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Title/Style of Cause:	Wallace de Almeida v. Brazil
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Decided by:	First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Florentin Melendez, Paolo Carozza. As established in Article 17(2)(a) of the IACHR Rules of Procedure, Commissioner Paulo Sergio Pinheiro, a Brazilian national, did not participate in the decision regarding this petition.
Dated:	20 March 2009
Citation:	de Almeida v. Brazil, Case 12.440, Inter-Am. C.H.R., Report No. 26/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANTS: Ivanilde Telacio dos Santos, Rafaela Telacio dos Santos, Rosana Tibuci Jacob, Fagner Gomes dos Santos, the Center for Black Studies, and the Center for Global Justice
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I. SUMMARY

1. On December 26, 2001, the Inter-American Commission on Human Rights (hereinafter the “Commission” or “IACHR”) received a petition filed by Ivanilde Telacio dos Santos, Rafaela Telacio dos Santos, Rosana Tibuci Jacob, Fagner Gomes dos Santos, the Center for Black Studies (Núcleo de Estudos Negros--NEN), and the Center for Global Justice (CJG), (hereinafter “the petitioners”), alleging violation by the Federative Republic of Brazil (hereinafter “Brazil” or “the State”) of Articles 4, 5, 8, 25 and 1(1) of the American Convention on Human Rights (hereinafter the “American Convention”) to the detriment of Wallace de Almeida (hereinafter the “alleged victim”).

2. Based on the information, the victim is alleged to have been murdered by members of the military police. He was a young 18-year-old black man serving as a professional soldier in the Army and was murdered on September 13, 1998. The petitioners assert that the police investigation has not yet been concluded and the Public Prosecutor’s Office has not even filed a complaint regarding the incident with the courts. The events in question reportedly took place in the context of an escalation in police/military violence, resulting from the policy that the state of Rio de Janeiro has been using in this area since late 1994. They also allege that the case involves racial and social factors, in that they report that the victims of this kind of alleged extrajudicial execution are black and poor. Finally, they ask that a recommendation be given to the Government of Brazil to investigate, prosecute and punish those responsible for the crime, that

the victims be compensated, and that measures be taken to prevent violent police actions like those reported here.

3. The State did not respond to the complaint despite having been notified in due legal form. However, its representatives did appear at the hearing held during the 121st period of sessions of the Commission on October 21, 2004, at which time it was stated that the police investigation into the case is effectively stalled and there is nothing new to report on the case.

4. In this report the Commission analyzes admissibility requirements and considers the petition admissible in accordance with Articles 46(2)(c) and 47 of the American Convention. As for the merits of the matter in dispute, which are also examined herein according to Article 37(3) of the IACHR's Rules of Procedure, the Commission concludes in this report, drawn up in accordance with Article 51 of the Convention, that the State violated Mr. Wallace de Almeida's right to life, integrity, a fair trial and judicial protection, which are guaranteed by Articles 4, 5, 8, 24 and 25 of the American Convention, in relation to the general obligation to respect and guarantee rights and the duty to give domestic legal effects as provided in Articles 1(1) and 2, as well as the obligation of the Brazilian State and of the state of Rio de Janeiro to implement all the provisions of the Convention under Article 28, all of that instrument. Finally, the IACHR makes relevant recommendations to the Brazilian State.

II. PROCESSING BY THE COMMISSION

5. The original petition was received by the Commission on December 26, 2001, filed as Petition N° 872/2001 and subsequently designated case No. 12.440. On January 4, 2002, the Commission sent the petitioners acknowledgement of receipt of their petition. On January 24, 2002, the Commission, pursuant to Article 30 of its Rules of Procedure, sent the State the pertinent sections of the complaint, asking that it respond to the petition and granting a period of two months for that purpose. This was communicated to the petitioners on the same date.

6. In a note received on August 9, 2002 and dated August 7 of the same year, the State requested that the Commission grant it an extension to answer the petition filed against it.

7. In a note received on January 16, 2004 and dated January 15 of the same year, the petitioners asked that a hearing be scheduled before the Commission to address legal issues relating to the case.

8. The Commission, in a note dated January 24, 2003, informed the State that its request for an extension was rejected based on the provisions of Article 30(3) of the Rules of Procedure, in that no basis had been found to support the request. As of the date this report was drawn up, the State had not responded to the petition.

9. The Commission, in a note dated January 22, 2004, advised the State pursuant to Article 37(3) of the Rules of Procedure, that it decided to give the case the number 12.440, and to proceed with considerations regarding the admissibility of the petition, up to the discussion on the merits. In the same note, it advised that in accordance with the provisions of Article 38(1) of

the Rules of Procedure, the petitioners were requested to submit additional information on the merits of the petition within a period of two months.

10. On March 23, 2004, the additional information the petitioners sent on the merits of the case was received by fax, and the same information was received through regular mail on April 5 of that year. Acknowledgement of the receipt of that information was sent to the petitioners on June 1, 2004.

11. In a note dated June 1, 2004, the State was sent relevant sections of the additional information submitted by the petitioners on the merits of the case, and the State was granted a period of two (2) months to submit comments on that information.

12. On August 30, 2004, the petitioners asked the Commission for information on the case.

13. On October 21, 2004, a hearing was held on the case during the 121st period of sessions of the Commission. It was attended by representatives of the petitioners and the State. At that time, the Chairman suggested that the parties might seek a friendly settlement of the matter.

III. POSITIONS OF THE PARTIES

A. Petitioners

14. The petitioners maintain that the complaint is based on the murder of the alleged victim by agents of the 19th Military Police Battalion of Rio de Janeiro. The victim was a young 18-year-old black soldier serving in the Army. The incident took place on September 13, 1998 in the "Morro de Babilonia," a favela located in the southern part of the referenced State. The petitioners maintain that the incident took place during a police operation carried out in an arbitrary manner at the referenced location, during which police agents used excessive violence against the inhabitants of the area. They assert that the police investigation has not been concluded to date and the Public Prosecutor's Office has not even filed a complaint with the court. They believe that this situation constitutes a violation of Articles 4, 5, 8, 24, 25 and 1(1) of the Convention and that, given the competent authorities failure to act to resolve the situation, a case must be filed against the State so that justice will be served and the alleged affected parties compensated.

15. As context for the situation, the petitioners denounce the use of excessive force by the police force of the State, specifically in the state of Rio de Janeiro, citing as evidence reports that this Commission and "Human Rights Watch" issued on the subject in 1997. Specifically, they maintain that in late 1994 the government of the state of Rio de Janeiro reached an agreement with the federal government that the Armed Forces would operate jointly with the Military Police to combat drug trafficking, under the name of "Operation Rio." The operation was marked by torture, arbitrary arrest, unauthorized searches and unnecessary use of violence by the police, which the petitioners maintain is demonstrated in reports similar to those referred to above. In May 1995, the petitioners assert that after General Nilton Cerqueira was appointed Secretary of Public Security of the state of Rio de Janeiro, under Governor Marcelo Alencar, new provisions were adopted in the Police Regulations. These included: 1) bonuses and promotions for bravery;

2) authorization for active police officers to use a second weapon; and 3) summary investigation rather than the full complete investigation, in order to accelerate murder cases involving police/military officers. The petitioners maintain that this situation degenerated into numerous abuses, such as planting evidence in cases in which agents brought down an alleged criminal (e.g., planting a weapon supposedly belonging to the subject). They maintain that these practices led to increased police violence in the state of Rio de Janeiro, as depicted in the work of Professor Ignacio Cano, which is attached to the petition as documentary evidence.

16. The petitioners also maintain that the issue of race is one of the preponderant factors relating to police violence. They maintain that the studies done by the aforementioned professor is able to categorically demonstrate this fact. This leads them to conclude that police violence is discriminatory in that it affects blacks in greater numbers and with greater intensity. They also allege that socio-economic factors are involved, since in the large majority of cases the alleged victims are poor and live in favelas and marginal areas, all of which they maintain can be found in the statistical data issued by the “Research Group on Discrimination.”

17. Regarding the murder of the alleged victim, they maintain that he was a young 18-year-old black man serving in the Brazilian Army as a recruit at the War Arsenal Garrison of Rio de Janeiro, a calm and disciplined individual who had not received any reprimands at all during the four (4) months he served in the Army, as shown in the statements in Annex III. On September 13, 1998, he was reportedly climbing the “Morro de Babilonia” where he lived when he met a cousin at a bar. While he was stopping to greet her, a group of police officers arrived on their way up to the top of the hill. The police stopped at the bar and ordered everyone to go home, violently shutting the doors of the bar. The alleged victim and his cousin obeyed the order, walking in the direction of their homes, while the police officers in question continued to climb, now behind these two subjects. When the cousin reached her house, she suggested that the alleged victim stay there, but he said he couldn’t because he had to get up at 4:30 in the morning to go to the garrison and had to continue on his way, but nothing would happen to him since he had his papers with him. They assert that no shots had been fired at that point. As the subject was nearing his residence, they claim that shots were fired by the police to simulate a confrontation between the police and the inhabitants, a common practice according to the petitioners. This situation caused the lights in the area to go out, and all the inhabitants, including the alleged victim, entered their houses. According to those who were with him (Annex IV), the shots got closer until all at once, after they heard a shot and a cry, the shooting stopped. A cousin of the alleged victim, who was there, was worried because not all of the family was in the house, looked outside through a hole in the door and saw someone had fallen in the garden, so he opened the door, at which time a police officer invaded the house. While the police officer was inside the house, the aforementioned cousin could see that several police officers were in the garden, among them one named Lieutenant Busnello. At that point, according to the petitioners, Busnello could see the alleged victim lying in the garden. The cousin then told them they had shot a young Army soldier, which led to a change in the police officer’s attitude, with some of them wanting to help the alleged victim and those in command of the operation not allowing them to do so. The family members of the alleged victim also tried to help him, but the police officers didn’t let them. Twenty minutes later the police agents roughly picked up the subject in a manner not advisable for someone who has been wounded and took him to the Miguel Couto

Hospital. He arrived there alive at 10:16 p.m. and later died at 2:25 in the morning of September 14, 1998 due to an external hemorrhage caused by a loss of blood.

18. The petitioners maintain that the episode described led to the opening of a police investigation on September 14, 1998. Only seven police officers were presented as having participated in the action and they maintained that they went to the location to assist other officers who were in a shootout with criminals. They assert that they didn't identify which of these officers exchanged shots with the alleged criminals, and that no expert tests were done to determine the source of the finger prints on the weapon found next to the body of the alleged victim, or on the guns used by the police in the incident. The victim's relatives were called to submit statements at the police headquarters located more than fifteen (15) kilometers from their home, where in order to identify the officers who raided the house they were shown a book with black and white, 3 x 4 centimeter photographs, so that they were unable to recognize anyone. They allege that the police investigation stayed at headquarters for the maximum time allowed and was then sent on October 14, 1994 to the Criminal Judge, who requested a new period for investigations[FN2]. Since that time, the investigation has been delayed. There have been numerous unnecessary proceedings, none of which has succeeded in identifying the individuals allegedly responsible, with the officer in charge of the investigation reporting to the Judge on two occasions that it was impossible to carry out the proceedings[FN3], so that the investigation remains incomplete. They maintain that no proceeding was opened at police headquarters to determine which officers were responsible for the act, the petitioners having requested on September 13, 2001 that headquarters provide information regarding who had been identified as the individuals responsible, in response to which they received a report regarding another case.

[FN2] Official letter sent by District Commissioner of 12th District Police Headquarters to the competent judge requesting extension, Annex XI.

