rosero. Merits,* para. 71, and *Case of Andrade Salmón,* para. 157.

[262] *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94*,* para. 145, and *Case of Andrade Salmón,* para. 157.

[263] *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of Andrade Salmón,* para. 157.

[264] *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of Andrade Salmón,* para. 157.

[265] *Cf.* Among others, *Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*, para. 78, and *Case of Andrade Salmón,* para. 158.

223. Lastly, in relation to the effects on the legal situation of those involved in the proceedings and the impact on their rights, the Court considers, as it has previously,[266] that it is not necessary to analyze this to determine whether the time taken by the said investigations was reasonable.

224. In conclusion, the Court considers that the prolonged duration of the investigation meant that the next of kin of the deceased victims remained in a situation of uncertainty as regards the perpetrators of the events of the 1994 raid. Based on the above, the Court concludes that the State violated the judicial guarantees of due diligence and a reasonable time established in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Alcides Ramos, Thiago da Silva, Alberto da Silva, Maria das Graças Ramos da Silva, Rosiane dos Santos, Vera Lúcia dos Santos de Miranda, Lucia Helena Neri da Silva, Joyce Neri da Silva Dantas, Edson Faria Neves, Mac Laine Faria Neves, Valdenice Fernandes Vieira, Neuza Ribeiro Raymundo, Eliane Elene Fernandes Vieira, Rogério Genuino dos Santos, Jucelena Rocha dos Santos, Robson Genuino dos Santos Júnior, Norival Pinto Donato, Celia da Cruz Silva, Nilcéia de Oliveira, Diogo Vieira dos Santos, Helena Vianna dos Santos, Adriana Vianna dos Santos, Sandro Vianna dos Santos, Alessandra Vianna Vieira, Zeferino Marques de Oliveira, Aline da Silva, Efigenia Margarida Alves, Sergio Rosa Mendes, Sonia Maria Mendes, Francisco José de Souza, Martinha Martino de Souza, Luiz Henrique de Souza, Ronald Marcos de Souza, João Alves de Moura, Eva Maria dos Santos Moura, João Batista de Souza and Josefa Maria de Souza.[267]

225. Regarding the investigation into the 1995 raid, as in the case of the investigation into the 1994 raid, the Court will now examine the four criteria established in its case law on this issue (*supra* para. 218).[268] The Court recalls that it corresponds to the State to justify, based on these criteria, why it has required the time that has passed to process the case and, if it is unable to justify it, the Court has broad authority to form its own opinion in this regard.[269] The State did not present specific arguments on the alleged violation of the right to judicial guarantees and judicial protection.

226. The Court recalls that the investigation into the raid of May 8, 1995, began the same day based on Incident Report No. 252 and concluded with the declaration of the statute of limitations in 2009, so that the proceedings lasted around 14 years. The proceedings were subsequently reopened in 2013 and closed again in 2015. Accordingly, the Court will now determine whether the time that elapsed was reasonable pursuant to the criteria established in its case law.

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[266] *Cf. Case of Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of September 23, 2009. Series C No. 203, para. 138, and *Case of Quispialaya Vilcapoma,* para. 187.

[267] Regarding the victims, the Inter-American Court has information that four family members indicated as presumed victims by the Inter-American Commission died before December 10, 1998 (Cirene dos Santos (mother of Alberto dos Santos Ramos, 1982), Edna Ribeiro Raimundo Neves (mother of Macmiller Faria Neves, 1991), Maria de Lourdes Genuino (mother of Robson Genuino dos Santos, 1997) and José Francisco Sobrinho (father of Robson Genuino dos Santos, 1971)). Regarding these persons, the Court will not make a declaration of State responsibility owing to the rule of temporal jurisdiction. Also, based on the evidence forwarded by the Commission and the representatives, the Court has noted that: (i) the person identified by the Commission as "Graça" corresponds to Maria das Graças da Silva, companion of Alberto dos Santos Ramos; (ii) the person identified by the Commission as Thiago Ramos, corresponds to Thiago da Silva; (iii) the person identified by the Commission as Alberto Ramos, corresponds to Alberto da Silva; (iv) Neuza Ribeiro Raymundo, identified by the Commission as the grandmother of Fabio Henrique Fernandes is, in fact, the grandmother of the victim Macmiller Faria Neves, and (v) the person identified by the Commission as Alessandra Vianna dos Santos, corresponds to Alessandra Vianna Vieira.

[268] *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of the Hacienda Brasil Verde Workers*, para. 370.

[269] *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of Andrade Salmón*, para. 157.

227. With regard to the complexity of the matter, the Court notes that the characteristics of the proceedings were not particularly complex, considering that the names of the police officers who took part in the raid, and also of the individuals who they allegedly had to look for or arrest during the incident should have been known. The Court does not find any particular reasons that reveal a special complexity in the case examined that would justify a duration of 14 years in the proceedings.

228. Regarding the procedural activity of the interested parties, the Court notes that there is no evidence that the next of kin had taken any actions that would have hindered the progress of the investigation; to the contrary, they were unable to participate in the investigation conducted as a result of the 1995 raid.

229. In relation to the conduct of the judicial authorities, the Court considers that they did not expedite the investigation and, anyway, it was addressed at evaluating the conduct of the deceased victims and not of the police officers who had executed them. The Court considers that the authorities did not endeavor, diligently, to ensure that the investigation advanced and that the perpetrators of the acts were identified and punished.

230. Lastly, concerning the effects on the legal situation of those involved in the proceedings and the impact of their rights, the Court considers that, in the instant case, it has effectively been proved that the extended duration of the investigations has meant that the next of kin have been unable to accede to reparation for damages. The failure to elucidate the facts also had a specific impact on the possibility of compensation for the victims' families, because the action filed by Evelyn Santos de Souza Rodrigues was rejected by the civil jurisdiction because the criminal responsibility for the facts denounced had not been determined.

231. Based on the foregoing, the Court concludes that the State violated the judicial guarantees of due diligence and a reasonable time established in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Waldomiro Genoveva, Océlia Rosa, Rosane da Silva Genoveva, Diogo da Silva Genoveva, Paulo Cesar da Silva Porto, Daniel Paulino da Silva, Georgina Soares Pinto, Nilton Ramos de Oliveira, Maria da Conceição Sampaio de Oliveira, Vinicius Ramos de Oliveira, Geraldo José da Silva Filho, Georgina Abrantes, Paulo Roberto Felix, Otacilio Costa, Beatriz Fonseca Costa, Bruna Fonseca Costa, Dalvaci Melo Rodrigues, Mônica Santos de Souza Rodrigues, Evelyn Santos de Souza Rodrigues, Pricila da Silva Rodrigues, Samuel da Silva Rodrigues, Lucas Abreu da Silva, Cecília Cristina do Nascimento Rodrigues, Adriana Melo Rodrigues, Roseleide Rodrigues do Nascimento, Shirley de Almeida, Catia Regina Almeida da Silva, Valdemar da Silveira Dutra, Geni Pereira Dutra, Vera Lucia Jacinto da Silva, Cesar Braga Castor, Vera Lucia Ribeiro Castor, Michele Mariano dos Santos, William Mariano dos Santos, Pedro Marciano dos Reis, Hilda Alves dos Reis and Rosemary Alves dos Reis.[270]

[270] Regarding the victims, the Inter-American Court has information that two family members indicated as presumed victims by the Inter-American Commission died before December 10, 1998 (José Rodrigues do Nascimento (father of Jacques Douglas Melo Rodrigues, 1988), and Ronaldo Inacio da Silva (father of Renato Inacio da Silva, 1994)). Also, Tereza de Cásssia Rosa Genoveva, indicated as presumed victim by the representatives, was not indicated as such in the Inter-American Commission's Merits Report. Regarding these persons, the Court will not make any declaration of State responsibility owing to the rule of temporal jurisdiction, and the decision taken in the preliminary objection of lack of jurisdiction *ratione personae* (*supra* para. 40). Additionally, the Court has information that Maria da Gloria Mendes (mother of Anderson Mendes) is deceased, although the evidence does not reveal her date of death conclusively. In this regard, the representatives indicated that they were not in contact with her family members and did not know her date of death. Therefore, the Court does not have sufficient information to consider her a victim of a violation of the American Convention in this case. Also, based on the evidence provided by the representatives, the Court has noted that: (i) the person identified by the Commission as Ofélia Rosa, corresponds to Océlia Rosa; (ii) the person identified by the Commission as "the son of Cosme Rosa Genoveva" corresponds to Diogo da Silva Genoveva; (iii) the person identified by the Commission as "Michele" corresponds to Michelle Mariano dos Santos; (iv) the person identified by the Commission as "the son of Fabio Ribeiro Castor" corresponds to William Mariano dos Santos.

B.4.3. Absence of effective judicial protection for the families of the victims who died in the 1994 and 1995 police raids

232. The Court has indicated that Article 25(1) of the Convention establishes, in general terms, the obligation of States to provide everyone subject to their jurisdiction with an effective judicial remedy against acts that violate their fundamental rights.[271]

233. The Court has also established that, for States to comply with the provisions of Article 25 of the Convention, it is not sufficient that the remedies exist formally, rather, they must be effective; that is, they must respond to the violation of the rights recognized either in the Convention, the Constitution or in law. This signifies that the remedy must be appropriate to counteract the violation and that its application by the competent authority must be effective. Likewise, an effective remedy means that the analysis of a judicial remedy by the competent authority cannot be reduced to a mere formality; rather, the authority must examine the reasons cited by the plaintiff and expressly rule on them.[272] Remedies that, owing to the general conditions of the country or even the particular circumstances of the case, are illusory cannot be considered effective.[273] This may occur, for example, when they have been proved to be useless in practice due to the absence of means to execute decisions or to any other situation that constitutes a denial of justice.[274] Therefore, the purpose of the proceedings should be the protection of the right recognized in the judicial ruling by the appropriate execution of this ruling.[275]

234. The Court has indicated that, pursuant to Article 25 of the Convention, it is possible to identify two specific State obligations. The first is to establish by law and to ensure the due application of effective remedies before the competent authorities that protect everyone subject to their jurisdiction against acts that violate their fundamental rights, or that entail the determination of their rights and obligations. The second is to guarntee the means to execute the respective final decisions and judgments issued by these competent authorities in order to truly protect the rights declared or recognized.[276] The right established in Article 25 is closely linked to the general obligation of Article 1(1) of the Convention, by attributing functions of protection to the domestic law of the States Parties.[277] On this basis, the State has the reponsibility not only to design and legislate an effective remedy, but also to ensure that this remedy is applied appropriately by its judicial authorities.[278]

235. However, the Court recalls its case law that the mere existence of judicial remedies does not meet the State's treaty-based obligation; rather, in practice, such remedies must be appropriate and effective instruments and provide a prompt and thorough response in accordance with their purpose; that is, to determine responsibilities and provide redress to

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[271] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, para. 91, and *Case of the Hacienda Brasil Verde Workers*, para. 391.

[272] *Cf. Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 96, and *Case of the Hacienda Brasil Verde Workers*, para. 392.

[273] *Cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs.* Judgment of February 6, 2001. Series C No. 7, para. 137, and *Case of the Hacienda Brasil Verde Workers*, para. 392.

[274] *Cf. Case of Las Palmeras v. Colombia. Reparations and costs.* Judgment of November 26, 2002. Series C No. 96, para. 58, and *Case of the Hacienda Brasil Verde Workers*, para. 392.

[275] *Cf. Case of Baena Ricardo et al. v. Panama. Jurisdiction.* Judgment of November 28, 2003. Series C No. 104, para. 73, and *Case of the Hacienda Brasil Verde Workers*, para. 392.

[276] *Cf. Case of the "Street Children" (Villagrán Morales et al.). Merits*, para. 237, and *Case of the Hacienda Brasil Verde Workers*, para. 393.

[277] *Cf. Case of Castillo Páez v. Peru. Merits.* Judgment of November 3, 1997. Series C No. 34, para. 83, and *Case of the Hacienda Brasil Verde Workers*, para. 393.

[278] *Cf. Case of the "Street Children" (Villagrán Morales et al.). Merits*, para. 237, and *Case of the Hacienda Brasil Verde Workers*, para. 393.

the victims as appropriate. The Court will now examine whether the proceedings undertaken in this case were truly appropriate and effective instruments.

236. In the instant case, the investigation into the October 1994 raid was almost n non-existent because the few measures taken were irrelevant. Furthermore, the investigation made no progress towards determining the perpetrators of the deaths. This situation resulted in a denial of justice to the detriment of the victims in this case because it was not possible to guarantee them judicial protection, either legally or materially. The State failed to provide the victims with an effective remedy through the competent authorities that would have protected them against acts that violated their human rights.

237. Despite the egregious nature of the facts – alleged extrajudicial executions – the investigation conducted did not analyze the substance of the matter presented and remained biased based on the preconception that the victims had died as a result of their own actions in a context of a confrontation with the police.

238. Regarding the right of the next of kin to participate at all stages of the respective proceedings, the Court recalls that this means that they are able to make proposals, receive information, provide evidence, submit arguments and, in summary, assert their rights. The purpose of this participation should be access to justice, to know the truth of what occurred, and the eventual granting of just reparation.[279] In this regard, expert witness Weichert indicated that, under Brazil's criminal procedure, the victim plays a secondary role and is treated as a mere witness, lacking access to the investigation. The absence of legal certainty in Brazilian law prevents the victims or their next of kin from playing an active role at the investigation stage, limiting this to the judicial stage, and this violated the right of the next of kin of those who died on October 18, 1994, to take part in the investigation.

239. Based on the above, when examining the process as a whole – which started with the investigation of the facts by the Rio de Janeiro police and is still awaiting a judicial ruling 22 years after the facts occurred – the Court concludes that the State violated the right to judicial protection, established in Article 25 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Alcides Ramos, Thiago da Silva, Alberto da Silva, Maria das Graças Ramos da Silva, Rosiane dos Santos, Vera Lúcia dos Santos de Miranda, Lucia Helena Neri da Silva, Joyce Neri da Silva Dantas, Edson Faria Neves, Mac Laine Faria Neves, Valdenice Fernandes Vieira, Neuza Ribeiro Raymundo, Eliane Elene Fernandes Vieira, Rogério Genuino dos Santos, Jucelena Rocha dos Santos, Robson Genuino dos Santos Júnior, Norival Pinto Donato, Celia da Cruz Silva, Nilcéia de Oliveira, Diogo Vieira dos Santos, Helena Vianna dos Santos, Adriana Vianna dos Santos, Sandro Vianna dos Santos, Alessandra Vianna Vieira, Zeferino Marques de Oliveira, Aline da Silva, Efigenia Margarida Alves, Sergio Rosa Mendes, Sonia Maria Mendes, Francisco José de Souza, Martinha Martino de Souza, Luiz Henrique de Souza, Ronald Marcos de Souza, João Alves de Moura, Eva Maria dos Santos Moura, João Batista de Souza and Josefa Maria de Souza.[280]

240. Regarding the investigation into the 1995 raid, the Court notes that the victims' next of kin were unable to access a remedy that would provide them with judicial protection. As in the proceedings in relation to the events of 1994, the next of kin of the victims who died were not allowed to participate in the 1995 investigation procedures. In addition, very few measures were taken during the investigation and those that were taken were irrelevant. Also, no step was taken to determine the perpetrators of the executions. These flaws in the investigation meant that it was not an effective remedy, because it did not make even the minimum

[279] *Cf. Case of Valle Jaramillo et al.,* para. 233, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal*, para. 230.

[280] Regarding the victims, the Court reiterates the observations made previously in footnote 267 of the judgment.

progress necessary to be able to consider that it was effective, regardless of any results that it might have achieved. This situation constituted a denial by the State of an effective remedy against acts that violated their human rights; in other words, it violated the right of access to justice.

241. Moreover, despite the egregious nature of the alleged execution of civilians committed by police officers in 1995, the investigation was guided by a preconception that the deceased victims had died as a result of lawful actions by the police. The result of this preconception was that the egregious nature of the acts was downplayed and what happened was normalized, which resulted in the absence of an appropriate investigation into the facts that analyzed the substance, because the investigation merely consisted in actions without any procedural relevance. In conclusions, the next of kin of the victims who died in the 1995 raid had no remedy or mechanism that would have allowed them to obtain judicial protection to address the violation of their rights, and they were not provided with any mechanism of reparation to address the execution of the members of their families.

242. Based on the foregoing, the Court concludes that the State violated the right to judicial protection established in Article 25 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Waldomiro Genoveva, Océlia Rosa, Rosane da Silva Genoveva, Diogo da Silva Genoveva, Paulo Cesar da Silva Porto, Daniel Paulino da Silva, Georgina Soares Pinto, Nilton Ramos de Oliveira, Maria da Conceição Sampaio de Oliveira, Vinicius Ramos de Oliveira, Geraldo José da Silva Filho, Georgina Abrantes, Paulo Roberto Felix, Otacilio Costa, Beatriz Fonseca Costa, Bruna Fonseca Costa, Dalvaci Melo Rodrigues, Mônica Santos de Souza Rodrigues, Evelyn Santos de Souza Rodrigues, Pricila da Silva Rodrigues, Samuel da Silva Rodrigues, Lucas Abreu da Silva, Cecília Cristina do Nascimento Rodrigues, Adriana Melo Rodrigues, Roseleide Rodrigues do Nascimento, Shirley de Almeida, Catia Regina Almeida da Silva, Valdemar da Silveira Dutra, Geni Pereira Dutra, Vera Lucia Jacinto da Silva, Cesar Braga Castor, Vera Lucia Ribeiro Castor, Michele Mariano dos Santos, William Mariano dos Santos, Pedro Marciano dos Reis, Hilda Alves dos Reis and Rosemary Alves dos Reis.[281]

B.5. Standards for due diligence and a reasonable time in cases of alleged sexual violence

243. In cases of sexual violence against women, the Court has established that States must take comprehensive measures to comply with due diligence. In particular, they should have a suitable legal protection framework that is enforced effectively, and prevention policies and practices that permit effective actions to be taken when complaints are received.[282] The prevention strategy should be comprehensive; in other words, it should prevent the risk factors while reinforcing institutions so that they can provide an effective response. States should also adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence.[283] All this should take into account that, in cases of violence against women, States also have general obligations established in Articles 8 and 25 of the American Convention, and particular obligations based on the specific inter-American treaty, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará).[284]

[281] Regarding the victims, the Court reiterates the observations made previously in footnote 270 of the judgment.

[282] *Case of González et al. ("Cotton Field")*, para. 258, and *Case of the Hacienda Brasil Verde Workers*, para. 320.

[283] *Case of González et al. ("Cotton Field")*, para. 258, and *Case of Velásquez Paiz et al.*, para. 108.

[284] *Cf. Case of Velásquez Paiz et al.*, para. 108, and *Case of I.V.,* para. 295.

244. Article 7(b) of that Convention specifically obliges the States Parties to employ due diligence in the prevention, punishment and eradication of violence against women.[285] Consequently, in the case of an act of violence against a woman, it is particularly important that the authorities in charge of the investigation conduct it with determination and efficiency, bearing in mind society's duty to reject violence against women and the State's obligation to eradicate it and to ensure that victims can have confidence in the state institutions established to protect them.[286]

245. The Court points out that violence against women is not only a human rights violation but is "an offense against human dignity and a manifestation of the historically unequal power relations between women and men," that "pervades every sector of society regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundations."[287]

246. Following the line of international case law, and taking into account the provisions of the Convention of Belém do Pará, the Court has considered that sexual violence consists of acts of a sexual nature that are committed against an individual without their consent and that, in addition to including the physical invasion of the human body, may include acts that do not involve penetration or even any physical contact whatsoever.[288]

247. Also, following legal and jurisprudential criteria in the sphere of both international criminal law and comparative criminal law, the Court has considered that rape does not necessarily involve a non-consensual vaginal sexual relationship as it was considered traditionally. Rape should also be understood to include acts of vaginal or anal penetration, without the victim's consent, using other parts of the aggressor's body or objects, as well as buccal penetration by the male member.[289] In particular, rape constitutes a paradigmatic form of violence against women the consequences of which even transcend the victim.[290]

248. The Court has established that rape is a particular type of aggression that, in general, is characterized by occurring in the absence of anyone other than the victim and the aggressor or aggressors. Given the nature of this type of violence, the existence of documentary or graphic evidence cannot be expected and, therefore, the victim's statement constitutes

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[285] Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Article 7: The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:
(a) refrain from engaging in any act or practice of violence against women and to ensure that
their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
(b) apply due diligence to prevent, investigate and impose penalties for violence against women;
(c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
(d) adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
(e) take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
(f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
(g) establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
(h) adopt such legislative or other measures as may be necessary to give effect to this Convention.

[286] *Case of Rosendo Cantú et al.* para. 177.

[287] Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará). Preamble.

[288] *Case of J.*, para. 358.

[289] *Case of the Miguel Castro Castro Prison,* para. 310, and *Case of J.*, para. 359.

[290] *Case of Fernández Ortega et al.*, para. 119.

fundamental proof of the act. Notwithstanding the legal classification of the facts made below, the Court considers that this standard is applicable to sexual violence in general. Moreover, when analyzing such statements, it should be borne in mind that rape corresponds to a type of crime that is frequently not reported by the victim due to the stigma usually associated with a complaint of this nature.[291]

249. It should also be pointed out that the absence of physical signs does not mean that ill-treatment has not occurred because it is frequent that such acts of violence against an individual do not leave permanent scars or marks. This is true for cases of both rape and sexual violence in which their occurrence is not necessarily verifiable by a medical examination.[292]

250. In addition, the Court has indicated that the violation of the right to physical and mental integrity has different connotations of degree and ranges from torture to other types of abuse or cruel, inhuman or degrading treatment, the physical and mental aftereffects of which vary in intensity according to exogenous and endogenous factors (duration of the treatment, age, sex, health status, context and vulnerability, among others) that must be analyzed in each specific situation.[293] This means that the personal characteristics of a supposed victim of torture or cruel, inhuman or degrading treatment must be taken into account when determining whether their person integrity was violated, because such characteristics may change an individual's perception of the reality and, consequently, increase the suffering and the feeling of humiliation when they are subjected to certain treatments.[294]

251. The Court has indicated that any use of force that is not strictly necessary due to the conduct of the person detained constitutes an attack on human dignity in violation of Article 5 of the American Convention.[295] In the instant case, the State has acknowledged that L.R.J., C.S.S. and J.F.C. were raped by public officials, which constituted a violation of their right to personal integrity (Article 5(1) of the American Convention) (*supra* para. 101).

252. In its case law, the Court has also determined that, in numerous cases, rape is a form of torture.[296] Accordingly, the obligation to investigate is reinforced by the provisions of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, which oblige the State to "take effective measures to prevent and punish torture within their jurisdiction," and "to prevent and punish other cruel, inhuman or degrading treatment or punishment." In addition, according to Article 8 of that Convention, the States Parties must "guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of [the] case." Moreover, when a complaint exists or a well-founded reason to believe that an act of torture has been committed within their jurisdiction, States Parties must guarantee that their respective authorities will proceed, *ex officio*, and immediately to conduct an investigation into the case and to initiate, when appropriate, the corresponding criminal proceedings.

253. In this regard, it is essential that the State act diligently to avoid acts of torture or cruel, inhuman or degrading treatment because, on the one hand, victims usually refrain from reporting the facts out of fear, especially when they are deprived of liberty in the State's custody. Also, the judicial authorities have the duty to guarantee the rights of the person

[291] *Case of J.*, para. 323.

[292] *Case of J.*, para. 329.

[293] *Cf. Case of Loayza Tamayo v. Peru. Merits,* para. 57, and *Case of J.*, para. 362.

[294] *Cf. Case of Ximenes Lopes,* para. 127, and *Case of J.*, para. 362.

[295] *Cf. Case of Loayza Tamayo. Merits,* para. 57, and *Case of J.*, para. 363.

[296] *Cf. Case of the Miguel Castro Castro Prison,* paras. 448 a 450, and *Case of Velásquez Paiz et al.*, para. 147.

deprived of liberty, which entails obtaining and securing any evidence that could prove alleged acts of torture.[297]

254. In cases of violence against women, several international instruments are useful for defining and providing content to the enhanced State obligation to investigate such cases with due diligence.[298] Among other matters, in a criminal investigation into sexual violence it is necessary that: (i) the victim's statement should be taken in a safe and comfortable environment, providing privacy and inspiring confidence; (ii) the victim's statement should be recorded to avoid the need to repeat it, or to limit this to the strictly necessary; (iii) the victim should be provided with medical, psychological and hygienic treatment, both on an emergency basis, and continuously if required, under a protocol for such attention aimed at reducing the consequences of the rape; (iv) a complete and detailed medical and psychological examination should be made immediately by appropriate trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be informed that she can be accompanied by a person of confidence if she so wishes;[299] (v) the investigative measures should be coordinated and documented and the evidence handled with care, including taking sufficient samples and performing all possible tests to determine the possible perpetrator of the act, and obtaining other evidence such as the victim's clothes, immediate examination of the scene of the incident, and the proper chain of custody of the evidence, and (vi) access to free legal assistance at all stages of the proceedings should be provided.[300] Also, in cases of supposed acts of violence against women, the criminal investigation should include a gender perspective and be conducted by officials trained in similar cases and in attending to victims of gender-based discrimination and violence.[301]

B.6. Due diligence and judicial protection in relation to the sexual violence against L.R.J., C.S.S. and J.F.C.