[FN3] Official letter sent by District Commissioner of 12th District Police Headquarters to the competent judge wherein this information appears, Annex XIV.

19. They maintain that the Commission is competent *rationae materiae*, *rationae personae*, *rationae temporis* and *rationae loci*, and that the domestic remedies have not been exhausted, although they believe that the exception provided in Article 31 (2) (c) of the Rules of Procedure applies. On this point, they specifically assert that as of the date the petition is filed there has been a delay of more than three (3) years and two (2) months during which time the police inquiry should have been concluded, in addition to the authorities disinterest in clearing up the crimes committed by its own agents, and the fact that public criminal action is the State's responsibility, making it difficult or impossible for those affected to push for the proceeding. As for the timeframe in which the petition was filed, they maintain that it is within the period allowed, as the exception to exhaustion of domestic remedies has been invoked, as explained above.

20. In summary, the petition claims a violation of the right to life and integrity established in Articles 4, 5 and 24 of the Convention, a failure to prevent the type of incident reported, the burden of which falls to the State in the form of a violation of Article 1(1) of the Convention,

according to an interpretation of the jurisprudence issued by the Court in the Velásquez Rodríguez case. It also alleges the existence of impunity with respect to crimes of this type, and that the policy applied by the state of Rio de Janeiro, as described in earlier paragraphs, encourages murders of the type reported. The petition also claims that the victims have been marginalized by the police authority of the State and that the rights to judicial guarantees provided in Articles 8 and 25 of the Convention have been violated. The petitioners thus ask that the State be condemned for the alleged violations, that those responsible for the punishable acts be investigated, tried and punished, that the victims be compensated, and that the necessary measures be taken so that violent police procedures will not continue to occur.

21. At the hearing held during the Commission's 121st period of sessions on October 21, 2004, the petitioners emphasized what they claimed in the petition.

B. The State

22. The State did not answer the complaint despite having been given due legal notice on January 24, 2002 of what was happening, in the period established in Article 30 of the Commission's Rules of Procedure.

23. The State's representatives attended the hearing held during the Commission's 121st period of sessions on October 21, 2004, indicating that criminal law is under federal jurisdiction but the administration of justice is under state jurisdiction. Regarding legislation to deal with the problem of police violence, the State asserted that there are legal reform bills, such as the one eliminating the "Law on Heinous Crimes," which is considered "malevolent" by the Special Secretariat for Human Rights, as well as amendments to the Penal and Criminal Procedures Codes. They asserted that the Federal Government does not have a militarized police like the states, and that the Military Police is another problem since it was created based on the principle of the "enemy within." At the federal level, efforts have been directed to transforming the Brazilian police into an intelligence police. They asserted that the Federal Government has no influence over compensation or other state police activities.

24. The Secretary of Human Rights of Rio de Janeiro, Jorge Costa, admitted that unhappily there has been no progress in the investigation of the case, claiming that if the petitioners had contacted him directly, it would have been possible to speed up the processing of the case. He maintained that the state government is supporting the Secretariat of Human Rights and that civil society should attempt direct contact with him. At that time, he repeated his personal position in favor of eliminating police investigations (IPL), in their current form, since the Code of Criminal Procedure only mandates deadlines for their conclusion, without establishing what should be done in an IPL, which is still an investigative instrument even though the Federal Government guarantees the right to the adversary system and a full defense. He suggested that the IPL violates the Constitution and is an ineffective bureaucratic procedure. Regarding the specific case, he asserted that he learned about it after the IACHR hearing had been scheduled, and managed to locate it, so that the IPL could be forwarded to the Homicides Commissariat. He added that he will open up an investigation through the Corregiduría General, emphasizing that the case before us is like many others and the problem is that in Brazil crimes are only investigated when the victims are important, with society pressuring the authorities only in such

cases. Thus, he emphasized that the case in question might possibly see some progress in the future, given that its study by the Commission has made it significant. He pointed out that everyone in Brazilian society discriminates against blacks, not just the police, and that the idea of racial democracy in Brazil is a farce.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

25. The petitioners are entitled under Article 44 of the American Convention to lodge complaints with the IACHR. The petition indicates as the alleged victim Mr. Wallace de Almeida, a citizen of the State. Thus, the Commission is competent *ratione personae* to examine the petition. As for the State, it ratified the American Convention on September 25, 1992.

26. The Commission is competent *ratione loci* to hear the petition, in that it alleges violations of rights protected under the American Convention and occurring within the territory of a State Party to that convention.

27. The IACHR is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected under the American Convention was already in effect on the date the actions alleged in the petition took place.

28. Finally, the Commission is competent *ratione materiae* because the petition reports violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

29. Article 46(1) of the American Convention establishes as an admissibility requirement for a complaint that remedies available under the State's domestic jurisdiction be exhausted, in accordance with generally recognized principles of international law.

30. Article 46(2) establishes that the provisions relating to the exhaustion of domestic remedies shall not apply when:

- a. the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies.

31. The petitioners have indicated that the origin of the complaint is the murder of the alleged victim by agents of the State without any apparent motive justifying that action, and that as of the

date the petition is examined nothing has been resolved regarding the police investigation of the facts, no related charges have been filed with the Public Prosecutor's Office, and there has not even been any determination as to the party responsible for the action, although nearly eight (8) years have passed since the principal incident with no resolution of the matter.

32. The State did not answer the petition despite having been legally and properly notified. Therefore, it did not submit any objection indicating a failure to exhaust domestic remedies. On repeated occasions, the Inter-American Court has established that "the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed"[FN4].

[FN4] The Inter-American Court has stated: "[T]he objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed." See: Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987, Series C, No. 1, para. 88; Fairén Garbí and Solís Corrales Case. Preliminary Objections. Judgment of June 26, 1987, Series C, No. 2, para. 87; Godínez Cruz Case. Preliminary Objections. Judgment of June 26, 1987, Series C, No. 3, para. 90; Gangaram Panday Case. Preliminary Objections. Judgment of December 4, 1991. Series C, No. 12, para. 38; Neira Alegría et al. Case. Preliminary Objections, Judgment of December 11, 1991, Series C, No. 13, para. 30; Castillo Páez Case. Preliminary Objections. Judgment of January 30, 1996. Series C, No. 24, para. 40; Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C, No. 25, para. 40.

33. There is sufficient evidence in the file to reliably determine that the event took place and that the investigation thereof was initiated at police headquarters[FN5]. However, it appears that this (the investigation) was never concluded[FN6].

[FN5] Official Report of Police Investigation, Statement of member of Military Police Force, Record, 14th District Police Headquarters, Annexes X, VI, VII.

[FN6] Official letters sent by agents of the 12th District Police Headquarters to the Judge handling the case, Annexes XI, XII, XIV.

34. The Commission believes that although domestic remedies have not been exhausted there is an unwarranted delay for a more than reasonable amount of time in resolving the matter, as there is evidence that the police initiated the relevant investigation, that it was unduly delayed for various reasons, and that there is no indication of its having been concluded as yet. This logically prevented the Public Prosecutor's Office from filing charges and proceeding to recommend public criminal action. This is presumed to be true given the State's failure to respond to the complaint.

35. The file indicates that the authorities learned of the situation on September 14, 1998[FN7]. On this point, the Commission feels that, under the specific circumstances of this

case, the fact that nearly eight (8) years have elapsed up to the time of decision in the instant case and that there has not even been any conclusion to the investigation of the facts at police headquarters amounts to an unwarranted delay in the criminal process, constituting grounds for the exception to the exhaustion of domestic remedies requirement, described above as an “unwarranted delay in rendering a final judgment under the aforementioned remedies” in Article 46(2)(c) of the American Convention.

[FN7] Police investigation intake desk, Annex X.

36. The only other item to point out is that invoking the exceptions to the rule of exhausting domestic remedies established under Article 46(2) of the Convention is closely tied to the determination of possible violations of certain rights enshrined therein, such as the guarantees of access to justice. Nonetheless, Article 46(2) of the American Convention, given its nature and purpose, is a provision the content of which is autonomous with respect to the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the rule of exhaustion of domestic remedies established in that provision are applicable to the case in question must be made in advance of and separately from the analysis of the merits of the case, since it depends on a standard of assessment different from that used to determine violations of Articles 8 and 25 of the Convention. It must be made clear that the causes and effects that have prevented the exhaustion of domestic remedies in the instant case will be analyzed, as relevant, in the report the Commission adopts on the merits of the dispute, in order to determine whether they actually constitute violations of the American Convention.

2. Deadline for submitting the petition

37. In accordance with Article 46(1)(b) of the American Convention, submission of the petition within six months of notice to the alleged victim regarding the decision exhausting domestic remedies is an admissibility requirement. Article 32(2) of the Commission’s Rules of Procedure indicates that “in those cases in which the exceptions to the requirement of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.”

38. In the instant case, the Commission rules on the applicability to this case of the exception to the requirement that domestic remedies be exhausted. In this regard, the Commission observes that the petition filed by the petitioners on December 26, 2001 was filed within a reasonable period of time, considering the specific circumstances of this case, particularly the date on which the events occurred, and the inconclusive police investigation for which the competent agency was responsible.

39. In the petition under consideration, the IACHR has concluded that there is an unwarranted delay in the matter. Therefore, the Inter-American Commission must determine whether the petition was filed within a reasonable period of time. On this point, we note that domestic authorities learned of the incident on September 14, 1998[FN8] and since that date

there has not even been a conclusion to the police investigation into the matter. The petition was filed on December 26, 2001, which fact leads the Commission to believe that it was filed in a reasonable period of time, in terms of the period established in Article 32 of its Rules of Procedure.

[FN8] Police investigation report, Annex X.

3. Duplication of proceedings and res iudicata

40. The file does not indicate that the subject of the petition is pending settlement in any other international proceeding or that it reproduces a petition already examined by this or any other international body. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention are to be considered satisfied.

4. Characterization of the alleged facts

41. For purposes of admissibility, the IACHR must decide whether the petition states facts that could characterize a violation, as stipulated in Article 47(b) of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order” under paragraph (c) of the same article.

42. The standard for assessing this point is different from that required to decide on the merits of a complaint. The IACHR must perform a prima facie evaluation to examine whether the complaint establishes an apparent or potential violation of a right guaranteed by the Convention, and not to establish the existence of a violation. Such examination is a summary analysis that does not involve a prejudgment or preliminary opinion on the merits.[FN9]

[FN9] IACHR, Report N° 21/04, Petition 12.190, Admissibility, José Luís Tapia González et al., Chile, February 24, 2004, para. 33.

43. The Commission does not find the petition “manifestly groundless” or “obviously out of order.” As a result, it feels that, prima facie, the petitioners have established the points required in Article 47, paragraphs (b) and (c) of the Convention.

44. Based on the foregoing, the Commission feels that, should the facts presented regarding the violation of rights to life, personal integrity, non-discrimination, the enjoyment of judicial guarantees and judicial protection to the detriment of the alleged victim and his relatives be proven, it would be possible to find that there have been violations of 4, 5, 8, 24 and 25 of the Convention as they relate to the general obligations contained in Articles 1(1) and 2 of the same instrument.

V. CONCLUSIONS ON COMPETENCE AND ADMISSIBILITY

45. Based on the de facto and de iure considerations presented and without prejudging the merits of the matter, the Commission concludes that the instant case satisfies the admissibility requirements indicated in Articles 46 and 47 of the American Convention.

VI. ANALYSIS ON THE MERITS

A. Preliminary considerations and context in which the incident took place

46. Before proceeding to analyze the case, the Commission presents the context in which the crime being reported was perpetrated, in which a young black 18-year-old victim, Wallace de Almeida, as evidenced in Annex VIII[FN10], serving as a soldier in the Army[FN11], bled to death from a leg wound caused by a shot from a firearm[FN12] during a police operation in the garden of his own home[FN13].

[FN10] Official autopsy report.

[FN11] Annex II, statements from the War Arsenal Commander where he served, Annex IX, Death Certificate.

[FN12] Annex IX, Death Certificate.

[FN13] Annex III, IV, VI; statements from witnesses.

47. The death of Wallace de Almeida occurred against a backdrop of police violence, in which police officers at the time of these events used force considered to be disproportionate in their operations. The argument customarily used by the members of these police forces to justify their actions, which generally result in the death of the alleged criminal, is the argument of legitimate defense or strict fulfillment of duty, which they claim exempts them from responsibility.[FN14]

[FN14] Journal of the National Congress (Section i), December 1992, Tuesday 1st. 25433. Rationale for Law No. 3.322, 1992, submitted by Hélio Bicudo and Cunha Bueno.

48. Although the Commission has information indicating a general climate of criminal violence in the state of Rio de Janeiro, there is ample evidence that most cases of violence used by the police go beyond the bounds of the legal system, with agents of the police often using their vaunted power, organization and equipment to engage in illegal activities. To illustrate this subject, the Commission has maintained that: “In 1994, partial data for federal states in Brazil showed that there were 6,494 homicides overall, with liability determined in about half of them. Of this latter number, 8% were attributed to “military” police and another 4% to “death squads.”[FN15] A high percentage of these cases occurred in the state of Rio de Janeiro. The Commission continues to believe that most of the deaths referred to are not the result of police officers acting strictly to fulfill their proper obligations, in that the activities of these police are known to involve the common practice of carrying out so-called “extrajudicial executions.”

These executions occur as the result of state police officers participating in extermination groups.[FN16]

[FN15] Report on the Situation of Human Rights In Brazil, IACHR, September 29, 1997.

[FN16] Reports from Human Rights Watch called POLICE BRUTALITY IN URBAN BRAZIL, April 1997 and FIGHTING VIOLENCE WITH VIOLENCE. Human Rights Abuse and Criminality in Rio de Janeiro, January 1996.

49. These data are supported by those in the “Human Development Report, Racism, Poverty and Violence, Brazil 2005,” published by the United Nations Development Programme (UNDP), which maintains that there has been an increase in crime of all types in Brazil over the last two decades, particularly homicide. According to data provided by the Brazilian Ministry of Health, the country went from 11.7 homicides for every 100,000 inhabitants in 1980 to 30.6 for every 100,000 inhabitants in 2001.[FN17] During this period, 646,158 (six hundred thousand forty-six thousand, one hundred fifty-eight) homicides were counted, or nearly 30,000 per year. In the ranking of homicide cases prepared by the Institute of Applied Economic Research (IPEA), the country ranks only behind Colombia, South Africa and Venezuela in terms of these numbers.

[FN17] Cano, Ignácio. 1997. Letalidade da Ação Policial no Rio de Janeiro. Rio de Janeiro: ISER.

Cano, Ignácio and Meireles, Elisabeth. 2004. Análise de Viés Racial nas Sentenças Penais. UERJ. Mimeo.

Cardia, Nancy (coord.). 1999. Atitudes, Normas Culturais e Valores em Relação à Violência. Brasília. Ministry of Justice, Secretariat of State for Human Rights.

Carvalho, J.A.M., Wood, C.H. and Andrade, F.C.D. 2004. Estimating the Stability of Census-Based Racial/Ethnic Classifications: The Case of Brazil. Population Studies 58 (3): 331-43.

50. Generally speaking, in cases like this, after the police cause the death of a subject considered to be a suspected criminal and there is a request to assign responsibility, the claim is that the death occurred as the result of an action of legitimate defense or in the strict performance of duty. The Commission reiterates the view that such explanations as customarily provided by the authorities in these cases constitute the existence of repressive action by State security organs, particularly the military. Despite the profound political changes the country has experienced since the end of the military government, the continued use by these agents of the repressive model used by that government is perceptible. This leads the members of these police forces to direct their actions towards violence, the alleged purpose being to prevent or put down possible movements then held to be subversive. In reality, many agents of the military police carry out abuses in the performance of their duties. These abuses are even noted when autopsy of the victims indicates that they died as the result of bullet wounds to vital areas of the body, or in the back, when it is clear that the victims did not try to resist and in many cases were unarmed.[FN18]

[FN18] Human Rights Watch, Annual Report 1998. Events in 1997. Brazil.

51. According to authoritative sources, a determination has clearly been made that the current excesses committed by agents of the state police are directed against common criminal elements, which, in the mind of some police sectors and even among the civilian population, are associated with the stereotypical notion that these criminals are “the blacks,” “the unemployed,” “the poor,” or “the street children.”[FN19]

[FN19] HÉLIO BICUDO. *Un Brasil Cruel y Sin Maquillaje*, São Paulo, Edit. Moderna, p. 68 (1994).

52. At the time the events under examination occurred, there was an alarming phenomenon in Rio de Janeiro, starting in May 1995 when a new Secretary of Public Security named Nilton Cerqueira took office. From that month until February 1996, the average number of people killed each month by the “military” police went from 3.2 to 20.55 people, with a total of 201 people in 1996.[FN20]

[FN20] Human Rights Watch, *Police Brutality in Urban Brazil*, p. 44, April 1997.

53. The Commission makes particular note of the fact that although the normal pattern in armed confrontations is that many more people are wounded than killed, during that period in Rio de Janeiro the number of civilians killed by the military police in confrontations was three times higher than the number of civilians wounded in those confrontations. This situation would clearly demonstrate excessive use of force and even a pattern of extrajudicial executions by the police in Rio de Janeiro. These police attitudes have had an effect on the population’s ability to trust their police—a key element in the rule of law—which has been noted to be very low in Rio. It should be noted that extrajudicial executions by the military police are not limited to when they are officially on duty but occur during off-duty hours as well. These cases are frequently reported by local and international sources and, in the view of the Commission, demonstrate a pattern of behavior that merits particular attention.[FN21]

[FN21] IACHR, *Report on the Situation of Human Rights in Brazil*, September 29, 1997.

B. Structure of the state police

54. A brief summary of the State security structure is needed. Authority to exercise, organize and guarantee public safety is distributed between the federal government and the states. There is a federal police force and each state has a civilian police force and another force called the

military police. The federal police, under the jurisdiction of the federal government, are subordinate to the Ministry of Justice and operate throughout the country. The principal function of the federal police is to verify crimes against the political and social order, as well as crimes against the property, services and interests of the federal government, its autonomous agencies and public enterprises, which also involves other types of offenses that have inter-state or international repercussions or require uniform suppression, as provided by law. The federal police are also responsible for suppressing and preventing the trafficking of narcotics, contraband, and diversion of narcotics. Also within its scope are the maritime, air and border police, as well as the police functions of the federal government.

55. The state police are divided into civil police and “military” police. The “military” police force carries out tasks proper to typical civil police, answers directly to the state executive (Governor and Secretary of Public Security in each state) and is not an internal force belonging to the national military apparatus. Nonetheless, it retains the name of “military” police given to it upon its creation during the period of military government in 1977.[FN22] Calling the police responsible for public security “military” actually had its origin under the military governments, when the police were under their direct control. This direct subordination disappeared with amendment of the Political Constitution in 1988, when they became subordinate to the constitutionally elected federal civilian authorities.

[FN22] Although the members of the “military police” carry out civil functions and are subordinate to the state governor, they are called state military services even though they do not have the typical relationship to the armed forces, which are federal and subordinate to their Commander in Chief, the President of the Republic. The Constitution establishes that these state police forces also act as auxiliary forces of the Army reserve to ensure public order and social peace when they are threatened. (Article 144(6) and Article 42 of the Federal Constitution).

56. The “military police” are responsible for ostensive policing and for maintaining public order. This means that they are primarily engaged in daily patrols and pursuing criminals. State police forces, both military and civil, are subordinate to the governors of the states, the Federal District and the Territories.[FN23] The state Chief of Police is the Secretary of Public Security, a direct assistant to the governor, and is responsible for the actions he performs or authorizes in carrying out his position.

[FN23] Federal Constitution, Article 144(6).

57. The civil police act as the judicial police of the state and investigate criminal offenses, with the exception of military sanctions and offenses under the jurisdiction of the federal police.

C. The Rio operation

58. As indicated in the Human Rights Watch report on “Fighting Violence with Violence: Human Rights Abuse and Criminality in Rio de Janeiro” published in January 1996, through this operation, in the context of which the violation being reported occurred, the state of Rio de Janeiro, in conjunction with the federal government, agreed in late 1994 to coordinate their efforts so that the armed forces would work with the military police to combat drug trafficking and eliminate criminal gangs in the area. The forces used in this unprecedented operation, which were logistically sizable, conducted dozens of raids in the favelas of Rio de Janeiro, many of which lasted for several days. In the first two and a half months of the operation, its most intensive phase, more than five hundred (500) people were arrested, nearly three hundred (300) firearms were seized, and seventy-four (74) kilograms of marijuana and more than seven (7) kilograms of cocaine were captured. Drug trafficking in the favelas was momentarily halted. However, most observers agree that the drug traffickers resumed their operations, as they usually did, once the troops withdrew from the favelas. The operation was marked by torture, arbitrary arrests and raids with no guarantees as well as unnecessary use of lethal force. Many of these abuses, such as subjecting an entire neighborhood to a house-by-house search, were expressly authorized and actually ordered on the basis of the operation’s strategic objectives. Other abuses, such as torture, were not covered by those strategic objectives. Nonetheless, the failure of civilian and military authorities to respond rapidly and effectively to reports of abuse and violations committed during the deployment of the operation is notable. Added to this are official’s public statements, commonly understood to have been intended to justify the excesses committed during an operation. Almost none of these cases led to court convictions. All of this suggests the Brazilian authorities indifference to human rights violations. In the worst cases, there is tacit acquiescence regarding such violations. In this operation, the army was used to combat the drug trafficking gangs precisely because of notable violence and corruption prevalent in the local police.[FN24]

[FN24] *According to information gleaned from a report by Human Rights Watch, “FIGHTING VIOLENCE WITH VIOLENCE. Human Rights Abuse and Criminality in Rio de Janeiro”, January of 1996.*Coimbra, C. Operação Rio: O mito das classes perigosas. Intertext/Office of the Author: Niterói/Rio de Janeiro, 2001.

* Jorge Atilio Silva Iualineli, Luiz Paulo Guarabara, Paulo Cesar Pontes Fraga, Tom Blickman. Drogas y Conflicto. Una guerra inútil. Drogas y violencia en Brasil. Documentos de debate. Editora Amira Armenta. EL BRASIL URBANO: NARCOTRÁFICO Y VIOLENCIA. Paulo Cesar Pontes Fraga. Professor and researcher, State University of Santa Cruz/BA. pp. 16-25

* C. Caldeira: Operação Rio e cidadania: as tensões entre o combate à criminalidade e a ordem jurídica in Elisa Reis, Maria Hermínia Tavares de Almeida and Peter Fry (orgs.): Política e Cultura: visões do passado e perspectivas contemporâneas, Hucitec-Anpocs, San Pablo, 1996, pp. 50-74.