255. The Court recognizes that the rape of a women who is detained or in the custody of a State agent is a particularly serious and reprehensible act, taking into account the vulnerability of the victim and the abuse of power deployed by the agent. Moreover, rape is an extremely traumatic experience that may have severe consequences and cause significant physical and mental harm, leaving the victim "physically and emotionally humiliated," a situation that it is

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[297] *Cf. Case of Cabrera García and Montiel Flores*, para. 135, and *Case of Espinoza González,* para. 240.

[298] *Cf. Case of Fernández Ortega et al.,* para. 194, and *Case of Espinoza González,* para. 242. *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, New York and Geneva, 2001, paras. 67, 77, 89, 99, 101 to 105, 154, 161 to 163, 170, 171, 224, 225, 260, 269 and 290, and World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, Geneva, 2003, *inter alia,* pp. 17, 30, 31, 34, 39 to 44 and 57 to 74.

[299] *Case of Fernández Ortega et al.,* para. 251 and 252, and *Case of Espinoza Gonzáles*, para. 252.

[300] *Cf. Case of Fernández Ortega et al.,* para. 194, and *Case of Espinoza González,* para. 242. In this regard, the State has the obligation to provide, with the victim's consent, treatment for the consequences to her health of the sexual violence, including the possibility of access to prophylactic treatment and to prevent pregnancy. In this regard see: World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, Geneva, 2003, *inter alia,* p. 63, Available at: http://whqlibdoc.who.int/publications/2004/924154628X.pdf?ua=1; See also: *Instrumento de Trabajo y Consulta, Protocolo Interinstitucional de Atención Integral a Víctimas de Violación Sexual,* Costa Rica, Available at: http://ministeriopublico.poder-judicial.go.cr/biblioteca/protocolos/10.pdf; *Modelo Integrado para la Prevención y Atención de la Violencia Familiar y Sexual*, 2010, Mexico, Available at: http://www.inm.gob.mx/static/Autorizacion_Protocolos/SSA/ModeloIntregrado_para_Prevencion_Atn_Violencia_familiar_y_se.pdf; Federación Latinoamericana de Sociedades de Obstetricia y Ginecología, *Propuesta de Estándares Regionales para la Elaboración de Protocolos de Atención Integral Temprana a Víctimas de Violencia Sexual*, 2011, Available at: http://www.flasog.org/wp-content/uploads/2014/01/Propuestas-Estandares-Protocolos-Atencion-Víctimas-Violencia-FLASOG-2011.pdf; *Modelo de Atención Integral en Salud para Víctimas de Violencia Sexual*, 2011, Colombia, available at: http://www.minsalud.gov.co/Documentos%20y%20Publicaciones/MODELO%20DE%20ATENCI%C3%93N%20A%20 V%C3%8DCTIMAS%20DE%20VIOLENCIA%20SEXUAL.pdf, and *Guía Técnica de Atención Integral de Personas Afectadas por la Violencia basada en Género*, 2007, Peru, available at: http://www.sis.gob.pe/ipresspublicas/normas/pdf/minsa/GUIASPRACTICAS/2007/RM141_2007.pdf.

[301] *Cf. Case of González et al. ("Cotton Field"),* para. 455, and *Case of Espinoza González,* para. 242.

difficult to overcome with the passage of time, contrary to other traumatic experiences.[302] In this case, the State itself acknowledged the egregious nature of the rape during the public hearing in this case, and called it "repugnant."

256. With regard to J.F.C, C.S.S. and L.R.J., the Court emphasizes that the authorities failed to take measures to investigate the sexual violence committed against them diligently. Not only were their statements not taken in a safe and comfortable environment, providing privacy and inspiring confidence, but they felt fear and anxiety when providing their statements, because the measures required to protect them had not been taken. Also, none of the three has received the medical, psychological or hygienic treatment required after the sexual violence they suffered; they did not undergo an adequate medical and psychological examination; they have only been able to intervene in the proceedings as witnesses and not as victims of sexual violence, and have not received any reparation for the sexual violence they suffered at the hands of State agents. Even though most of the above shortcoming occurred before the Court had jurisdiction with regard to Brazil, the Court considers that the State did not take any measure as of December 10, 1998, to rectify, mitigate or redress those actions that prejudiced the investigation of the facts and, after that date, to conduct a diligent, serious and impartial investigation addressed at determining the corresponding responsibilities based on the standards set out in this judgment (*supra* paras. 243 to 254). In particular, it is worth noting that the reopening of the investigation in 2013 did not consider the crime of rape against L.R.J., C.S.S. and J.F.C., and only assessed the 13 homicides. Therefore, even though it described the statements of the three victims of rape and their collaboration with the investigations conducted in the 1990s, as well as the evidence of the crimes and the identification of the perpetrators, the reopening of the investigation did not consider the rapes as possible cases of torture and did not open criminal proceedings in this regard.

257. The Court emphasizes that L.R.J., C.S.S. and J.F.C. had identified their aggressors, but no investigation was conducted into the crimes of which they were victims. Twenty-two years have passed since the facts occurred and no proceeding initiated by the State has investigated the rapes. Each time they participated in the proceedings, L.R.J., C.S.S. and J.F.C. testified as witnesses and not as victims of a particularly serious crime such as rape by State agents.

258. The Court considers that, based on the complete absence of any State action with regard to the rape and possible acts of torture against L.R.J., C.S.S. and J.F.C., the State violated Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, as well as Article 7 of the Convention of Belém do Pará, to the detriment of L.R.J., C.S.S. and J.F.C.

259. In addition, the situation described above resulted in a complete denial of justice to the detriment of the victims, because it was not possible to guarantee them judicial protection in this case of either a material or a legal nature. The State did not provide the victims with an effective remedy implemented by competent authorities that would have protected their rights against acts that had violated them, with the result that the facts remain unpunished to date. Consequently, the Court concludes that the State violated the right to judicial protection, established in Article 25 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, as well as Article 7 of the Convention of Belém do Pará, to the detriment of L.R.J., C.S.S. and J.F.C. However, regarding the alleged violation of the rights of the child established in Article 19 of the American Convention to the detriment of C.S.S. and J.F.C., the Court considers that, when its jurisdiction entered into effect, they had both attained their

[302] *Cf. Case of the Miguel Castro Castro Prison*, para. 311.

majority, so that it is not appropriate for the Court to rule with regard to facts that occurred when they were children and that did not take place within the Court's temporal jurisdiction.

VII-2
RIGHT TO PERSONAL INTEGRITY[303]

A. Argumentos of the parties and of the Commission

260. The ***Commission*** emphasized that the prolonged impunity, in addition to the way in which the investigations were conducted with the aim of stigmatizing and revictimizing the deceased and their families, caused L.R.J., C.S.S., J.F.C., and the next of kin of those who died suffering and anguish, as well as feelings of insecurity, frustration and helplessness owing to the disinterest of the public authorities in conducting an investigation. Moreover, the attempts to stigmatize the victims and treat them as criminals signified that Brazil had violated the right to personal integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument.

261. The **representatives** of the presumed victims considered that the Court should presume that knowledge of the death of their family members caused them great suffering and anguish, and seriously affected their physical and moral integrity.

262. The representatives also indicated that the victims' next of kin had expressed their frustration owing to the excessive time that had passed since the events that resulted in the death of their loved ones without justice being done. They underscored that the victims' next of kin were unable to promote or expedite the investigation and that when the police authorities requested their presence, the said authorities merely suggested that their loved ones were involved in drug-trafficking.

263. The representatives argued that all the next of kin, those of both first and second degree relationships, had suffered significant physical and mental harm owing to the failure to clarify the facts, conduct an investigation and punish those responsible, and due to the stigma experienced owing to the way in which their family members were returned to them, and to the version of the events and the total absence of a response by the State in relation to what happened.

264. They asked the Court to declare that the State was internationally responsible for violating the right to personal integrity established in Article 5 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the deceased victims in this case, owing to the frustration and suffering they were caused due to the total impunity of the facts described.

265. The ***State*** considered that there was no direct and automatic relationship between a supposed violation of the personal integrity of the next of kin of the victims and the allegation

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[303] Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

3. Punishment shall not be extended to any person other than the criminal.

4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

of the lack of judicial protection, because the lack of judicial protection was not established in Article 5 of the American Convention.

266. The State also argued that the lack of judicial protection did not cause moral harm to the victims' next of kin because, with the exception of Mônica Santos de Souza Rodrigues and Evelyn Santos de Souza Rodrigues, none of the other victims tried to exercise their right to file an action against the State for the deaths that had occurred.

267. The State argued that a reading of Article 5 cannot be limited to the first paragraph because it should be considered as a whole in order to ascertain its real purpose. According to the State, this article expressly prohibits, for example, actions that involve torture or cruel and degrading treatment.

268. The State indicated that it was not possible to base an argument on the simple assumption that an alleged lack of judicial protection – which was not established in Article 5 – could lead to the premise of the violation of personal integrity. In the State's opinion, if the act was not established in Article 5, the claimed violation of this article could not be verified by the creation of alleged violations that were not included in the Convention.

B. Considerations of the Court

269. In numerous cases, the Court has considered that the next of kin of victims of human rights violations may, in turn, be victims.[304] The Court has considered that the right to mental and moral integrity of a victim's family members has been violated owing to the additional suffering they have endured owing to the particular circumstances of the violations perpetrated against their loved ones and due to the subsequent acts or omissions of the State authorities in relation to the facts.[305]

270. In the instant case, the Court notes that the failure to investigate the facts and the continuing impunity could have caused harm and suffering to the victim's next of kin. In this regard, the case file before the Court includes evidence related to the harm and suffering endured by some of the family members of those who died in the police raids; the written and presential statements and the reports on the psychosocial impact on the victims' next of kin reveal that their person integrity was affected in various ways.[306]

271. Consequently, the Court considers that is has been proved that, as a result of the failure to investigate, prosecute and punish those responsible for the death of their family members, Mônica Santos de Souza Rodrigues; Evelyn Santos de Souza Rodrigues; Maria das Graças da Silva; Samuel da Silva Rodrigues; Robson Genuino dos Santos Jr.; Michelle Mariano dos Santos; Bruna Fonseca Costa; Joyce Neri da Silva Dantas; Geni Pereira Dutra; Diogo da Silva Genoveva; João Alves de Moura; Helena Vianna dos Santos; Otacilio Costa; Pricila

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[304] *Cf. Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal*, para. 161.

[305] *Cf. Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Velásquez Paiz et al.*, para. 209.

[306] Statement by Mônica Santos de Souza Rodrigues (evidence file, folio 16613); statement by Evelyn Santos de Souza Rodrigues (evidence file, folio 16616); statement by Diogo da Silva Genoveva (evidence file, folio 16629); statement by Michelle Mariano dos Santos (evidence file, folio 16658); statement by Maria das Graças da Silva (evidence file, folios 16622 and 16623); statement by Geni Pereira Dutra (evidence file, folios 16627 and 16628); statement by João Alves de Moura (evidence file, folio 16634 and 16635); statement by Helena Viana dos Santos (evidence file, folios 16647, 16648, 16650); statement by Samuel da Silva Rodrigues (evidence file, folio 16639); statement by Robson Genuino dos Santos Jr. (evidence file, folios 16652 and 16654); statement by Otacilio Costa (evidence file, folio 16621); statement by Pricila Rodrigues (evidence file, folio 16632); statement by William Mariano dos Santos (evidence file, folio 16636); statement by Joyce Neri da Silva Dantas (evidence file, folio 16626), and statement by Bruna Fonseca Costa (evidence file, folios 16606 and 16607).

Rodrigues and William Mariano dos Santos have endured profound suffering and anguish to the detriment of their mental and moral integrity.

272. The failure to investigate the deaths of their family members violated the mental and moral integrity of the persons mentioned above, which includes the extreme lack of protection and vulnerability in which they remain at the present time. Additionally, their normal daily lives and their overall life project have been effected because many of the family members have had to move house, change employment or renounce their education in order to work and to assume responsibilities at a young age to help maintain their families.[307] However, the Court does not have any evidence with regard to other family members[308] to determine the effects on their mental and moral integrity as a result of the failure to investigate the events of 1994 and 1995.

273. With regard to L.R.J., C.S.S. and J.F.C., the Court considers that, owing to the complete failure to investigate the sexual violence of which they were victims, they experienced feelings of anguish and insecurity, as well as frustration and suffering. The failure to identify and punish the perpetrators meant that the anguish has lasted for years, without them being able to feel protected or provided with reparation.

274. Consequently, taking into consideration the circumstances of this case, and the affidavits presented, the Court concludes that the State violated the right to personal integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of: Mônica Santos de Souza Rodrigues; Evelyn Santos de Souza Rodrigues; Maria das Graças da Silva; Samuel da Silva Rodrigues; Robson Genuino dos Santos Jr.; Michelle Mariano dos Santos; Bruna Fonseca Costa; Joyce Neri da Silva Dantas; Geni Pereira Dutra; Diogo da Silva Genoveva; João Alves de Moura; Helena Vianna dos Santos; Otacilio Costa; Pricila Rodrigues; William Mariano dos Santos; L.R.J., C.S.S. and J.F.C.

VII-3
FREEDOM OF MOVEMENT AND RESIDENCE[309]

A. Argumentos of the parties and of the Commission

275. The ***Commission*** did not refer to the violation of this right.

276. The ***representatives*** indicated that, by an evolutive interpretation of Article 22(1) of the American Convention, it should be understood that this article protects the right not to be

[307] Statement by Robson Genuino dos Santos Jr. (evidence file, folio 16654); statement by João Alves de Moura (evidence file, folio 16634); statement by Helena Viana dos Santos (evidence file, folios 16647 and 16650), and statement by Michelle Mariano dos Santos (evidence file, folio 16658).

[308] Cirene dos Santos, Edna Ribeiro Raimundo Neves, José Francisco Sobrinho, José Rodrigues do Nascimento, Maria da Gloria Mendes, Maria de Lourdes Genuino, Ronaldo Inacio da Silva, Alcides Ramos, Thiago da Silva, Alberto da Silva, Rosiane dos Santos, Vera Lúcia dos Santos de Miranda, Lucia Helena Neri da Silva, Edson Faria Neves, Mac Laine Faria Neves, Valdenice Fernandes Vieira, Neuza Ribeiro Raymundo, Eliane Elene Fernandes Vieira, Rogério Genuino dos Santos, Jucelena Rocha dos Santos, Norival Pinto Donato, Celia da Cruz Silva, Nilcéia de Oliveira, Diogo Vieira dos Santos, Adriana Vianna dos Santos, Sandro Vianna dos Santos, Alessandra Vianna Vieira, Zeferino Marques de Oliveira, Aline da Silva, Efigenia Margarida Alves, Sergio Rosa Mendes, Sonia Maria Mendes, Francisco José de Souza, Martinha Martino de Souza, Luiz Henrique de Souza, Ronald Marcos de Souza, Eva Maria dos Santos Moura, João Batista de Souza, Josefa Maria de Souza, Waldomiro Genoveva, Océlia Rosa, Rosane da Silva Genoveva, Paulo Cesar da Silva Porto, Daniel Paulino da Silva, Georgina Soares Pinto, Nilton Ramos de Oliveira, Maria da Conceição Sampaio de Oliveira, Vinicius Ramos de Oliveira, Geraldo José da Silva Filho, Georgina Abrantes, Paulo Roberto Felix, Beatriz Fonseca Costa, Dalvaci Melo Rodrigues, Lucas Abreu da Silva, Cecília Cristina do Nascimento Rodrigues, Adriana Melo Rodrigues, Roseleide Rodrigues do Nascimento, Shirley de Almeida, Catia Regina Almeida da Silva, Valdemar da Silveira Dutra, Vera Lucia Jacinto da Silva, Cesar Braga Castor, Vera Lucia Ribeiro Castor, Pedro Marciano dos Reis, Hilda Alves dos Reis and Rosemary Alves dos Reis.

[309] Article 22(1) of the American Convention: Freedom of Movement and Residence. 1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

forcibly displaced. Also, the State obligation to protect the rights of displaced persons entails not only the duty to adopt measures of prevention, but also to provide the necessary conditions for a dignified and safe return to their usual place of residence or their voluntary resettlement in another part of the country.

277. The representatives alleged that L.R.J., C.S.S. and J.F.C. were obliged to leave their homes in Favela Nova Brasilia owing to the violent circumstances surrounding the acts described above and the fact that the perpetrators of those acts continued to be members of the police. The displacement of the victims was continuing, and even persisted after the date on which the State accepted the Court's contentious jurisdiction. Recently, L.R.J. had to return to Favela Nova Brasilia for financial reasons, and this caused her a great deal of fear and anxiety.

278. The representatives asked the Court to declare that the State was responsible for failing to comply with its obligation to ensure rights in relation to the right to freedom of movement and residence contained in Article 22(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of L.R.J., C.S.S. and J.F.C..

279. The ***State*** argued the inexistence of facts revealing a real threat to, or any restriction of, freedom of movement and the possibility of remaining in their homes with regard to the three presumed victims. The State considered that the alleged situation of witnessing the deaths that occurred during the police raids could result in an eventual trauma for the victims. However, this did not constitute a violation of the right to freedom of movement and residence and there were no facts that proved a real threat to the victims.

280. The State also indicated that the threat or persecution must be real. Consequently, it cannot be limited merely to a feeling of fear because, in that case, the State would have no specific obligation to guarantee freedom of movement in its territory. Lastly, the State recalled that L.R.J. had confirmed that she was living in Favela Nova Brasilia and, therefore, asked the Court to acknowledge that there had been no violation of the right to freedom of movement and residence.

B. Considerations of the Court

281. The Court notes that the facts that relate to L.R.J., C.S.S. and J.F.C. having been obliged to leave their homes in Favela Nova Brasilia – owing to the violent circumstances surrounding the acts and that the perpetrators of those acts continued to be members of the police – is not included in the factual framework established in the Merits Report of the Inter-American Commission. These alleged facts were presented belatedly, without any justification, and cannot be considered supplementary to the facts established in the Merits Report.

282. Consequently, the Court concludes that the facts that relate to L.R.J., C.S.S. and J.F.C. having had to abandon their homes in Favela Nova Brasilia are not part of the factual framework established in the Merits Report, so that it is not possible to conclude that the State violated the right to freedom of movement and residence established in Article 22(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of C.S.S., J.F.C. and L.R.J.

VIII
REPARATIONS
(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)

283. Pursuant to the provisions of Article 63(1) of the American Convention,[310] the Court has indicated that any violation of an international obligation that has produced harm entails the duty to make adequate reparation[311] and that this provisions reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[312]

284. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the violated rights and to redress the consequences of those violations.[313]

285. The Court has established that reparations must have a causal nexus with the facts of the case, the violations that have been declared, the harm proved, and the measures requested to redress the respective harm. Therefore the Court must observe the concurrence of these factors to rule appropriately and in keeping with law.[314]

286. Bearing in mind the violations declared in the preceding chapter, the Court will proceed to examine the claims presented by the victims' representatives and the arguments of the State, in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation[315] in order to establish measures to redress the harm caused to the victims.

A. Injured party

287. The Court reiterates that, pursuant to Article 63(1) of the Convention, anyone who has been declared a victim of the violation of any of the rights recognized therein is considered to be an injured party.[316] Therefore, the Court considers that the persons identified in paragraphs 224, 231, 239, 242, 259 and 274 of this judgment are the injured parties and, in their capacity as victims of the violations declared in Chapter VII of this judgment, they will be considered beneficiaries of the reparations ordered by the Court below.

B. Obligation to investigate

Investigation of the facts, identification, prosecution and punishment, as appropriate, of those responsible

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[310] Article 63(1) of the American Convention establishes: "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

[311] *Cf. Case of Velásquez Rodríguez v. Hondur*as. *Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Andrade Salmón*, para. 188.

[312] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 25, and *Case of Andrade Salmón*, para. 188.

[313] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs,* para. 26, and *Case of I.V.*, para. 325.

[314] *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Andrade Salmón*, para. 188.

[315] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, paras. 25 to 27, and *Case of I.V.*, para. 327.

[316] *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 233, and *Case of Andrade Salmón*, para. 190.

288. The ***Commission*** asked that the State conduct an impartial and effective investigation, within a reasonable time, into the human rights violations perpetrated in this case, including the pattern of excessive use of lethal force by the police, to determine the truth and to punish those responsible.

289. The ***representatives*** asked that the State investigate the facts, within a reasonable time – but through impartial, independent and competent institutions – and also all the individuals who took part directly or indirectly in the execution of 26 victims and in the sexual violence committed against another three victims. They also asked that an investigation be conducted, followed by the eventual sanction, of all the public officials who acted in a negligent or omissive way, contributing to the impunity of those responsible.

290. The ***State*** made no reference to this measure of reparation.

291. The Court recalls that, in Chapter VII-1, it declared that the different investigations conducted by the State into the facts of this case violated the victims' rights to judicial guarantees and judicial protection and determined that the actions of the judicial authorities lacked due diligence, that procedures were not carried out within a reasonable time and that the investigations were closed without having examined the merits of the matter. Also, that several years later, the investigation into the events of 1994 had been reopened without any diligence being revealed in this procedure to date. The investigation into the events of 1995 were reopened and closed a second time without making any progress. In addition, the statute of limitations was applied to the investigations into the facts even though they constituted probable extrajudicial execution and torture (*supra* para. 226).

292. Based on the foregoing, the Court establishes that the State must conduct the investigation that is underway into the events related to the deaths that occurred during the 1994 raid, with due diligence and within a reasonable time, in order to identify, prosecute and punish, as appropriate, those responsible. In the case of the deaths that occurred during the 1995 raid, the State must initiate or reactivate an effective investigation into those events. Due diligence in the investigations signifies that all the corresponding state authorities are obliged to collaborate in the gathering of evidence. Consequently, they must provide the judge, prosecutor or other judicial officials with all the information required and refrain from actions that might obstruct the progress of the investigation.[317] Furthermore, in view of the conclusions established in this judgment concerning the violation of the rights to judicial protection and judicial guarantees, the State, through the Prosecutor General of the Federal Public Prosecution Service, must evaluate whether the facts relating to the 1994 and 1995 raids should be the subject of a request for transfer of jurisdiction. In particular, the State must also:

a) Ensure that the next of kin have full access and capacity to act at all stages of these investigations, based on domestic law and the provisions of the American Convention,[318] and
b) Given that it is probable that extrajudicial executions and acts of torture are involved, the State must refrain from resorting to any procedural obstacle to exempt itself from this obligation.[319]

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[317] *Cf. Case of García Prieto et al. v. El Salvador,* para. 112, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal*, para. 212.

[318] *Cf. Case of El Caracazo v. Venezuela. Reparations and costs.* Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal*, para. 286.

[319] *Cf. Case of Barrios Altos v. Peru. Merits.* Judgment of March 14, 2001. Series C No. 75, para. 41, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal*, para. 285.

293. Finally, regarding the acts of sexual violence, as the Court has established on other occasions in relation to this type of case,[320] both the investigation and the subsequent criminal proceedings must include a gender perspective, undertake specific lines of investigation in relation to sexual violence pursuant to domestic law and, as applicable, ensure adequate participation during all stages of the investigation and trial. Also, the investigation must be conducted by officials with training and experience in similar cases and in assisting victims of discrimination and gender-based violence. In addition, the State must ensure that those in charge of the investigation and the criminal proceedings, as well as anyone else involved, such as witnesses, expert witnesses or members of the victims' families, have due guarantees for their safety.[321]

C. Rehabilitación

Psychological and psychiatric treatment for the victims

294. The ***representatives*** asked that the State provide free medical and psychological care, as well as any medication required by the treatment, to the victims' next of kin.

295. The ***State*** indicated that, pursuant to article 196 of the Brazilian Federal Constitution, health is a right of everyone and an obligation of the State. Accordingly, Law 8,088/1990 established the Unified Health System (SUS) and Law 10,216/2001 determined that it was the State's responsibility to implement a mental health policy. The State also emphasized the provisions of Directive 3,088/2011, which created the Psychosocial Care Network, within the SUS, for those with mental health disorders or problems, or with needs arising from the use of drugs. It argued that it had incorporated into its legal framework the obligation to provide psychological and psychiatric treatment, and possessed all the necessary means to provide the victims with treatment and access to medicines.