59. Decree No. 21.753 was promulgated on November 8, 1995, authorizing the payment of bonuses to officers demonstrating bravery in service. The petitioners allege that the events being reported took place in the context of this policy. The decree in question was revoked by Law N° 2.993 of June 30, 1998 passed by the Legislative Assembly. The petitioners maintain that at the

same time the Secretary of Public Security revived a dormant provision that allowed the promotion of police agents who performed acts of bravery in service. The fact of the matter is that these bonuses and promotions have been used to reward police officers who killed those suspected of committing crimes, regardless of the circumstances. The sources cited below indicated that ninety-two (92) situations were examined that resulted in a recommendation for promotion between 1995 and 1996. In those cases that involved “bravery,” the Military Police of Rio de Janeiro killed seventy-two (72) civilians; in contrast, there have been only six demotions. Media sources indicate that the policies in question have led to a significant increase in civilians killed by the Military Police in Rio de Janeiro. The Commission also knows of cases in which police accused of victimizing the alleged “criminals” are rewarded or promoted, as in the case of a sergeant who had previously been alleged to be responsible for 49 murders and who was given the title of “Police Officer of the Year.”[FN25] In turn, Colonel Gilson Lopes, who gave him the medal, has a 24-year career with the police and 44 deaths to his credit.[FN26]

[FN25] The case of police sergeant Adeval de Oliveira is a clear example of a military police officer who was rewarded despite his violent conduct. In 1992, Sergeant Adeval de Oliveira killed drug trafficker Edmilson with a shot to the head and another to the heart. In his deposition, a witness stated he had seen Edmilson raise his hands and plead not to be killed; nonetheless, the sergeant shot him.

[FN26] Documents from proceeding No. 25.122.85-3 describe the story of 20-year-old student Delton Da Mota, who was killed by a team led by officer Gilson Lopes while speaking to three friends near his home. None of the four friends was armed, took drugs, or had a criminal record. Delton was hit by four bullets and died from a wound to his head and acute internal bleeding. According to Colonel Lopes, Delton’s death was an act of legitimate defense. To date, the courts have not convicted him in any of the 42 proceedings against him. Colonel Lopes began to earn his reputation in 1978 when he killed 18-year-old Paulo Bueno (the son of a Military Police sergeant) and two minors. The three were in a vehicle that had been stolen by an acquaintance. The minors were discovered by Lopes’ squad and executed without being given any chance to defend themselves. According to witnesses, one of the young men was killed while screaming for help from the body of a truck.

60. The Commission’s view is that even though there is an obvious aura of violence surrounding the entire area in which drug trafficking is involved, representing a serious threat to the inhabitants of Rio de Janeiro and other areas of Brazil, the counter-offensive criminal policies to confront this situation, which do not observe due respect for and adherence to international human rights standards ratified by the State in international treaties, subvert the consistency that the State has agreed to honor in its legislation, as these policies are not harmonious with those commitments.

D. Police violence and race

61. The Commission sees a notable influence of the racial factor in the matter. On this subject, there has been emphasis on earlier occasions regarding concerns over violence against youth in Brazil, stressing in particular the nexus between violence and racial factors. For that

reason, in its Report on the Situation of Human Rights in Brazil, the Commission highlighted the fact that social indicators revealed that the Afro-Brazilian population was more likely to be suspected, harassed, prosecuted and convicted than the rest of the population.[FN27] Based on the large number of complaints received, the IACHR recommended that the Brazilian State “take steps to educate judicial and police officers to prevent behavior involving bias and racial discrimination in criminal investigations, trials and sentencing.”

[FN27] IACHR, Report on the Situation of Human Rights in Brazil, Chapter IX, para. 24.

62. Similarly, the Commission noted that the Report on the Human Rights Situation of Afro-Brazilians submitted to it during its 114th period of sessions by attorneys from Brazilian organizations,[FN28] indicates that in Brazil the racial profile was a determining factor in a large number of illegal arrests, and that the black population was subject to more surveillance and more targeting by the police system.

[FN28] General hearing on the human rights of Afro-Brazilians, held on March 8, 2002 at IACHR headquarters, at its 114th period of sessions.

63. Another investigation conducted by the ISER (Institute of Religious Studies, Professor Ignacio Cano) confirmed that the “effect of race on the use of lethal police force is perhaps the most serious source of human rights violations in Brazil.” After evaluating more than 1000 homicides committed by the Rio de Janeiro police between 1993 and 1996, that report concludes that “race was a factor that affected the police—whether consciously or not—when they shot to kill. The darker a person’s skin, the more susceptible they are to being the victim of fatal violence on the part of the police.” This indicates to us that police violence is discriminatory because it affects greater numbers and with more violence when the subjects have characteristics of the black race. Another determining factor in the analysis of police violence in Brazil is the socio-economic factor, as in most cases the victims are poor people living in favelas and marginal areas.

64. Records from the Brazilian health system based on death certificates contain data on the color/race of homicide victims at twenty (20) locations in the country. The statistics leave no doubt that being black, young, male and single means being a preferred target of lethal violence in Brazil. Of the twenty (20) states analyzed, in only one state, Paraná, are more whites than blacks killed. We note, however, that in that state the percentage of blacks in the total population is 24.7%. The white population represents 74.3%. These data are from the 2003 National Household Census of the Institute of Geography and Statistics (IBGE).[FN29]

[FN29] Human Development Report. Race, Poverty and Violence. Brazil 2005, United Nations Development Programme (UNDP).

65. The Commission notes that most victims of police violence in the state are black or mixed-race young men, many of whom have no criminal record. According to UNESCO, 93% of homicide victims in Brazil in the year 2000 were men. Young men aged 15 to 24 are 30 times more likely to be homicide victims. Young black men have twice the homicide rate. Of 17,900 young males who were homicide victims in 2002, 11,308 were black and 6,592 were white.[FN30]

[FN30] Amnesty International , No. 77, February-March 2006.

66. The disproportionately high number of subjects with black characteristics among the victims killed in police actions is a clear indication of a racist tendency in the state's law enforcement apparatus. It could be argued that the group in question is the most frequent target of police action not on the basis of phenotype but because most black- and brown-skinned individuals are among those with the lowest incomes and would thus be involved in a higher number of violent crimes. However, another study coordinated by the above-referenced sociologist Ignacio Cano[FN31] suggests that that hypothesis is unfounded. That study indicated that in Rio de Janeiro the proportion of blacks killed by the police was higher than whites both within and outside the favelas. Analysis of the data confirmed that the different survival rates of people with different phenotypes is statistically significant and does not depend on where confrontations with the police occur. The likelihood that blacks will die in these confrontations is much higher in the favelas, as they represent the highest number of the local population. However, the different numbers for blacks and whites killed by the police in other areas are also clearly significant, as most victims are black.

[FN31] Cano, Ignácio. 1997. *Letalidade da Ação Policial no Rio de Janeiro*. Rio de Janeiro: ISER.
Cano, Ignácio and Meireles, Elisabeth. 2004. *Análise de Viés Racial nas Sentenças Penais*. UERJ. Mimeo.

67. While in the case under examination there are no objectively conclusive and totally reliable indications that the murder of Wallace de Almeida was due to his race, this is a good time for the Commission to again emphasize its concern regarding the serious connection in Brazil, particularly in the area of Rio de Janeiro, between police violence and the race of those affected by it, assertion which was confirmed by the State at the hearing held during the Commission's 121st period of sessions on October 21, 2004.

E. Impunity and police violence

68. Brazilian security forces have repeatedly been accused of systematically violating citizen's rights. There is also a strong belief that there is a system guaranteeing impunity for

these violations as well as a history of violations by the police, as Brazilian justice has demonstrated and the government itself has recognized in its national human rights plan.[FN32]

[FN32] IACHR, Report on the Situation of Human Rights in Brazil, Chapter III, para. I.

69. Whenever a crime occurs, a “police inquiry” (police investigation) is initiated and it is conducted by the civil police. The inquiry may be initiated officially by written order of the police authority with power to do so, at the request of the victim or injured party, or by order of a judge or the public prosecutor’s office. Once the investigation is opened, the police must gather as much information as possible about the crime, perform all the necessary tests at the crime scene, and if there is enough evidence, indicate who they consider responsible for committing the crime. The police must take a statement from the victim and may conduct any investigation they consider necessary to clarify the factual situation surrounding the case. Pursuant to Article 10 of the Brazilian Code of Criminal Procedure they have thirty (30) days to conclude the investigation if no one is arrested and ten (10) days if a suspect was arrested. If this time limit runs out, the judge (generally at the request of the prosecutor) may extend the investigation for an additional thirty (30) days. In practice, the deadlines established by law for completing police investigations are never met.[FN33]

[FN33] Report on Police Brutality in Urban Brazil, Human Rights Watch, April 1997.

70. The Commission has noted that there are many difficulties in investigating police violence. When the authorities decide to investigate specific cases, it should first be emphasized that police officers are responsible for the initial investigation of crimes committed by officers in the same force, and they rarely diligently investigate the events surrounding murders committed by police. Once transferred to the prosecutors, these poorly documented cases are never given priority. When they are presented with *indicia*, the Brazilian courts fail to perform their legal obligation to convict and sentence violent police officers. In addition to this, there are enormous difficulties gathering evidence to identify those responsible for human rights violations. One of the causes is the erroneous concept of police corporativism that covers up violence on the part of police by obstructing justice. On this point, the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions adopted on May 24, 1989 by Resolution 1989/65 of the Economic and Social Council provide, *inter alia*, that there should be prompt and impartial investigation of all suspected cases of extra-legal, arbitrary or summary executions, and that such investigation must seek to determine the existence of any pattern or practice that brought about the death. Paragraph 11 of the resolution establishes that

in cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of

such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all the information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

71. Regarding the investigations carried out in the territory of the State, the Commission also received information that, for example, torture is commonly used by the state police as an investigative method. According to such reports, when the authorities want to verify claims of torture they encounter difficulties and even refusals to obey court orders.[FN34]

[FN34] This is what faced Public Prosecutor Nilo Cairo in the State de Rio de Janeiro. In an effort to confirm the torture of Andre Melo Nascimento in January 1995, he asked the Judge of Criminal Court 20 in the state capital to order an examination of the victim's injuries. His request having been accepted, he went to the Central Army Hospital along with two physicians and a photographer appointed by the authorities, to carry out that examination. Despite this, a Lieutenant Colonel in the Army did not allow them access to the patient with the excuse that the court order had to be forwarded to his commanders in order to be authorized. Although he was advised by the Prosecutor that his attitude amounted to a failure to obey a legal order and obstruction of justice, the officer was unmoved. (Communication from the Office of the Prosecutor of the state of Rio de Janeiro/PRDC/No. 128, document no. XIII, April 1995).

72. Another de facto obstacle is the "law of silence" prevailing in Brazil, according to which eye witnesses (testemunhas) refuse to clarify the circumstances of incidents they witnessed because of fear of possible reprisals. Fear of reprisals is so strong that often the victims of police violence prefer to be silent rather than be subjected to reprisals.[FN35] Brazil still has no effective witness protection system.

[FN35] Another example of this situation is the case of J.H., owner of a bar in a favela in the Santa Teresa neighborhood of Rio de Janeiro, In 1996 he was hit by a bullet from the weapon of a police officer who was patrolling the favela. While in the hospital healing from the wound, he was beaten about the face by five armed civil police officers, who confused him with someone else they had just shot on the "hill." The police only stopped beating J.H. when a hospital physician showed them his identification papers and the victim's record, explaining that he was there to get better. In order to avoid reprisals, J.H. chose not to file a complaint and to remain anonymous.

73. The fear of being a good witness is well-founded since in cases in which the "law of silence" is not honored, the witness puts his life at risk. An example is what happened on November 6, 1994 to young 14-year-old Eduardo de Araujo, who survived the Candelaria massacre. The youth was shot and killed by two men who would pass by everyday on the street

where he lived, shooting into the air. On the day he was killed, the men repeated their routine but they made him run, converting him into a moving target.[FN36]

[FN36] Gilberto Dimenstein, *Democracia em Pedacos*, São Paulo, Edit. Companhia das Letras, 1996.

74. The consideration by the United Nations Commission on Human Rights of the report submitted by Brazil regarding Article 40 of the Covenant on Civil and Political Rights published on April 11, 2005 indicated that one of the central problems contributing to police violence is the so-called “law of silence,” according to which eye witnesses of punishable actions refuse to clarify the facts of an incident they witnessed for fear of reprisals. The Commission expressly stated that creation of an effective witness protection program is essential to deal with the problem. The report indicates that the first witness protection program in Brazil was implemented in late 1990 in the State of Pernambuco, through a joint initiative of an NGO, the Legal Support Group for Grass Roots Organizations (Gabinete de Assessoria Jurídica das Organizações Populares - GAJOP), and the government. This program is known under the name PROVITA (the same name was given to the protection program at the national level). Meanwhile, the state of Rio Grande do Sul also approved the first Brazilian legislation providing assistance to the victims of violence, along with a witness protection program, specifically in the year 1998. This was called PROTEGE. As of the report’s publication date, Brazil has sixteen (16) state witness protection programs operating in conjunction with the federal government. There is also a federal witness protection program responsible for cases where the states lack their own program. All the witness protection programs in Brazil go without the investment they need from those responsible for them, reducing their potential to expand. Similarly, there is no procedure to provide new identities for witnesses and their families. These limitations aside, the witness protection programs are a recent phenomenon in Brazil, in addition to being an essential instrument for combating impunity that has yielded significant results.[FN37]

[FN37] Human Rights Committee Consideration of Reports submitted by States Parties under Article 40 of the Covenant. Second Periodic Report. BRAZIL. 11 April 2005.

75. On the other hand, when a witness is willing to cooperate with the court to identify criminals, he is confronted by a slow judicial process and months may go by before he is called to testify. Since there is no office protecting the witness, cooperation with the justice system is discouraged. This was the case of Wagner Dos Santos, a 23-year-old car washer who was the principal witness to the Candelaria massacre and was attacked. After the massacre, Santos moved to Bahía for protection, but 15 days after he returned to Rio de Janeiro, while he was living at the witness protection house under the protection of the state guard, he was again attacked by military police involved in the massacre.[FN38]

[FN38] Gilberto Dimenstein, *Democracia em Pedacos*, São Paulo, Edit. Companhia das Letras, p. 79, 1996.

76. The Commission is aware that a Parliamentary Committee for Investigation of the murders of children and adolescents in Brazil concluded that much of the responsibility for crimes of this type belonged to agents of the military police, and also that those police officers who were accused of having committed the crimes had support from various sources, beginning with deficient police investigations and followed by indulgent treatment in military courts.

77. Police mistrust of the marginal population and police failure to respect the law, results in mistrust of the police on the part of the population. Although this lack of trust varies from state to state, it is very high in most states, reflecting insecure living conditions in many of them, which encourages human rights violations. In the State of Bahia, for example, surveys conducted in 1995 reveal that 85% of the population does not trust the “military” police and 82% does not trust the civil police. This has led the legislature to establish a parliamentary committee to investigate the matter. These figures confirm those cited earlier for Rio de Janeiro.

78. The factor that most fosters police violence against those suspected of having committed crimes, is considered to be the impunity that protects those agents who commit serious human rights abuses against this class of victims. Impunity is the result of the general ineffectiveness of the Brazilian system of justice, which is notably exacerbated when the case involves factors such as a victim who is poor and lives in a favela and suspects who are police officers.

79. Another report cited earlier[FN39] noted that military justice in Brazil is administered in such a way that it is nearly impossible to convict military police officers for violent crimes against civilians. Crimes committed by military police officers are investigated by members of the same force, who, surprisingly, almost always determine that the homicides were the result of crossfire.

[FN39] *Urban Police Violence in Brazil: Torture and Police Killings in São Paulo and Rio de Janeiro after Five Years*, A Human Rights Watch Short Report, vol. 5, no. 5 (Human Rights Watch, New York, 1993).

80. According to the Brazilian press, when military or civil police commit crimes, the path to impunity is frequently taken from the very start of the violent police action. After a suspect dies, the police usually take the victim to some hospital nearby to receive “first aid.” This practice undermines the investigation at the scene of the crime, while it fosters the notion that the police are concerned with the welfare of the fallen victim. In Rio de Janeiro, in dozens of cases that resulted in promotions, the police brought victims of shootouts to local hospitals, where they were declared dead. In July 1996, Dr. Maria Emilia Amaral, director of the Souza Aguiar Hospital in central Rio de Janeiro, reported that over a period of twenty (20) days the police brought ten (10) bodies to the emergency room of her hospital. The doctor wrote to the Secretary

of Public Security, Nilton Cerqueira, asking that he order his agent's to stop bringing corpses to the hospital's emergency area for first aid.[FN40]

[FN40] Polícia deixa cadáveres na emergência de hospital, O Globo (Rio de Janeiro), July 11, 1996.

81. A study conducted by Rio de Janeiro State Criminal Court Judge, Sergio Verani, who analyzed dozens of these cases of murders committed by police officers during the course of two decades, describes how the path toward impunity frequently begins with the decision to fill out a "resisting arrest form," rather than immediately open up an investigation of a homicide committed by the police. This form, designed for cases in which individuals resist legally implemented arrest orders, is used to transfer responsibility from the police to the victim:

The procedure adopted by the police authorities in the situation under analysis is consistent: instead of arresting the police officers responsible for the homicide committed in flagrante, a "resisting arrest form" is filled out and the matter is closed. A police investigation is opened, which investigates and finds nothing, since generally the police officer who signs the form is the officer cited as the witness. No one is indicated, and when someone is, it is the victim himself.[FN41]

[FN41] Sérgio Verani, *Assassinatos em nome da lei*, (Rio de Janeiro: Adelarã, 1996, p. 33.

82. This source states that when a resisting arrest form is not used (and even in some cases where it is used), the next step toward impunity is the police investigation. In cases of police violence, as in all other crimes, the police themselves conduct the investigation of the abuses: both military and civil police investigate their own comrades. The Commission notes that, predictably, these police investigations tend to satisfy the legal requirements rather than investigate and corroborate police misconduct or identify the individual responsible for the abusive conduct. It is common knowledge that in many investigations a serious effort has been made to determine the criminal background of the victim, if any. Once it is established that the victim was a "marginal" individual, the investigations are closed. Implicit in this process is the idea that, due to the routine ineffectiveness of these investigations, police officers can kill criminals without fear of the consequences.

83. Another serious impediment to diligent investigation and prosecution of police abuse cases is forensic experts' lack of autonomy. In most states in Brazil, forensic pathologists are subordinate to the police, even though the Brazilian Society of Forensic Pathologists has been maintaining since 1989 that its members should be independent. According to newspaper reports, an example of poor investigation conducted by subordinate experts involves a case that occurred in July 1993, when the police massacred twenty-one (21) residents of "Vigario Geral," a favela in Rio de Janeiro. Three years after the incident, the judge ordered the exhumation of seventeen (17) of the victim's bodies. The examinations conducted on October 7, 1996 determined that

there were nine (9) bullets and two (2) fragments that the initial forensic examination had not found in the bodies before they were buried.[FN42]

[FN42] Vigário: juiz exige que os corpos sejam exumados, O Globo, September 11, 1996; Exumação traz novas balas, Jornal do Brasil (Rio de Janeiro), October 8, 1996; Peritos deixaram 9 balas nos corpos de chacinados, O Globo, October 8, 1996; and Exumados corpos de vítimas de chacina, Folha de S. Paulo, October 8, 1996.

84. We understand that there are sufficient data indicating that the Brazilian judicial branch itself bears part of the responsibility for the impunity that exists with respect to police abuses.[FN43] In many cases, even when all the procedural obstacles have been overcome, judicial favoritism toward the police involved makes impunity possible. This is particularly true in military courts, whose poor track record for convicting officials who have committed human rights abuses is of public knowledge. Many civil court judges also show favoritism toward police officers, especially when their victims are individuals suspected of having committed common crimes.

[FN43] Human Rights Watch, Police Brutality in Urban Brazil, April 1997.

VII. ESTABLISHED FACTS

85. The State did not properly answer the petition but its representatives attended the hearing held during the Commission's 121st period of sessions on October 21, 2004, at which time they agreed to the facts alleged in the petition. The Chairman informed them at the time that the petition regarding the State had not yet been answered.

86. Article 39 of the Commission's Rules of Procedure states that "The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true, if the State has not provided responsive information during the maximum period set by the Commission under the provisions of Article 38 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion." On this same point, the Court has maintained that "...the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law..."[FN44]. As the petition has not been answered and there is an acknowledgment from the State as to the factual situation, it must be presumed factual that:

Wallace de Almeida was a young black 18-year-old army soldier[FN45], who was wounded in the right thigh[FN46] by agents from the 19th Military Police Battalion of Rio de Janeiro, on September 13, 1998 in the "Morro de Babilonia," a favela located in the southern part of that city, where he lived, during a police operation at that location[FN47], where he remained without medical care, which led to his death from a loss of blood[FN48].

[FN44] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C, No. 4.

[FN45] Annex VIII, Autopsy Report, Annex IX, Death Certificate.

[FN46] Annex VII, Police Record from the 14th District Police Headquarters and Annex IX, Death Certificate.

[FN47] Annexes III, Statement of the mother of the victim, IV Statement of witness, VI Statement of member of Military Police Luís Fernando Dos Santos.

[FN48] Annex IX, Death Certificate.

87. On the afternoon of the day he was killed, the alleged victim was climbing the “Morro de Babilonia” headed toward his residence, when he met his cousin at a bar and stopped to greet her. While he was there, a group of police officers arrived on their way to the top of the hill and ordered all those present to go home[FN49], an order that both Wallace and his cousin obeyed. The police continued climbing, now following the two subjects. Along the way they reached the cousin’s house, which came first. When the alleged victim was asked by his relative to take refuge there, he refused, stating that he had to be at the garrison where he was serving early the next morning, but that nothing would happen to him since he had his documents, and then continued walking. Wallace’s mother, who was at the home of a friend located in front, saw her son reach the door of his home at the moment firearm shots started. The alleged victim’s family, except for his mother, was inside the house[FN50]. The electricity was cut off as a result of the shooting, shots rang out, a shout was heard and then ceased. Concerned because not all inhabitants of the house were there, a cousin of the alleged victim, named Fagner, looked out through a hole in the door, saw a body lying in the garden, and opened the door. An armed police officer entered the residence, asking where the bandits were[FN51]. While this was happening, Fagner could see that other police officers were approaching the patio of the house, when he told them they had shot a member of the army. Some of them seemed to want to help the alleged victim but others prevented them from doing so. His relatives tried to help him, since he seemed to be alive but was losing a lot of blood. After more than twenty (20) minutes, the police decided to help Wallace, picking him up by his arms and legs, dragging him and tossing him into the prisoner transport area of the police vehicle. From there he was transported to the “Miguel Couto” Hospital, where he arrived alive at 10:16 p.m. and died at 2.25 a.m. on September 14, as a result of an external hemorrhage[FN52].