296. The Court notes the existence of the State's public health policies under the universal guarantee of health care, including psychological and psychiatric treatment for persons suffering from mental disorders. However, according to the *amicus curiae* presented by the Ombudsman of the state of São Paulo, the Brazilian public psychosocial network was weak and would not be prepared to take on cases such as this one. Consequently, considering that, in the instant case, there is no evidence that the victims of sexual violence and the next of kin of those who were killed by the police have had access to this type of treatment, despite the suffering and the feelings of fear and anguish they experienced as a result of the failure to investigate the acts committed during the 1994 and 1995 police raids, which still affect them, the Court finds that the State must provide, free of charge and immediately, through its specialized health institutions, the adequate and effective psychological and psychiatric treatment that the victims require, following their informed consent and for as long as necessary, including the provisions of medicines, also free of charge. In addition, the respective treatments should be provided, insofar as possible, in the centers chosen by the victims.[322] To this end, the victims have six months from notification of this judgment to request the State to provide this treatment.

D. Measures of satisfaction

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[320] *Cf. Case of González et al. ("Cotton Field"),* para. 455*, and Case of I.V.,* para. 326.

[321] *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 309, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal*, para. 285.

[322] *Cf. Case of Cantoral Benavides v. Peru*. *Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 51, *and Case of I.V.,* para. 332.

297. International case law, and in particular that of this Court, has established repeatedly that the judgment constitutes, *per se*, a form of reparation.[323] Additionally, the Court will determine measures that seek to redress the non-pecuniary damage and that are not of a monetary nature, as well as measures of public scope or repercussion.[324]

D.1. Publication of the judgment

298. The ***representatives*** asked that the State publish the sections of the judgment that refer to the proven facts, the analysis of the violations of the American Convention, and the operative paragraphs, in two national newspapers.

299. The ***State*** acknowledged the relevance of the publication of the Court's judgments and mentioned that, on the website of the Special Human Rights Secretariat, it maintains the judgments delivered in the cases of *Sétimo Garibaldi* and *Gomes Lund et al*. The State undertook to publicize this judgment in a similar way to those two cases. Also, regarding the publication in national newspapers, the State pointed out the high cost of such publications and proposed that, instead of publishing the judgment in national newspapers, the Court should order its publication on official websites and its dissemination on the social networks of government organs. The State considered that this proposal could achieve widespread public repercussion of the judgment.

300. The Court considers that, as it has decided in other cases,[325] the State must publish, within six months from notification of this judgment: (a) the official summary of this judgment prepared by the Court, once, in the Official Gazette, in a legible and appropriate font; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation, in a legible and appropriate font, and (c) the official summary of this judgment prepared by the Court and this judgment in its entirety, available for three years, on an official website of the federal Government, on the official website of the government of the state of Rio de Janeiro, and on the website of the Civil Police of the state of Rio de Janeiro. Also, in response to the proposal made by the State, the Twitter and Facebook social network accounts of the Special Human Rights Secretariat of the Ministry of Justice, the Ministry of Foreign Affairs, the Civil Police of the state of Rio de Janeiro, the Public Security Secretariat of the state of Rio de Janeiro, and the government of the state of Rio de Janeiro must promote the webpage on which the judgment and its summary are located, by a weekly post for one year.

301. The State must inform the Court immediately when it has made the publications ordered in sections (a) and (b) of paragraph 300, regardless of the one-year time frame for presenting its first report established in the twenty-third operative paragraph of this judgment. Furthermore, in the report required in that operative paragraph, the State most provide evidence of all the weekly social network posts ordered in section (c) of paragraph 300 of the judgment.

D.2. Public act to acknowledge responsibility and commemorative plaques

302. The ***representative***s asked that, as a symbolic measure of reparation, the State install two plaques in Favela Nova Brasilia near where the extrajudicial executions took place, as a memorial to what occurred, and to inform the population of the result of the proceedings

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[323] *Cf. Case of Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Andrade Salmón*, seventh operative paragraph.

[324] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Yarce et al.*, para. 336.

[325] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of I.V.,* para. 334.

before the Court. They also requested that the State establish a place where professional training courses are offered and also a school in Favela Nova Brasilia. The text of the plaques should be negotiated with the victims' representatives and the name of the school with their next of kin.

303. They also asked that the Brazilian State carry out a public act to acknowledge its international responsibility in order to apologize for the harm caused to the victims and to avoid the repetition of similar facts with the participation of authorities and victims, and coverage in the media.

304. The ***State*** objected to the organization of a public act to acknowledge responsibility and did not refer to the establishment of a place to offer professional training courses and a school in the community. It did not object to the commemorative plaques; however, it asked that the text be defined by the State without the need for the consent of the victims. If the Court should consider that this was not appropriate, the State asked that it should be the Court itself that defined the content of this symbolic reparation.

305. The Court considers that the State must organize an act to acknowledge international responsibility in relation to the facts of this case and their subsequent investigation. During this act, the State must refer to the facts and the human rights violations declared in this judgment. The act must take place in a public ceremony and be publicized. The State must ensure the participation of those declared victims in this judgment, if they so wish, and invite the organizations that represented them before the national and international instances. All the details of this public ceremony must be duly and previously consulted with the victims and their representatives. The State authorities who should attend or participate in this act must be senior officials of the federal Government and of the state of Rio de Janeiro and it is for the State to define who they will be. The State has one year from notification of this judgment to comply with this obligation.

306. During this public act, two plaques must be inaugurated in the main square of Favela Nova Brasilia in memory of the victims in this judgment; one plaque relating to the events of 1994 and the other to the events of 1995. The text on these plaques must be agreed between the State and the representatives within six months. If the parties cannot reach an agreement, they must advise the Court, which will define the precise text to be included on the plaques.

E. Guarantees of non-repetition

E.1. Adoption of public policies

307. The ***Commission*** requested the adoption of administrative regulations and operational procedures and plans to eliminate the impunity of police violence, and to modernize and professionalize the police forces; the establishment of control systems and internal and external accountability to enforce the obligation to investigate, with a gender and ethno-racial perspective, all cases in which law enforcement agents use lethal force and/or sexual violence; the reinforcement of the institutional capacity of independent oversight bodies, including forensic agencies, to combat the pattern of impunity of cases of extrajudicial executions by the police, and adequate training for the police on how to deal effectively and efficiently with individuals from the most vulnerable sectors of society.

308. The ***representatives*** requested the creation of a national protocol of due diligence for investigations into gross human rights violations, which would include parameters for the joint action of the police, the Public Prosecution Service, the Judiciary, Forensic Institutes and other bodies involved in the investigation of crimes resulting from police violence; the creation of external control committees attached to the Public Prosecution Service and special courts to

try crimes resulting from police violence; the establishment of objective criteria for substituting tenured judges in their absence; the suspension of police accused of participating in cases of serious violations under investigation by the police until the investigation has concluded; the provision of psychological and professional support to police officers who face dangerous situations; the reinforcement of the Internal Affairs Offices and Ombudsman's Offices external to the police; the guarantee of financial, material and institutional resources for the Threatened Victims and Witnesses Protection Programs (PROVITA) and human rights defenders in the states; the creation of a single consecutive system for numbering and monitoring investigations by the Police, the Public Prosecution Service, and the Judiciary; the creation, under the executive branch of all the states of a commission to reduce the lethal nature of police actions; the obligation to publish annual reports on police officers and civilians who die during police operations, and the training of health care professionals on the laws and standards in force to ensure effective compliance with Law No. 12,845/14, which regulates the treatment of victims of sexual violence, including human rights training with a gender perspective.

309. The ***State*** provided a detailed response to the different measures requested by the representatives. Regarding the creation of a national protocol on due diligence, it argued that it had a wide variety of laws and norms that regulated investigation procedures.[326] It pointed out that it was unnecessary and inefficient to create other mechanisms to control and monitor the organs responsible for the investigation of crimes due to the Public Prosecution Service's responsibilities in relation to police investigations and the external control of police activities,[327] and the competence of the National Council of the Public Prosecution Service (CNMP) to monitor compliance with the functional duties of its members.[328] Lastly, the State indicated that the activities executed by the Public Prosecution Service, the Police and the Judiciary were unquestionably interconnected.

310. With regard to the creation of special courts for crimes resulting from police violence, the State indicated that, according to the Constitution, each federative state has competence to organize the system of justice at the state level and it would be inappropriate to create a special court to try crimes of that nature. It also stressed existing domestic measures to ensure the effectiveness of judicial services.[329]

311. In response to the representatives' requests, the State also argued that it already had procedures in place to provide psychological and professional support to police officers facing

[326] Brazilian Criminal Code (Law No. 2,848/40); Code of Criminal Procedure (Law No. 3,689/41); Law No. 12,720/13 which regulates the crime of killing human beings; Law 12,030/2009 which regulates forensic services; Law No. 12,850/2013 to combat organized crime within and outside public institutions; Law No. 4,898/65 which prohibits the abuse of power by public authorities; Law No. 11,343/06 on the elimination of drug-trafficking; Law No. 11,473/2007 on federative cooperation in the area of public security; draft Law No. 4,471/2012 which seeks to enhance mechanisms for a proper investigation of incidents of undue use of lethal force and the punishment of the police officers involved in such cases.

[327] The competence of the Public Prosecution Service is defined in article 129, paragraphs VI, VII and VIII of the Brazilian Federal Constitution, in Supplementary Law No. 75/1993, and in Resolutions Nos. 13/06 and 23/06 issued by the National Council of the Public Prosecution Service (CNMP).

[328] The competence of the National Council of the Public Prosecution Service (CNMP) is defined in article 130-A.2 of the Brazilian Federal Constitution and Resolution No. 20/2007 regulating article 9 of Supplementary Law 75/93 and article 80 of Law No. 8,625/93.

[329] Article 125.4 of the Federal Constitution, and Law 9,299/1996 establishing the jurisdiction of ordinary justice to try crimes of the murder of civilians by military personnel; Resolution No. 08/2012 of the National Human Rights Council establishing the series of actions that should be taken by the police investigation following a homicide resulting from a police intervention; draft Law 790/201582, which relates to redress for the harm caused to victims of gunshot wounds in conflicts with the police, and Resolution No. 159/15 of the Legislature of the state of Rio de Janeiro creating the Parliamentary Commission of Inquiry (CPI) to investigate cases of homicide as a result of police interventions.

dangerous situations,[330] and considered that the following requests were inappropriate: (a) the creation of rules for the substitution of judges – indicating that the State already has objective criteria on this matter;[331] (b) the reinforcement of the Internal Affairs Offices and Ombudsman's Offices – indicating that, in additional to already having these mechanisms,[332] it also has a collegiate body, the National Forum of Police Ombudsman's Offices responsible for the promotion and protection of human rights and has developed national directives and shared experiences, and (c) the guarantee of financial, material and institutional resources for the Threatened Victims and Witnesses Protection Programs (PROVITA)[333] and human rights defenders in the states – indicating that it already guarantees effective and adequate protection for victims and witnesses, providing them with social rehabilitation and personal autonomy, and that the protection of human rights defenders is adequate based on international standards. The State also considered inappropriate the request concerning the Human Rights Defenders Protection Program because it bore no relationship to the instant case.

312. In relation to the creation of a single consecutive system of numbering and monitoring investigations and the creation of commissions to reduce the lethal nature of police actions, the State argued that it had norms to ensure improved harmonization, efficiency and procedural transparency[334] in order to guarantee a reduction in police lethality.[335]

313. Regarding the publication of annual reports on the numbers of police officers and civilians who die during police operations, the State advised that the implementation of such reports was established in the 2012-2015 Multi-year Plan, and underscored the existence of the National System of Public Security, Prison and Narcotics Information (SINESP)[336] and the National Annual Report on Public Security produced by the National Public Security Forum, which has been monitoring the issue of police lethality since 2014.

314. Finally, with regard to training for those involved in providing care to victims of sexual violence, the State presented various Ministry of Health regulations[337] and projects addressed at improving attention to women in situations of risk.

315. The State did not refer to the representatives' request concerning the suspension of police officers accused of taking part in serious cases under investigation by the police until the end of the investigation.

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[330] Directive No. 02/2010 of the Human Rights Secretary of the Office of the President of the Republic and Ministry of Justice; Directive 11, strategic goal III of the National Human Rights Program (PNDH-3).

[331] Articles 93 and 96 of the Brazilian Federal Constitution; articles 134 to 138 and 265 of the Civil Procedural Code; and articles 21, 45, 114, 117 and 118 of Supplementary Law No. 35/1979

[332] Law 3,168/1999 creating the Ombudsman's Office and Law 3,403/2000 creating the Unified Internal Affairs Office, both in the state of Rio de Janeiro.

[333] Law 9,807/1999, regulated by Decree 3,578/2000.

[334] Resolution No. 177/1996 of the Federal Council of Justice; Resolution No. 441/2005 of the Federal Council of Justice; Resolution No. 46/2007 of the National Council of Justice; Resolution No. 6598/2008 of the National Council of Justice; Resolution No. 121/2010 of the National Council of Justice; Resolution No. 100318/1996 of the Federal Council of Justice; Resolution No. 00318/2014 of the Federal Council of Justice.

[335] Interministerial Directive No. 4226/2010; Decree No. 7037/2009 adopting the National Human Rights Program; Law 12986/2014 creating the National Human Rights Council; and draft laws Nos. 6500/2013; 370/2011; 179/2003 and 300/2013.

[336] Law 12,681/2012, creating the National System of Public Security, Prison and Narcotics Information (SINESP).

[337] Decree No. 7,958/2013 establishing guidelines for the treatment of victims of sexual violence for public security and health professionals; Law No. 12,845/2013 regulating the treatment of victims of sexual violence; Decree No. 8086/2013 creating the program: *Mujer: Vivir sin violencia* [Women: a life without violence]; Directive No. 485/2014 regarding the organization of the health care network to treat victims of sexual violence, and State Law (Rio de Janeiro) No. 7,448/2016 creating the sub-hearing "femicide" in the state's police records and adopting other related measures.

316. The Court finds it important that the publication of annual reports with data on the number of police and civilian deaths during police actions and operations be compulsory. The Court takes note of the data disseminated by the Public Security Institute of Rio de Janeiro, which includes information on homicides resulting from police interventions. It also takes into consideration the existence of the National System of Public Security Information (SINESP) created by Law No. 12,681/2012, one of the purposes of which is to make available reports, statistics, indicators and other information to assist in the formulation, implementation, execution, follow-up and evaluation of public policies. However, the system does not disseminate public security data in Brazil in a clear and detailed manner.

317. Considering that the State has not contested the measure and, indeed, has suggested that this measure was already contemplated in the 2012-2015 Multi-year Plan, and also taking into account the attributes of the National System of Public Security, Prison and Narcotics Information, the Court orders the State to publish, each year, an official report with data on the deaths that have occurred during police operations in all the country's states. This report should also contain annually updated information on the investigations conducted into each incident that resulted in the death of a civilian or a police officer. The Court will oversee this measure and could determine additional or supplementary measures during monitoring compliance with judgment if the goals of this measure are not met satisfactorily.

318. Regarding the creation of external control committees attached to the Public Prosecution Service, the Court underlines the role of that institution in criminal investigations and its constitutional mandate of external control of police activities. Furthermore, the Court underscores the following resolutions of the National Council of the Public Prosecution Service (CNMP): No. 13 of October 2, 2006, on the opening and processing of criminal investigation procedures; No. 20 of May 28, 2007, establishing the external control of police activities by the Public Prosecution Service, and No. 129 of September 22, 2015, regarding the external control by the Public Prosecution Service in investigations into deaths resulting from police interventions. In addition, the Court takes note of article 130-A.2, of the Federal Constitution establishing that control of compliance with the functional duties of its members corresponds to the National Council of the Public Prosecution Service.

319. Nevertheless, even though Resolution No. 129 of the CNMP establishes the measures to be taken by the Public Prosecution Service in cases of death resulting from a police intervention, considering that police violence is usually investigated by the police themselves, the Court finds it necessary that the external control by the Public Prosecution Service in cases of police violence should go further than merely the remote monitoring of the investigations conducted by agents of the police itself. It is essential that, in situations of death, torture or sexual violence presumably resulting from police interventions in which *prima facie* police officers appear to be the possible perpetrators, the State take the necessary legal measures so that, immediately following the *notitia criminis,* it entrusts the investigation to an independent body, distinct from the police force involved in the incident, such as a judicial authority or the Public Prosecution Service, assisted by police, criminalistic and administrative personnel unrelated to the law enforcement body to which the possible perpetrator or perpetrators belong. To this end, the State must take the necessary measures to ensure that this procedure is implemented within one year of the delivery of this judgment, in accordance with the standards for independent investigations mentioned in paragraphs 183 to 191 *supra*.

320. The Court takes note of the existence of the Unified Internal Affairs Office in the state of Rio de Janeiro, created by State Law No. 3,403/2000; of the Police Ombudsman in the state of Rio de Janeiro, created by Law No. 3,168/1999, as well as of the existence of the National Forum of Ombudsman's Offices, a collegiate organ created by Presidential Decree No. 1/1999 and later substituted by Decree 3/2006. Consequently, considering that the State already has such mechanisms, the Court finds that the request to publicize the data on homicides and

injuries derived from police interventions is contemplated in the measures ordered in paragraph 317 *supra*.

321. Regarding the creation of committees for the reduction of the lethal nature of police actions at the state level, the Court recognizes that the competence of the Public Prosecution Service to conduct the external control of police activities involves a possible analysis of the excessive use of force by the police. It also takes into consideration that the measures taken by the State in recent years seek to harmonize standards on police use of force. For example, Interministerial Directive No. 4,226/2010, establishes that the use of force by the police must be in accordance with the international standards for the protection of human rights and the principles of legality, necessity, proportionality, moderation and appropriateness, and guideline 14 of the National Human Rights Program (PNDH-3) relates to combating institutional violence, emphasizing the eradication of torture and the reduction of police lethality.

322. Nevertheless, considering the serious nature of the information presented by the parties to these proceedings in relation to the extremely lethal nature of police actions in Brazil, and especially in Rio de Janeiro, the Court determines that the state of Rio de Janeiro should establish policies and goals for the reduction of police lethality and violence. The Court will oversee this measure and may determine additional or supplementary measures while monitoring compliance with judgment if the goals of this measure – that is the reduction in police lethality – are not met.

323. Lastly, as regards training for health care professionals on the laws and regulations in force to ensure effective compliance with Law No. 12,845/13, the Court takes note of the improvements in the regulations on the treatment of violence against women in Brazil with the recent adoption of Law No. 12,845/2013 which makes providing care to victims of sexual violence compulsory; Decree No. 7,958/2013, establishing guidelines for the provision of care to victims of sexual violence by law enforcement agents and personnel of the Unified Health System; Decree No. 8,086/2013 creating the program *Mujer: Vivir Sin Violencia,* which includes training to ensure care for victims of sexual violence, and Ministry of Health Directive No. 485/2014, redefining the functioning of the service for attending to victims of sexual violence. At the state level, the state of Rio de Janeiro has adopted Law No. 7,448/2016, creating the category of "femicide" in police records in that state, and also Special Police Precincts, a hospital and a room in the Central Institute of Forensic Medicine for attending to women victims of sexual violence. In addition, the Civil Police of Rio de Janeiro has adopted two directives that are relevant for this case: No. 620/2013, establishing the basic routine to be followed by the police authorities in cases of homicides in which the victims are women, and No. 752/2016, creating a Working Group to adapt the Latin American Protocol for the Investigation of Gender-based Violent Deaths of Women.

324. The Court appreciates the measures taken by the State. Nevertheless, it stresses that the mere existence of legal instruments of this type is insufficient to ensure the effective protection of women victims of sexual violence, in particular when the perpetrators are agents of the State. Therefore, the Court finds it essential that the State continue the actions it has established and implement, within a reasonable time, a compulsory permanent program or course on care for women victims of rape, for all ranks of the Civil and Military Police of Rio de Janeiro and health care officials. This judgment must be included as part of that training, together with the case law of the Inter-American Court on sexual violence and torture, and the international standards for the care of victims and the investigation of this type of case.

E.2. Adoption of legislative amendments

325. The ***Commission*** asked that the State adopt domestic laws addressed at the prevention, investigation and punishment of any human rights violations resulting from acts of violence committed by state agents, and regulate by law police procedures that involve the legitimate use of force.

326. The ***representatives*** asked that the State adopt a law for all the states of Brazil granting autonomy to criminal experts in relation to the police, by creating a specific independent career and guaranteeing human, financial and structural resources for such experts to perform their functions; also, an infra-constitutional legal framework with regard to the Request for Transfer of Jurisdiction that expressly establishes cases of police violence as a situation requiring the transfer of competence from the state jurisdiction to the federal jurisdiction. The representatives also asked for changes to the law to include, expressly, among the premises for the early production of evidence in the criminal sphere, the case of witnesses to violence perpetrated by police officers, or that the presumption of a specific risk be determined allowing judges to authorize the early production of evidence in cases of police violence. Alternatively, they asked that the presumption of a specific risk be established in these cases so that the judicial authorities could determine the early production of evidence by judicial authorities. In addition, they requested the creation of a mechanism for the participation of victims and civil society organizations in investigations into crimes against civilians committed by the police.

327. The ***State*** considered that the representatives' request that laws be adopted in each state of the Federation guaranteeing the independence of criminal experts was legally impossible, because the State did not have the authority to intervene in state laws. In any case, it argued that, at the federal level, Law No. 12,030/2009 existed that guaranteed the technical, scientific and functional autonomy of criminal experts and, furthermore, Constitutional Amendment Bill 499/2010 is being processed which will establish an autonomous career of expert. Regarding the transfer of jurisdiction, the State indicated that this is fully in effect; however, it mentioned draft Law No. 6,647/2006 concerning its infra-constitutional regulation, which covers matters such as its use in cases of police violence. Regarding the request for early production of evidence, the State clarified that article 156 of the Code of Criminal Procedure allowed the judge to determine, *ex officio*, the early production of evidence, and article 155 of this legal instrument established the production of early evidence, including testimonial evidence if a witness will be absent due to illness or age.

328. Lastly, the State indicated that its criminal procedural legislation provided remedies that allowed civil society to take part in and monitor criminal proceedings, including article 5-LIX of the Federal Constitution, which admits the private action in crimes subject to public action if the latter is not presented within the legal time frame. Also, article 266 of the Code of Criminal Procedure permits the plaintiff to act as an assistant to the Public Prosecution Service in public actions.

329. Regarding the creation of a mechanism for the participation of victims and civil society organizations in investigations into crimes resulting from police violence, the Court takes note that the State already has laws that ensure the participation of an assistant to the prosecution in public criminal actions. However, the State has not referred to any legal framework that guarantees the participation of the parties at the stage of the investigation by the police or the Public Prosecution Service. Consequently, and pursuant to its case law concerning the participation of the victims at all stages of the investigation and the criminal proceedings,[338] the Court determines that the State must adopt the legislative or other measures required to allow the victims of crimes or their next of kin to take part, officially and effectively, in the

[338] Among others, *cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 195, and *Case of Omar Humberto Maldonado Vargas et al.*, para. 110.

investigation of crimes conducted by the police or the Public Prosecution Service, without prejudice to the need for discretion or confidentiality in such procedures.

E.3. Elimination of the expression "resisting arrest" and reduction of police lethality

330. The ***Commission*** requested the immediate elimination of the automatic registering of deaths perpetrated by the police as "resisting arrest."

331. The ***representatives*** required substitution of the expressions "resisting arrest" and "resistance followed by death," by "homicide derived from police intervention" or "bodily injury derived from police intervention"; the authority of the Homicide Division in the investigation of cases resulting from a police intervention; the priority of the expert appraisal of the weapons confiscated in such cases, and the linking of the rates of police lethality to the goals and indicators of the public security system.

332. The ***State*** argued that, in compliance with the recommendations made in Report No. 141/11 of the Inter-American Commission on Human Rights, the Human Rights Secretariat of the Brazilian Government had issued Resolution No. 8/2012, established the change of the expressions "resisting arrest" and "resistance followed by death" to "bodily injury or homicide resulting from a police intervention." It also underscored the National Human Rights Program(PNDH-3), which recommended the elimination of generic expressions such as "resting arrest."[339] The State also mentioned Joint Resolution No. 02/2015 of the Federal Police Department and the Superior Council of the Police, which established that "resisting arrest" should, in future, be referred to as "bodily injury or homicide resulting from opposition to a police intervention" and determined the internal procedures to be adopted in this type of situation. Lastly, the State mentioned draft Law No. 4,471/2012, which refers to "moderation and necessity" as objectives of actions of legitimate defense taken by public agents to contain resistance to a legal action; establishes specific rules for expert appraisals, and reinforces the regulation of the investigation stages and procedures in this type of case. At the level of the state of Rio de Janeiro, the State underlined the issue of Directives Nos. 553/2011 and 617/2013 of the Civil Police of Rio de Janeiro. The former establishes a series of basic guidelines that the police should take into account when recording an act of resistance, and the latter establishes the adoption of the technical expression "bodily injury or homicide resulting from a police intervention" instead of "resisting arrest" and "resistance following by death."

333. Although the State has not referred directly to the other requests, it advised that, in the state of Rio de Janeiro, the cases of homicides derived from police interventions are investigated by the Homicide Division and that Special Scene of the Crime Groups (GELC) have been created, and also a working group to implement a course on crime scene investigation under Directive 776/2016.