[FN49] Annex III, Statement of the mother of the victim.

[FN50] Annex IV, Statement of Witness.

[FN51] Annex V, Statement of Witness.

[FN52] Annex VII, Record of 14th District Police Headquarters, VIII, Autopsy report and IX, Death Certificate.

88. The police investigation of the case was initiated on September 14, 1998, as noted in the receipt from the Entrance to Civil Police Headquarters, which stated that the case was reported through Incident Record N° 975.461/98 of that office, in which the death of the alleged victim

was recorded[FN53]. This investigation, which was given the number 544/98[FN54], has not been concluded to date and no complaint has been filed with the courts by the Public Prosecutor's Office.

[FN53] Autopsy report, annex VIII, pg. 3.

[FN54] Annex X, Police investigation report.

89. The military police force, which had been working in conjunction with the Rio de Janeiro State Police in the context of "Operation Rio" since late 1994, used excessive brutality in the operation.

90. The State was implementing a policy of bonuses and promotion for bravery in service, fostering the commission of human rights abuses against alleged criminal suspects.

91. Both racial and social issues were involved in the situation, as the fact that Wallace de Almeida was black, poor and a resident of a marginal area led to his being left to die unaided by the police who wounded him.

92. Based on the foregoing, the Commission believes that the alleged victim was left to die from loss of blood, given the lack of assistance, as the result of a bullet wound he received from police officers; that, as of the date this report was written, the investigation of the case has been stalled and incomplete; being also extremely poor and conducted without due diligence. The investigation was marked by delays, mistakes and negligence, which has made it impossible to date to accuse anyone of committing the crime.

VIII. VIOLATIONS OF RIGHTS IN THE AMERICAN CONVENTION

A. Right to life (Article 4 of the American Convention)

93. Article 4 of the American Convention establishes as follows:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

94. The right to life is a fundamental human right and the basis for exercising all other human rights. The Inter-American Court has already indicated that enjoyment of the right to life is a prerequisite for exercising all other human rights. If this right is not respected, all other rights are meaningless. Due to the fundamental nature of the right to life, narrow views of that right are not admissible. In essence, the fundamental right to life includes not only the right of every human being not to be arbitrarily deprived of life but also the right not to be barred from access to conditions guaranteeing a dignified existence. States have the obligation to guarantee the creation of the conditions required so that violations of this basic right do not occur. In particular, they have a duty to prevent agents of the State from violating that right.[FN55]

[FN55] I/A Court H.R., Case of the “Street Children” (Villagrán Morales et al.), Judgment of November 19, 1999, para. 144.

95. The right to life implies that States have the obligation to guarantee it. According to Article 1(1) of the American Convention this entails the obligation to prevent violations of that right, to investigate violations of the right to life, to punish those responsible and to compensate the families of victims when those responsible are agents of the State.

96. In the instant case, the petitioners maintain that Wallace de Almeida, a poor, young, 18-year old black subject, was hit in the right thigh by a shot fired by agents of the Military Police during an operation in the neighborhood where he lived, who left him to die from loss of blood without giving him aid. This gives the situation the characteristics of a summary execution.

97. They also alleged that the police investigation did not yield results, and no charges were filed by the Public Prosecutor’s Office against anyone accused as responsible, leading to impunity for the crime.

98. The Commission considered it to be an established fact that members of the military police were the ones who killed Wallace de Almeida on September 14, 1998. In effect, there is a document in the instant case containing the statement of Military Police Sergeant Luís Fernando Dos Santos Silva, who participated in the operation in which the alleged victim was wounded, and who reported that those in command of the operation were informed when the agents became aware of the situation, and according to the sergeant this led to the victim’s being taken to a hospital[FN56]. Annex VII[FN57] indicates that the subject was admitted to the hospital at 10:16 p.m. and died at 2:45 a.m. Annex VIII, the examination of the body report, indicates that the victim died as the result of a bullet wound to the right thigh, with injury to the right femoral artery and femoral veins, which produced external bleeding. Similar data appear in the Death Certificate appearing in Annex IX. Giving credence to the assertion made by the petitioners that the alleged victim was not assisted by the police after being wounded and remained on the ground for several hours without being given care, it must be concluded that Wallace de Almeida died as the result of the wound in question.

[FN56] Statement of member of Military Police, Annex VI.

[FN57] Record from the 14th District Police Headquarters.

99. The State did not dispute any of the evidence provided by the petitioners. Given the absence of an answer to the petition and the lack of any evidence to the contrary, the petition is fully credible, demonstrating the truth of the assertions. The indicia derived from the assertions could well serve to clarify the case. The Court’s jurisprudence has maintained that: “The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia, and presumptions may be considered, so long as they

lead to conclusions consistent with the facts.”[FN58] As asserted in the petition and corroborated in the Annexes, the shootout in which the victim was shot occurred at 9:00 p.m.[FN59] and the victim was admitted to the hospital at 10:16 p.m.[FN60] From this we deduce that a significant amount of time elapsed before the victim was given any care, all the more so given the absence of any refutation of the assertions made by the petitioners to the effect that the subject was transferred to the hospital in a precarious condition, after remaining unattended for quite some time since, according to the petitioners, the shooting stopped when the alleged victim shouted after being hit by the bullet and his family was not allowed to help him. The deduction from all these assertions is that death occurred as a result of the victim’s not having been treated soon enough after being wounded.

[FN58] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C, No. 4.

[FN59] Annex VI, Statement of member of Military Police.

[FN60] Annex VII, Record 14th District Police Headquarters.

100. The Commission should emphasize that the instant case is particularly serious because it involves the killing of a young 18-year-old person. It also notes that this is not an isolated case; rather, it reflects a pattern of conduct outside the law on the part of the State’s civil/military police. The Commission has received reports for several years regarding the escalation of violent actions carried out by state police forces. In its general report on the situation of human rights in Brazil in 1997, the Commission indicated that: “...during the period running up to February 1996, average deaths per month at the hands of the military police went from 3.2 to 20.55 persons, meaning a total of 201 in 1996.”

101. When analyzing the instant case, the IACHR considered as central elements the statements, testimony and evidence attached as Annexes as well as the indicia derived therefrom.

102. As Article 4 of the American Convention establishes that no one may be deprived of life arbitrarily, this encompasses not only deaths due to intentional acts but also those situations in which the loss of life occurs as an unintended result. Nonetheless, the deliberate use or unintended use of lethal force is only one factor that must be evaluated with respect to this requirement. Any use of force by law enforcement must be strictly limited to what is required to achieve the ends being sought. This indicates to us that a strict assessment must be made of what is required in order to determine whether the action of the State is “necessary” in a democratic society under the standards of the article cited. As a result, the force used must be found to be entirely proportional to the objectives sought.

103. In light of the importance that Article 4 of the American Convention gives to the protection of life, any case that involves a potential loss of life must be subject to careful scrutiny, taking into consideration not only the actions of the agents of the State but also the circumstances surrounding the matter. In particular, it is essential to examine whether the operation was planned and controlled by the authorities so as to minimize as much as possible the need to resort to the use of lethal force. The authorities were required to ensure that such risk was properly minimized. Another issue that must be examined is whether the authorities were

negligent in choosing the course of action that surrounded the situation. Some decisions from the European Court of Human Rights support this view[FN61].

[FN61] *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-50 and p. 57, § 194, *Andronicou and Constantinou v. Cyprus*, judgment of 9 October 1997, Reports of Judgments and Decisions 1997-VI, pp. 2097-98, § 171, p. 2102, § 181, p. 2104, § 186, p. 2107, § 192 and p. 2108, § 193 and *Hugh Jordan v. the United Kingdom*, no. 24746/95, ECHR 2001-III.

104. It is held to be a fact that Wallace de Almeida was in the garden of his house, having come home in the early hours of the night, when he was caught up in the middle of a police operation that was searching for some alleged criminals. The subject was unarmed and the site of the incident was dark as a result of shots fired by the police. The situation posed no risk at all to the agents who were carrying out the operation. There is no indication that any violence could have been expected from the victim. Nonetheless, an unnecessary number of shots were fired in the operation, one of which managed to hit the alleged victim. The Commission feels that balancing the urgent need to protect life as a fundamental value with the situation we are examining, a police operation that is not pursuing any particular criminal cannot justify putting any human life in danger, since the people nearby, like the alleged victim, do not prima facie present a danger to anyone. Any other assessment of this matter would be incompatible with the basic principles of any democratic society as universally recognized today[FN62].

[FN62] See relevant provisions of “UN Basic Principles for the Use of Force and Firearms by Law Enforcement Agents,” paragraphs 67/70.

105. The use of powerful weapons by agents of the police exposes human lives to potential danger, even when there are rules designed to minimize this risk. Consequently, the Commission believes that the unnecessary use thereof crosses the line of arbitrariness established under Article 4 of the American Convention, even more so when harm is done to an unarmed subject who was not suspected of having committed any punishable act, and thus was not specifically being pursued. The only situation in which a death caused by law enforcement would not violate this principle would be when there is proportionality between the aggression of the police and the response to it. In this case, the alleged victim was not suspected of having committed a crime, was unarmed, and had no substantive ability to attack the police. The scene was dark and the number of shots fired by the police was not strictly necessary and thus not justified. This leads to the conclusion that excessive force was used in this case.

106. The Commission believes that in the actual performance of a State’s obligation to protect the lives of its citizens under Article 4 of the American Convention, a crucial element is the proper planning of any operation to be carried out by law enforcement in which firearms are involved. To achieve this, consideration must be given at a minimum to the physical setting in which the operation will take place, the nature of the offenses committed by those whose arrest is

being sought, and the degree of danger the suspects may pose, if any. Simply shooting is not permissible. The question of what circumstances justify resorting to the use of firearms should be limited to cases of self defense, of imminent threats of death or serious injury to others, to preventing the commission of particularly serious crimes involving grave threat to life, to arresting someone who poses a risk and resists authority, or preventing their escape, only when less extreme methods are not enough to achieve these ends. As is clear from all the evidentiary material in the record, none of these circumstances applied in this case, so that the operation has no justification at all, all the more so because it was not intended to apprehend a particular person or persons. The State has a duty to prevent these situations.

107. The Commission considers it to be established that Wallace de Almeida was wounded in the right thigh by a shot fired by agents of the State police on September 13, 1998 and remained on the ground without receiving any attention from approximately 9:00 p.m.[FN63] until he was transported to the hospital, where he was admitted at 10:16 p.m.[FN64] The indicia inferred from the annexes cited indicate that the alleged victim was left unattended by the police who shot him for about an hour, until he was transported to a hospital. This conclusion is reached based on the difference between the time at which the wound is known to have occurred, according to the annex cited and based on a statement from someone who participated in the operation, and the time when the victim was admitted to the hospital, which could not have been very far from the scene of the incident since Rio de Janeiro is a big city, so that the police erred by not giving the victim the care he needed.

[FN63] Annex VI, Statement of member of Military Police.

[FN64] Annex VII, Record 14th District Police Headquarters.

108. With respect to incidents of this type, international law assigns international responsibility to the State for the behavior of its agents when acting as such, even outside the regular performance of their duties. This includes higher agencies of the State such as the executive, legislative and judicial branches and the acts and omissions of their officials or subordinates.[FN65]

[FN65] Santiago Bendavia, *Derecho Internacional Público*, Publishing House: Editorial Jurídica de Chile, 1976, p. 151.

109. The Inter-American Court of Human Rights, in its judgment of July 29, 1988 (Velásquez Rodríguez Case), has ruled as follows on this point:

Under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.[FN66]

[FN66] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, para. 170.