334. Regarding the substitution of the expression "resisting arrest," the Court shares the opinion provided by expert witness Marlon Weichert during the hearing and considers that, even though the change in the name of the procedure does not change the procedure *per se*, the search for a more appropriate expression has a symbolic value. The Court takes note that the State has adopted norms at the national level through the National Human Rights Program (PNDH-3), Resolution No. 8/2012 of the Human Rights Secretariat and Joint Resolution No. 02/2015 of the Federal Police Department and the Superior Council of the Police and, at the level of the state of Río de Janeiro, by Directive No. 617/2013 of the Civil Police of Rio de

[339] In some states the change in the expression has already been adopted; for example, in the state of Rio de Janeiro by means of Civil Police Directive No. 617/2003.

Janeiro. However, the Court considers that, even though Resolution No. 8/2012 of the Human Rights Secretariat has proposed to change "resisting arrest" to "bodily injury or homicide resulting from a police intervention"; Joint Resolution No. 02/2015 of the Federal Police Department and the Superior Council of the Police established that "resisting arrest" should be entitled "bodily injury or homicide resulting from opposition to a police intervention." This means that the expression that should be used by the police to refer to homicides or injuries caused by police interventions has not been standardized.

335. Accordingly, the Court takes note of Directive No. 617/2013 of the Civil Police of Rio de Janeiro which establishes that the technical term for the said records should be "bodily injury or homicide resulting from a police intervention," and considers this appropriate and in keeping with what the National Human Rights Program has established. Accordingly, the Court orders the State to take the necessary measures to harmonize this expression in the reports prepared and investigations conducted by the police or the Public Prosecution Service of Rio de Janeiro in cases of deaths or injuries caused by the actions of the police. The concept of "opposition" or "resistance" to the actions of the police should be abolished.

336. In relation to the way to conduct an investigation into cases of civilian deaths caused by the police, the Court considers that, at the national level, Joint Resolution No. 02/2015 of the Federal Police Department and the Superior Council of the Police has already established the internal procedures to be adopted in this type of situation and, at the level of the state of Rio de Janeiro, Directive No. 553/2011 has also established a series of basic guidelines that the police should take into account following the registration of a death derived from police action. However, the Court must underscore the importance of the adoption of draft Law No. 4,471/2012, which would establish norms to preserve evidence for technical appraisal, and for the gathering and conservation of evidence, and an impartial investigation by the organs of the system of justice. Therefore, the Court urges the State to endeavor to adopt those measures by the diligent enactment of the said law. The Court will not monitor this.

E.4. Other measures requested

337. With regard to the elaboration of a national protocol on due diligence in cases of police violence, the Court considers that the domestic laws establish rules and procedures that are sufficiently clear in cases of deaths derived from a police intervention. At the level of the state of Rio de Janeiro, the Court takes note of Directive No. 553/ 2011, which establishes the basic procedural guidelines for investigations related to bodily injury or homicide resulting from a police intervention. Consequently, the Court finds that this request is not admissible.

338. The Court also considers that the requests to create special courts for crimes derived from police violence and the establishment of objective criteria for the substitution of tenured judges if they should be absent are inadmissible because the criminal courts have both jurisdiction and technical capacity to try crimes of police violence. In addition, national laws already contain objective criteria for the substitution of judges.

339. Regarding the provision of psychological and professional support for police subject to dangerous situations and the suspension of police officers accused of participating in serious cases being investigated by the police, the Court notes the efforts made by the State, such as Goal III of the National Human Rights Program (PNDH-3), which proposes permanent support for the mental health of professionals of the public security system, and Interministerial Directive No. 2, of the Human Rights Secretariat and the Ministry of Justice, which establishes national guidelines for the promotion and defense of the human rights of public security professionals. Therefore, the Court does not find it necessary to order the measure of reparation requested.

340. Regarding the request to reinforce the Program for the Protection of Human Rights Defenders and the Threatened Victims and Witnesses Protection Program (PROVITA), the Court considers this inadmissible, because it bears no relationship to the instant case.

341. In relation to the creation of a consecutive system for numbering and monitoring investigations and proceedings before different State organs, the Court takes note of the measures taken by the State since 1996, including Resolutions No. 177/1996 of the Federal Council of Justice (CJF) instituting a single cover page and numbering system for processing cases at the trial stage of the Federal Judiciary; No. 441/2005 of the CJF referring to the distribution of trials within the Federal Judiciary; No. 12/2006 of the National Council of Justice (CNJ) creating the Judiciary database; No. 46/2007 of the CNJ creating standardized procedural rules for the Judiciary; No. 65/2008 of the CNJ relating to standardization of the numbering of proceedings in the organs of the Judiciary; No. 121/2010 of the CNJ relating to the dissemination of procedural data on the internet; No. 00318/2014 of the CJF creating the document management program and archive for the Federal Judiciary, and Directive No. 11/2001 of the Federal Police Department, which defines and consolidates operational standards for the activities of the Judicial Police. Therefore, considering the evolution in the procedural organization of Brazil's system of justice in recent years, the Court finds it unnecessary to order this measure.

342. With regard to the measure of reparation to establish a place that offers professional training courses and a school in Favela Nova Brasilia, the Court considers that this is unrelated to the facts of the case and does not find it pertinent to order it. Also, the Court recalls that it has no evidence to determine the violation of the right to freedom of movement and residence in this case, so that it is not appropriate to grant the measure related to a house for L.R.J.

343. Regarding the request to guarantee the autonomy of criminal experts in relation to the police, by creating a specific and independent career with human, financial and structural resources for the implementation of their functions, the Court takes note that, since 2009, article 2 of Law No. 12,030/2009 guarantees technical, scientific and functional autonomy to criminal experts in Brazil. The Court also notes the existence of two bills being processed before the National Congress (499/2010 and 325/2009) in order to include two subparagraphs in article 144 of the Federal Constitution to guarantee that federal criminal experts and state and Federal District criminal experts are independent from law enforcement agencies in Brazil. At the state level, the Court takes note of the initiatives of the state of Goiás that, by Law No. 16,897/2010, determined that the career of criminal expert is attached to the Superintendence of Technical and Scientific Police of the Public Security Secretariat, and of the state of São Paulo, determining that the Criminalistics Institute and the Forensic Institute are also attached to the Superintendence of Technical and Scientific Police of the state. Consequently, the Court does not find it necessary to order the measure of reparation requested.

344. In the case of the representatives' request that cases of police violence are expressly established as a situation for transferring jurisdiction from the state's system of justice to the federal judiciary, the Court considers that article 109.5 of the Constitution guarantees the use of the mechanism of the Request for Transfer of Jurisdiction in cases of gross human rights violations, which include possible cases of police violence. The Court also notes the exceptional nature of that measure in Brazil's legal system. Pursuant to a ruling of the Brazilian Superior Court of Justice, the federalization of cases depends on three presumptions: (i) the existence of gross human rights violations; (ii) the risk of the State's international responsibility for failing to comply with legal obligations assumed in international treaties, and (iii) the inability of local authorities to provide an effective response. The Superior Court of Justice had already ruled that first degree murder by an on-duty agent of any public organ may be considered a gross human rights violation and justify the transfer of jurisdiction, a premise that has even resulted in the transfer of jurisdiction in a case of human rights violations committed by

military police (IDC No. 3). Based on the foregoing, and on the conclusions established in this judgment with regard to the violation of the right to judicial protection and judicial guarantees, the State, though the Prosecutor General of the Federal Public Prosecution Service must assess whether the facts relating to the 1994 and 1995 raids should be the subject of a Request for Transfer of Jurisdiction.

345. With regard to legislative changes to include the possibility of early production of evidence, the situation of witnesses of violence perpetrated by police agents, and the determination by the judicial authority of the presumption of a specific risk that would lead to the early production of evidence in cases of police violence, the Court considers that the early production of evidence, when its urgency and relevance has been demonstrated, is already established in article 156 of the Code of Criminal Procedure. Consequently, the Court does not consider it necessary to order this measure of reparation.

346. In the case of the attribution to the Homicide Division of the investigation of cases derived from a police intervention, notwithstanding the provisions of paragraph 320 of this judgment, the Court considers that State has already responded to this request.

347. Lastly, regarding the requests to give priority to the expert appraisal of weapons confiscated in cases of police violence, and the inclusion of rates of lethality in the goals or indicators of the public security system, the Court considers that these have already been referred to in other measures ordered in this judgment.

F. Compensation

F.1. Pecuniary damage

348. In their final written arguments, the ***representatives*** requested the payment of "patrimonial damage" which included pecuniary damage and consequential damage, based on the equity principle, because the vouchers for the respective expenses had not been kept. In this regard, the Court recalls that the proper procedural moment for requesting measures of reparation is the brief with pleadings, motions and evidence. As the representatives made no request for compensation for pecuniary damage in that brief, the request presented in its final written arguments is time-barred.

F.2. Non-pecuniary damage

349. The ***Commission*** asked that the necessary measures be taken to ensure adequate and complete compensation for both the pecuniary and the non-pecuniary damage generated by the violations perpetrated in this case in favor of the next of kin of the 26 victims who died in the police raids and in favor of L.R.J., C.S.S. and J.F.C.

350. The ***representatives*** asked for compensation for the harm suffered by those identified as victims. In the case of the non-pecuniary damage they requested US$35,000 for each victim of the 1994 and 1995 police raids in Favela Nova Brasilia and US$50,000 for each of the three victims of sexual violence during the 1994 police raid.

351. The ***State*** argued that compensation for non-pecuniary damage to the victims and their families was inappropriate because the delivery of the judgment should be sufficient to provide satisfactory for non-pecuniary damage. It also underlined that the victims' representatives had not proved any affective relationship or financial dependence between the siblings of the direct victims and the victims themselves and, therefore, the said siblings could not be considered injured third parties.

352. In its case law, the Court has developed the concept of non-pecuniary damage and has established that this "may include both the pain and suffering caused by the violation and also the impairments of values of great significance to the individual and any alteration, of a non-pecuniary nature, in the living conditions of the victim."[340] Given that it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated, for the purposes of integral reparation to the victim, by the payment of a sum of money or the delivery of goods or services with a monetary value, which the Court may determine in reasonable application of sound judicial criteria and in equity.[341]

353. In Chapter VII, the Court declared the international responsibility of the State for the violation of the rights established in Articles 5, 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 of this instrument (*supra* paras. 224, 231, 239, 242 and 274) and, in the case of L.R.J., C.S.S. and J.F.C. also in relation to Articles 1, 6 and 8 of the ICPPT and 7 of the Convention of Belém do Pará (*supra* paras. 258 and 259). Based on the findings made and the different violations determined in this judgment, the Court establishes, in equity, a single payment of US$35,000.00 (thirty-five thousand United States dollars) for each victim of violation of the rights to judicial guarantees, judicial protection and personal integrity recognized in paragraphs 224, 231, 239, 242, 258, 259 and 274 of this judgment and the additional sum of US$15,000.00 (fifteen thousand United States dollars) each for L.R.J., C.S.S. and J.F.C.

G. Costs and expenses

354. The ***representatives*** requested reimbursement of the expenses incurred in the processing of these proceedings from the lodging of the petition before the Commission to the procedures carried out before the Court.

355. The representatives indicated that the costs and expenses of the Instituto de Estudos da Religião (ISER) amounted to US$24,673.67. That sum is divided as follows: (i) US$3,734.60 meeting and travel expenses; (ii) US$762.27 mailing and photocopying expenses, and (iii) US$ 20,176.80 salaries. Meanwhile, CEJIL's costs and expenses amounted to US$90,009.10. The representatives divided this sum as follows: (i) US$26,893.74 meeting and travel expenses; (ii) US$1,996.42 mailing and photocopying expenses; (iii) US$170.71 research and stationery expenses; (iv) US$1,228.09 translations and judicial fees, and (v) US$59,720.14 salaries.

356. The ***State*** asked that, if it was not declared internationally responsible, it should not be sentenced to pay any amount for costs and expenses. Also, if it was sentenced to pay costs and expenses, the State indicated that this should be for reasonable and duly authenticated amounts that were directly related to the specific case. In particular, Brazil considered that the expenses for lawyers' salaries did not meet these requirements because they were mere estimates that it was impossible to corroborate.

357. The Court reiterates that, pursuant to its case law, costs and expenses form part of the concept of reparation because the actions taken by the victims in order to obtain justice at both the national and international level entail disbursements that should be compensated when the international responsibility of the State is declared in a judgment. Regarding the reimbursement of expenses, it is for the Court to assess their scope prudently; they include the expenses incurred before the authorities of the domestic jurisdiction, as well as those

[340] *Cf. Case of the "Street Children" (Villagrán Morales et al.)*, para. 84, and *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016. Series C No. 330, para. 207.

[341] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 53, and *Case of Andrade Salmón*, para. 207.

generated during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.[342] As it has indicated on other occasions, the Court recalls that it is not sufficient merely to forward evidentiary documents; rather, the parties are required to include arguments that relate the evidence to the facts it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established.[343]

358. After examining the evidence provided, the Court concludes that some of the amounts requested are justified and proven. Consequently, the Court determines, in equity, that the State must pay the sum of US$20,000.00 (twenty thousand United States dollars) to the ISER and US$35,000.00 (thirty-five thousand United States dollars) to CEJIL.

359. At the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representatives any subsequent reasonable and duly authenticated expenses.[344]

H. Reimbursement of expenses to the Legal Assistance Fund

360. The representatives of the victims had requested support from the Victims' Legal Assistance Fund of the Court to cover participation in the hearing of those persons whom the Court called on to testify in person. They asked that the Fund cover the expenses of airfares, board and lodging and notarial services for the affidavits of presumed victims, expert witnesses and witnesses. In an order of the President of December 3, 2015, the request filed by the presumed victims through their representatives for access to the Court's Legal Assistance Fund was admitted and the financial assistance required for the presentation of five statements, either at the hearing or by affidavit was authorized.

361. On December 16, 2016, the State was forwarded a disbursements report as established in Article 5 of the Court's Rules for the operation of the said fund. The State was given the opportunity to present its observations on the expenses incurred which amounted to US$7,397.51. Brazil did not make any observations.

362. Based on the violations declared in this judgment and on compliance with the requirements to access the Fund, the Court orders the State to reimburse the fund the sum of US$7,397.51 (seven thousand three hundred and ninety-seven United States dollars and fifty-one cents) for the expenses incurred. This sum must be reimbursed to the Inter-American Court within six months of notification of this judgment.

I. Method of compliance with the payments ordered

363. The State shall make the payment of the compensation for non-pecuniary damage, and to reimburse the costs and expenses established in this judgment directly to the persons and organizations indicated herein, within one year of notification of this judgment, pursuant to the following paragraphs.

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[342] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, *Case of Andrade Salmón*, para. 210.

[343] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 277, and *Case of Andrade Salmón*, para. 211.

[344] *Cf. Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of August 24, 2010. Series C No. 214, para. 331 and *Case of Andrade Salmón*, para. 213.

364. If any of the beneficiaries is deceased or should die before they receive the respective compensation, this shall be delivered directly to their heirs, in keeping with the applicable domestic law.

365. The State shall comply with its pecuniary obligations by payment in United States dollars or the equivalent in Brazilian currency, using the exchange rate in force on the New York Stock Exchange (United States of America), the day before payment to make the respective calculation.

366. If, for causes that can be attributed to any of the beneficiaries of the compensation or their heirs, it is not possible to pay all or part of the amounts established within the indicated time frame, the State shall deposit the said amounts in their favor in a deposit account or certificate in a solvent Brazilian financial institution, in United States dollars, and in the most favorable financial conditions allowed by the State's banking laws and practice. If the corresponding compensation is not claimed, when ten years have passed, the amounts shall be returned to the State with the interest accrued.

367. The amounts allocated in this judgment as compensation for non-pecuniary damage and to reimburse costs and expenses shall be delivered in full to the persons and organisations indicated in this judgment without any deductions derived from possible taxes or charges.

368. If the State should fall in arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Federative Republic of Brazil.

IX
OPERATIVE PARAGRAPHS

369. Therefore,

THE COURT

DECIDES,

Unanimously,

1. To reject the preliminary objections filed by the State concerning the inadmissibility of the submission of the case to the Court owing to the publication of the Merits Report by the Commission; the lack of jurisdiction *ratione personae* in relation to the presumed victims who had not granted a power of attorney or who were not related to the facts of the case; the lack of jurisdiction *ratione materiae* due to violation of the principle of subsidiarity of the inter-American system; the lack of jurisdiction *ratione materiae* in relation to presumed violations of the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; the failure to exhaust domestic remedies and the failure to respect the reasonable time to submit the case to the Commission, pursuant to 24 to 29, 35, 36, 37, 40, 41, 42, 55 to 58, 64 to 67, 76 to 80, and 85 to 88 of this judgment.

2. To declare partially admissible the preliminary objections filed by the State concerning the lack of jurisdiction *ratione personae* concerning victims who were not included in the Commission's Merits Report, and the lack of jurisdiction *ratione temporis* concerning facts prior to the date of the State's acceptance of the Court's jurisdiction, pursuant to paragraphs 35 to 40 and 49 to 51 of this judgment.

DECLARES:

Unanimously that:

3. The State is responsible for the violation of the right to the judicial guarantees of the independence and impartiality of the investigation, due diligence and a reasonable time established in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the persons indicated in paragraphs 224 and 231 of this judgment, pursuant to paragraphs 172 to 231 hereof.

Unanimously that:

4. The State is responsible for the violation of the right to judicial protection established in Article 25 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the persons indicated in paragraphs 239 and 242 of this judgment, pursuant to paragraphs 172 to 197 and 232 to 242 hereof.

Unanimously that:

5. The State is responsible for the violation of the rights to judicial protection and judicial guarantees established in Articles 25 and 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and Article 7 of the Convention of Belém do Pará, to the detriment of L.R.J., C.S.S. and J.F.C., pursuant to paragraphs 243 to 259 of this judgment.

Unanimously that:

6. The State is responsible for the violation of the right to personal integrity43 established in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of: Mônica Santos de Souza Rodrigues; Evelyn Santos de Souza Rodrigues; Maria das Graças da Silva; Samuel da Silva Rodrigues; Robson Genuino dos Santos Jr.; Michelle Mariano dos Santos; Bruna Fonseca Costa; Joyce Neri da Silva Dantas; Geni Pereira Dutra; Diogo da Silva Genoveva; João Alves de Moura; Helena Vianna dos Santos; Otacilio Costa; Pricila Rodrigues; William Mariano dos Santos; L.R.J.; C.S.S., and J.F.C., pursuant to paragraphs 269 to 274 of this judgment.

Unanimously that:

7. The State did not violate the right to personal integrity established in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Cirene dos Santos, Edna Ribeiro Raimundo Neves, José Francisco Sobrinho, José Rodrigues do Nascimento, Maria da Gloria Mendes, Maria de Lourdes Genuino, Ronaldo Inacio da Silva, Alcides Ramos, Thiago da Silva, Alberto da Silva, Rosiane dos Santos, Vera Lúcia dos Santos de Miranda, Lucia Helena Neri da Silva, Edson Faria Neves, Mac Laine Faria Neves, Valdenice Fernandes Vieira, Neuza Ribeiro Raymundo, Eliane Elene Fernandes Vieira, Rogério Genuino dos Santos, Jucelena Rocha dos Santos, Norival Pinto Donato, Celia da Cruz Silva, Nilcéia de Oliveira, Diogo Vieira dos Santos, Adriana Vianna dos Santos, Sandro Vianna dos Santos, Alessandra Vianna Vieira, Zeferino Marques de Oliveira, Aline da Silva, Efigenia Margarida Alves, Sergio Rosa Mendes, Sonia Maria Mendes, Francisco José de Souza, Martinha Martino de Souza, Luiz Henrique de Souza, Ronald Marcos de Souza, Eva Maria dos Santos Moura, João Batista de Souza, Josefa Maria de Souza, Waldomiro Genoveva, Océlia Rosa, Rosane da Silva Genoveva, Paulo Cesar da Silva Porto, Daniel Paulino da Silva, Georgina Soares Pinto, Nilton Ramos de Oliveira, Maria da Conceição Sampaio de Oliveira, Vinicius Ramos de Oliveira, Geraldo José da Silva Filho, Georgina Abrantes, Paulo Roberto Felix, Beatriz Fonseca Costa, Dalvaci Melo Rodrigues, Lucas Abreu da Silva, Cecília Cristina do Nascimento Rodrigues,

Adriana Melo Rodrigues, Roseleide Rodrigues do Nascimento, Shirley de Almeida, Catia Regina Almeida da Silva, Valdemar da Silveira Dutra, Vera Lucia Jacinto da Silva, Cesar Braga Castor, Vera Lucia Ribeiro Castor, Pedro Marciano dos Reis, Hilda Alves dos Reis and Rosemary Alves dos Reis, pursuant to paragraph 272 of this judgment.

Unanimously that:

8. The State did not violate the right to freedom of movement and residence established in Article 22(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of C.S.S., J.F.C. and L.R.J., pursuant to paragraphs 281 and 282 of this judgment.

AND ESTABLISHES:

Unanimously that:

9. This judgment constitutes *per se*, a form of reparation.

10. The State shall conduct, effectively, the investigation underway into the facts related to the deaths that occurred in the 1994 raid, with due diligence and within a reasonable time, in order to identify, prosecute and punish, as appropriate, those responsible pursuant to paragraphs 291 and 292 of this judgment. In the case of the deaths that occurred in the 1995 raid, the State must open or reopen an effective investigation into these facts pursuant to paragraphs 291 and 292 of this judgment. In addition, the State, through the Prosecutor General of the Federal Public Prosecution Service, must assess whether the facts relating to the 1994 and 1995 raids should be subject to a Request for Transfer of Jurisdiction, as indicated in paragraph 292 of this judgment.

11. The State shall open an effective investigation into the acts of sexual violence, pursuant to paragraph 293 of this judgment.

12. The State shall provide the psychological or psychiatric treatment required by the victims, following their informed consent and including the provision of medicines, free of charge and immediately, adequately, effectively and for as long as necessary, through its specialized health institutions. In addition, the respective treatments must be provided, insofar as possible, in the centers chosen by the victims, pursuant to paragraph 296 of this judgment.

13. The State shall make the publications indicated in paragraph 300 of the judgment, as established therein.

14. The State shall organize a public act to acknowledge its international responsibility for the facts of this case and their subsequent investigation and, during this act, it shall unveil two plaques to commemorate the victims in this judgment in the main square of Favela Nova Brasilia, pursuant to paragraphs 305 and 306 of this judgment.

15. The State shall publish an official annual report with data on the deaths that occur during police operations in all the country's states. This report should also include annually updated information on the investigations conducted into each incident that resulted in the death of a civilian or a police officer, pursuant to paragraphs 316 and 317 of this judgment.

16. The State, within one year of notification of this judgment, shall establish the necessary legal mechanisms so that, in situations of presumed deaths, torture or sexual violence resulting from a police intervention in which *prima facie* it appears possible that police agents could be involved, immediately following the *notitia criminis,* the investigation is entrusted to an independent body, distinct from the police force involved in the incident, is put in charge of the

investigation, such as a judicial authority or the Public Prosecution Service, assisted by police, criminalistic and administrative personnel unrelated to the law enforcement agency to which the possible perpetrator or perpetrators belong, pursuant to paragraphs 318 and 319 of this judgment.

17. The State shall take the necessary measures to ensure that the state of Rio de Janeiro establishes goals and policies to reduce police lethality and violence, pursuant to paragraphs 321 and 322 of this judgment.

18. The State shall implement, within a reasonable time, a permanent and mandatory program or course for all ranks of the Civil and Military Police of Rio de Janeiro and officials who provide health care on the assistance that should be given to women victims of rape. The training provided should include this judgment, the case law of the Inter-American Court in relation to sexual violence and torture, and also international standards for the treatment of victims and the investigation of this type of case, pursuant to paragraphs 323 and 324 of this judgment.

19. The State shall adopt the legislative or other measures required to permit victims of offenses or their family members to take part, formally and effectively, in the investigation of crimes conducted by the police or the Public Prosecution Service, pursuant to paragraph 329 of this judgment.

20. The State shall take the necessary steps to harmonize the expression "bodily injury or homicide as a result of a police intervention" in the reports and investigations of the police or the Public Prosecution Service in cases of death or injuries caused by the actions of the police. The concept of "opposition" or "resistance" to the actions of the police should be abolished, pursuant to paragraphs 333 to 335 of this judgment.

21. The State shall pay the amounts established in paragraph 353 of this judgment as compensation for non-pecuniary damage and to reimburse costs and expenses, pursuant to paragraph 358 of this judgment.

22. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the sum disbursed during the processing of this case, pursuant to paragraph 362 of this judgment.

23. The State shall, within one year of notification of this judgment, provide the Court with a report on the measures adopted to comply with it.

24. The Court will monitor full compliance with this judgment in exercise of its authority and in fulfillment of its duties under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with all its provisions.

Eduardo Ferrer Mac-Gregor Poisot
Acting President

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Secretary

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
Acting President

Pablo Saavedra Alessandri
Secretary