110. This leads to the conclusion that the Federative Republic of Brazil is responsible in the case under examination for the acts and omissions of the police officers who participated in the operation carried out on the Morro de Babilonia on the night of September 13, 1998, which resulted in the death of Wallace de Almeida. The obligation under Article 4 of the American Convention has an active aspect and another passive aspect. From an active perspective, it encompasses both the obligation to bring to bear measures guaranteeing respect for citizens, ensuring their effectiveness, and the obligation to help them when needed in situations that are relatively serious. This is why the police officers, by wounding the alleged victim, and failing to take him to the hospital immediately, considering the credence given to the petitioners' assertions, the State's failure to respond and the fact that the shooting stopped when the victim shouted out when hit, have committed a clear omission and someone must necessarily be charged with that responsibility.

111. As to the State's failure to investigate the facts, the Commission is of the view that the obligation under Article 4 of the American Convention to protect the right to life in practice supports the provision contained in Article 1(1) of the Convention concerning the obligation of all State Parties to guarantee that all those subject to their jurisdiction have the rights and freedoms guaranteed under the Convention. To that end, some type of official investigation must follow when an individual is killed by the use of force. The investigation must be conducted by an efficient and impartial agency. Its essential purpose should be to ensure the implementation of domestic laws protecting the right to life, and in cases involving agents of the State as perpetrators, to ensure that they submit to a proceeding for actions that are within its jurisdiction.[FN67] The investigation must be able to lead to the identification and punishment of those responsible. This is not a requirement as to methods but rather as to results. Any deficiency in the investigation that limits its ability to establish the cause of death, or the responsibility of the perpetrator, will produce a failure to meet the standard required for the purpose.[FN68] In addition, in order for an investigation into a death caused by state agents outside the framework of legal exceptions to be effective, it must be conducted under the responsibility of persons who are independent of those implicated in the events.[FN69] This refers not only to independence within the hierarchy but also to independence in practice.[FN70] There must be a sufficient public scrutiny component in the investigation or its results so as to ensure both in theory and practice that the population remains confident that the authority is faithful to the rule of law, thus avoiding any appearance of collusion or tolerance for violations of the law.[FN71]

[FN67] See, *mutatis mutandis*, İlhan v. Turquia [GC], no. 22277/93, § 63, ECHR 2000-VII.

[FN68] See *Angelova v. Bulgaria*, no. 38361/97, § 139, ECHR 2002-IV.

[FN69] *Ver Güleç v. Turkey*, 27 July 1998, Reports 1998-IV, p. 1733, §§ 81-82 y *Öğür v. Turkey* [GC], no. 21954/93, §§ 91-92, ECHR 1999-III.

[FN70] See *Ergi v. Turkey*, judgment of 28 July 1998, Reports 1998-IV, pp. 1778-79, §§ 83-84.

[FN71] See *McKerr v. the United Kingdom*, no. 28883/95, §§ 111-15, ECHR 2001-III.

112. The Commission concludes that although the State Party has the obligation to choose the methods needed to make the rights protected by the Convention fully effective, the required result is the full enjoyment of those rights. Regarding the right to life, the authorities' duty to ensure its effective protection will not be fulfilled until the investigation of cases in which law enforcement officers are involved as alleged perpetrators implements standards comparable to those required under Article 4 of the Convention. In the case at hand, although the police investigation was opened by the civil police on September 14, 1998[FN72], it stalled at that stage and to date the Public Prosecutor's Office has not even charged anyone as being responsible for the crime, fact which was acknowledged by the State at the hearing held during the Commission's 121st period of sessions on October 21, 2004.

[FN72] Annex X, Police Investigation report.

113. Based on this evidence, the Commission feels that there is sufficient evidence with the necessary weight to conclude that State military police officers violated young Wallace de Almeida's right to life.

114. For this reason, the State's international responsibility arises for violation of the right to life enshrined in Article 4 of the American Convention, to the detriment of the referenced subject in the form of failing to honor the obligation, resulting in the death of the individual, to guarantee his right to life, given the absence of preventive measures for the purpose, the failure to provide assistance to the alleged victim when needed, and the failure to fulfill the duty to properly investigate the facts.

B. Right to personal integrity (Article 5 of the American Convention)

115. In accordance with Article 5 of the Convention, every person has the right to have his physical, mental, and moral integrity respected. Article 5 explicitly provides that "no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."

116. The Commission concludes that in the instant case members of the police force in Brazil violated young Wallace de Almeida's right to humane treatment. The officers involved in the operation wounded the victim in the thigh and did not give him the assistance he needed. It is admitted as fact that the victim remained on the ground for about an hour until he was transported to a hospital in precarious conditions, having been dragged and then thrown in the prisoner transport area of a police vehicle. This conduct entails both perceptible physical damage and intrinsic risk to the person's safety, as it clearly damaged his integrity, understood as the "quality of an unaltered organic system,"[FN73] by suffering an obvious deterioration in his physical condition, being already hurt. All the wounds caused by this treatment indicate so. Simply being thrown into a vehicle's transport area without the minimum amount of care required to transport someone who has been wounded is also an injury to an individual's physical integrity. Regardless of whether the treatment the alleged victim received was serious enough to be classified as torture,[FN74] it clearly affected his physical integrity, constituting cruel treatment in violation of Article 5 of the Convention.

[FN73] FOUGEYROLLAS, Patrick, René Cloutier, Hélène Bergeron, Jacques Côté and Ginette St Michel. Classification québécoise: Processus de production du handicap, Québec, Réseau international sur le Processus de production du handicap, 1998, p. 62.

[FN74] See the Inter-American Convention to Prevent and Punish Torture, Article 2 (in which torture is defined).

117. Based on the preceding considerations, the Commission concludes that the State violated Wallace de Almeida's right to personal integrity. Thus, Brazil committed a violation of Article 5 of the American Convention.

C. Right to judicial guarantees and judicial protection (Articles 8 and 25 of the American Convention)

118. Article 1(1) of the American Convention establishes that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

119. Article 8 of the Convention establishes that:

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.

120. Article 25 of the Convention provides:

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.

121. The States Party to the inter-American human rights system have the obligation to investigate and punish those responsible for human rights violations, and to compensate the victims of such violations, or their relatives. Article 1 of the American Convention establishes the States' obligation to ensure that everyone subject to their jurisdiction enjoys the free and full exercise of rights and freedoms recognized in the Convention. The Inter-American Court of Human Rights has explained that as a consequence of that obligation, States are required to "prevent, investigate and punish any violation of the rights recognized by the Convention and,

moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.”[FN75]

[FN75] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, para. 166.

122. On the same point, the Court has stated that “it is clear from Article 1.1 that the State is obligated to investigate and punish any violation of the rights embodied in the Convention in order to guarantee such rights.”[FN76] The Inter-American Court of Human Rights has also explained in connection with the provisions of the Convention transcribed above that: “Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to a simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. As this Court has ruled, Article 25 “is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society.”[FN77]

[FN76] I/A Court H.R., Case of the “Street Children” (Villagrán Morales et al.) Judgment of November 19, 1999, para. 225.

[FN77] I/A Court H.R., Loayza Tamayo Case, Reparations. Judgment of November 27, 1998, para. 169.

123. That article is directly related to Article 8.1 of the American Convention which embodies the right of all persons to a hearing with due guarantees and within a reasonable time, by an independent judge or tribunal, for a ruling on rights of any kind.

124. As a result, the State has the duty to investigate human rights violations, to prosecute those responsible and prevent impunity. The Court has defined impunity as “the failure to investigate, prosecute, take into custody, try and convict those responsible for violations of rights protected by the American Convention” and has stated that “the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”[FN78]

[FN78] I/A Court H.R., Loayza Tamayo Case. Judgment of November 27, 1998, paras. 169 and 170.

125. The State’s obligation to investigate and punish human rights violations must be undertaken seriously by the States. The Inter-American Court has stated in this regard that:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation

does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.[FN79]

[FN79] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, para. 177.

126. The Inter-American Commission has also stated, with respect to the States' obligation to investigate seriously, that:

the fact that no one has been convicted in the case or that, despite the efforts made, it was impossible to establish the facts does not constitute a failure to fulfill the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.[FN80]

[FN80] IACHR, Annual Report 1997, Report No. 55/97, Case 11.137 (Juan Carlos Abella et al.), Argentina, para. 412. On the same subject, see also: IACHR, Annual Report 1997, Report No. 52/97, Case 11.218 (Arges Sequeira Mangas), Nicaragua, paras. 96 and 97.

127. The record shows that more than eight (8) years have passed since the investigation in the death of Wallace de Almeida began[FN81] and so far, according to all the information appearing in the file, no one has even been charged as responsible for the crime. The initial stage of the police investigation, which as indicated must be completed within a limited period of time, has not been concluded, making it impossible for the Public Prosecutor's Office to charge anyone. For this reason, no final decision has been reached nor have reparations been made for the consequences of the death. The Inter-American Court of Human Rights has stated that the reasonable time established in Article 8(1) of the Convention is not an easy concept to define and has referred to decisions from the European Court of Human Rights to clarify the concept. Those decisions establish that the following points must be considered to determine whether a proceeding is conducted in a reasonable period of time: the complexity of the matter; the procedural activity of the interested party; and the behavior of the judicial authorities.[FN82]

[FN81] Annex X, Police investigation report.

[FN82] I/A Court H.R., Genie Lacayo Case. Judgment of January 29, 1997, para. 77.

128. In this regard, the determination as to what constitutes a “reasonable period” should take into account the specifics of each case. In this case, the Commission considered all the petitioners’ claims as well as the express acknowledgement made by the State’s representatives at the hearing held on October 21, 2004 during the Commission’s 121st period of sessions. On this point, the Commission considers it important to recall that the Inter-American Court has stated that: “The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.”[FN83]

[FN83] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, para. 136.

129. The Commission concludes that since the police investigation began on September 14, 1998 and did not find anyone responsible, it is materially impossible for the Public Prosecutor’s Office to charge anyone as the alleged perpetrator of the crime. The outlines of the situation leads to the determination that the process contains clear evidence, as well as the State’s acknowledgement, that the investigative process was halted sine die, without even a hint of progress from its outset and that there is no justification for this conduct. In addition, the Commission believes that the victim’s relatives have done everything within their power with respect to proceedings before Brazilian courts, since the procedural impetus in the area of public criminal action is in the hands of the Public Prosecutor’s Office and the courts involved, so that there is little that those affected can do. Therefore, the Commission feels that the fact pattern, the personal situation of those involved in the process, the degree of complexity of the case, or the procedural activity of the interested parties do not constitute factors that would excuse the unwarranted delay in the administration of justice in this case.

130. Let us emphasize once again that since the police investigation was initiated on September 14, 1998[FN84] no progress has been made in the process, which was virtually stalled, as the State has admitted. Nearly eight (8) years have passed since that time without any movement in the case. As indicated above, any police investigation, according to Article 10 of the Brazilian Code of Criminal Procedure, must be concluded within thirty (30) days if no one is arrested and within ten (10) days if a suspect was arrested. Beyond this time period, the judge, usually at the request of a party, may extend the investigation for an additional thirty (30) days. This situation clearly amounts to an unjustified delay in the process. It is now necessary to determine what the State’s responsibility is with regard to this situation. On this subject, the Inter-American Court of Human Rights has maintained that:

What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court's task is to determine whether the violation is the result of a State's failure to fulfill its duty to respect and guarantee those rights, as required by Article 1(1) of the Convention.[FN85]

[FN84] Annex X, Police investigation report.

[FN85] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, para. 173.

131. Similarly, the Court has established as follows:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.[FN86]

[FN86] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, para. 176; and I/A Court H.R., Godínez Cruz Case. Judgment of January 20, 1989, para. 187.

132. The investigation of the murder of Wallace de Almeida was conducted by police investigators, without any type of judicial control or oversight, and did not yield any results. The Commission understands that a fundamental characteristic of an investigation is that it must be carried out by an independent and autonomous body. The basis for this can be found in reading the aforementioned Articles, 1(1), 25 y 8 of the American Convention. The last one of these three articles takes up the issue of jurisdiction, independence and impartiality of courts as a fundamental element of due process. In this regard, this guarantee must be extended to the investigation, which in the end makes it possible for the court to act. Without this guarantee during the initial and crucial stages of investigation, the subsequent proceedings would be adversely affected. It is found that neither the regular nor military police have the independence and autonomy required to impartially investigate the alleged human rights violations committed by agents of said bodies. The investigation of alleged human rights violations committed by the police, under this hypothesis, is therefore, in itself, a violation of the American Convention.

133. If the investigation were to reveal any responsibility of the military, it would, accordingly be tried by Military Courts. On this topic, the IACHR has stated that “the problem of impunity has been aggravated by the fact that most cases involving human rights violations by members of the State security forces are tried by the military criminal justice system”,[FN87] and indicates that “repeatedly and consistently military courts do not provide the guarantees of independence and impartiality for trying cases involving punishing members of the Armed Forces, and therefore impunity is guaranteed.”[FN88]

[FN87] IACHR, Second Report on the Situation of Human Rights in Peru, June of 2000, Chapter II, para. 209.

[FN88] IACHR, Third Report on the Situation of Human Rights in Colombia, ob. cit., paras. 17 et seq.

134. The military criminal justice system has certain unique characteristics that prevent access to effective and impartial judicial remedy in this jurisdiction. One of them is that military justice cannot be considered a true judicial system, inasmuch as it is not a part of the Judicial Branch of Government, but instead is under the Executive Branch of Government. Another aspect is that the judges of the military judicial system in general are active duty members of the Army, which places them in a position of judging their comrades in arms, thus rendering the requirement of impartiality illusory, since members of the Army often feel compelled to protect those who fight beside them in a difficult and dangerous context.[FN89]

[FN89] IACHR, Second Report on Human Rights Situation in Peru, ob. cit., par. 211.

135. As for the State's obligations with respect to the failure to act to guarantee the victim's ability to exercise his rights, the Inter-American Court has ruled as follows:

The second obligation of the States Parties is to "ensure" the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensure the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.[FN90]

[FN90] I/A Court H.R., Godínez Cruz Case, Judgment of January 20, 1989, para. 175.

136. In the instant case, the Brazilian courts have not been able to produce a final ruling after eight (8) years. Furthermore, there has not even been any conclusion to the police investigation stage and it is thus impossible for the Public Prosecutor's Office to bring charges against those responsible. This delay is clearly close to allowing total impunity based on the statute of limitations, the result of which would be to make any punishment or compensation impossible to achieve. The Commission feels that the domestic judicial decisions in this case shows ineffectiveness, negligence or omission on the part of Brazilian police authorities, making it impossible to determine who is responsible for the events and to prosecute and convict them, as well as making any type of reparation for the victim's relatives inadmissible because these cases require a conclusion in the criminal proceeding before any proceeding for civil compensation can be instituted. These considerations show that the State has not been able to organize its structure so as to guarantee these rights. All this is a violation independent of Articles 8 and 25 of the American Convention on Human Rights as related to Article 1(1) thereof.

D. Right to equality before the law (Article 24 of the American Convention)

137. Article 24 of the American Convention establishes that: “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.” With respect to this, the States are obligated to guarantee that all persons under their jurisdiction are effectively equal before the law. Given that it is based on recognition of that prerogative that the prohibition on discriminatory treatment is achieved.[FN91]

[FN91] Cf. I/A Court H.R., Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion 18/03 of September 17, 2003, para. 101; Cf. Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, IACHR, Advisory Opinion OC-4/84 of January 19, 1984, para. 54;

138. In this respect, the term discrimination includes all distinction, restriction or preference based on race, color, sex or other grounds.[FN92]

[FN92] Cf. Non-discrimination. U.N. Human Rights Committee, General Observation No. 18, Thirty-seventh period of sessions (1989) UN Doc. HRI/GEN/1/Rev. 5, para. 7

139. The European Court of Human Rights, following the same line of thinking, has found in more recent decisions[FN93] that: States have a general obligation under Article 2 of the European Convention on Human Rights, which has the same purpose as Article 4 of the American Convention, to conduct an effective investigation in cases where someone has been deprived of life. This obligation must be met without discrimination, as required under Article 14 of the Convention[FN94]. When there are suspicions that racial attitudes led to a violent act, it is particularly important that an official investigation be conducted vigorously and impartially, considering the need to continuously reaffirm society’s condemnation of racism, and to retain minorities’ trust in the ability of the authorities to protect them from the threat of racial violence. The State’s performance of its positive obligation under Article 2 of the Convention requires that the domestic legal system demonstrate its ability to apply criminal laws against anyone who arbitrarily kills someone, regardless of the victim’s ethnic or racial origin.[FN95]

[FN93] Nachova et al v. Bulgaria (Aplication Numbers 43577/98 & 43579/98) ECHR July 6, 2005.

[FN94] Article 14 of the European Convention on Human Rights, prohibits discrimination just as Article 24 of the American Convention does.

[FN95] See Menson et al. v. United Kingdom (dec.), no. 47916/99, ECHR 2003-V.

140. On the same point, the European Court maintained that when violent incidents, particularly deaths at the hands of government agents, are being investigated, government authorities have an additional duty to take all reasonable steps to expose any racist motive and to establish whether any racial hatred or prejudice could have played a role in what happened. The

failure to do so by treating violence and brutality due to racial motives on a par with cases with no racist overtones would be to turn a blind eye to the special nature of actions that are considered particularly destructive of basic rights. A failure to make a distinction as to the manner in which essentially different situations are handled may constitute unjust treatment that is irreconcilable with Article 14 of the Convention.[FN96] In order to maintain public trust in the machinery that enforces the law, States Party must ensure that in investigations of incidents involving the use of force a distinction is made both in the legal system and in practice between cases in which excessive force is used and cases where a death occurs due to racist causes. It is acknowledged that proving the existence of racist motives is extremely difficult in practice. The respondent State's obligation to investigate any racist overtone in a violent act is an obligation to use its best efforts in a non-absolutist way.[FN97]

[FN96] See, mutatis mutandis, *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV.

[FN97] See, mutatis mutandis, *Shanaghan v. the United Kingdom*, no. 37715/97, § 90, ECHR 2001-III, adjusting the same standard in relation to the general standard to investigate.

141. In the instant case, Wallace de Almeida was a young man of African descent, a historically marginalized group in comparison with the white population that is politically and economically dominant. Of all contemporary societies, Brazilian society is probably the one that has managed to achieve the most profound amalgam of different origins and cultures. This blending was not always harmonious nor is it complete or egalitarian. Differences still exist today that are far from a minimum acceptable level of equality and such discrimination is often reflected in patterns that violate human rights, particularly the rights to equality, non-discrimination, and dignity. The principal expression of these racial disparities[FN98] is the uneven distribution of wealth and opportunities.

[FN98] The IACHR uses the term "racial" not in adherence to theories that claim the existence of different races within the human species, but rather following the terms used in Article 1 of the American Convention on Human Rights.

142. The Commission accepts as fact that in late 1994 the government of the state of Rio de Janeiro and the federal government came to an agreement that the armed forces would work in conjunction with the military police to combat drug trafficking under the name of "Operation Rio." In the context of this operation, the police have used torture, arbitrary arrests, unauthorized searches, and the unnecessary use of force. All of this is deduced from the large number of reports on the question, as referred to above, which is strengthened by the State's failure to provide an express response on the matter, applying in the light of existing indicia the presumption of truth with respect to the allegations made in the petition, in accordance with Article 39 of the Commission's Rules of Procedure.

143. The circumstantial evidence is that which results from the indicia, conjectures, indications or more or less vehement and decisive presumptions accepted by the judge as logical conclusions based on a derivation or combination of the facts. The presentation made by the petitioners, added to the position established by the State in the hearing at which its representative testified as to the petition's not having been answered, and the large number of reports, already alluded to, lead to the determination that in the situation that concerns us the joint police force of Brazil used the repressive tactic commonly called "racial profiling" against the young Wallace de Almeida when it wounded him and left him bleeding. This tactic is adopted for supposed reasons of public safety and protection and is motivated by stereotypes based on race, color, ethnicity, language, descent, religion, nationality, place of birth, or a combination of these factors, rather than on objective suspicions, and it tends to single out individuals or groups in a discriminatory way based on the erroneous assumption that people with such characteristics are prone to engage in specific types of crimes. This determination is supported by the report submitted by Sir Nigel Rodley, the United Nations Special Rapporteur on Torture, who visited five state capitals in Brazil between August 20 and September 12, 2000, to inspect police stations and prison facilities, concluding that the Brazilian police systematically engage in violence in their daily operations.[FN99]

[FN99] United Nations, Report of the Special Rapporteur (Visit to Brazil), para. 49 et seq.

144. In General Recommendation N° XXXI on preventing racial discrimination in the administration and functioning of the criminal justice system (2005), the United Nations Committee on the Elimination of Racial Discrimination maintained that the States Party must take all necessary steps to prevent interrogations, arrests and searches that are in reality based solely on physical appearance, color, characteristics, race or ethnicity, or some other profile that makes an individual subject to a higher degree of suspicion. The States Party must prevent and severely punish violent acts of torture, cruel, inhuman or degrading treatment, as well as all human rights violations affecting those belonging to these particular groups and committed by government agents, particularly the police, the military, and customs personnel, as well as those working at airports, or penal, social, medical or psychiatric institutions. In doing so, the States Party must ensure proportionality in the use of force, based on strict need, with respect to situation in which the aforementioned persons are involved, consistent with the United Nations "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials." [FN100]

[FN100] CERD. General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system 2005.

145. In this respect, any practice that is contrary to a State's obligations under the Convention cannot be considered reasonable or advisable.[FN101] In order to guarantee the right to non-discrimination, the States are required to adopt positive measures[FN102] by establishing, for such purposes, distinctions based on de facto inequities for the protection of those who must be protected.[FN103]

[FN101] Cf. I/A Court H.R., 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-13/93 of July 16, 1993, para. 35.

[FN102] Cf. Airey Case Vs. Ireland, ECHR, Merits, Judgment of October 9, 1979, para. 25.

[FN103] Cf. I/A Court H.R., Yatama Case. Judgment of June 23, 2005, para. 201; Cf. I/A Court H.R., Juridical Status and Human Rights of the Child, Advisory Opinion OC-17/02 of August 28, 2002, para. 46; Cf. I/A Court H.R., The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion of October 1, 1999, para. 119.

146. In the instant case, young Wallace de Almeida belongs to an especially vulnerable social group due to its racial and social condition, which justifies adopting positive measures in its favor, such as equal treatment before the law, and respect for the presumption of innocence guaranteed under Brazil's Constitution.

147. From this perspective, the failure to take affirmative measures to reverse or change de iure or de facto discriminatory situations harmful to a specific group produces international responsibility on the part of the State.[FN104]

[FN104] Cf. I/A Court H.R., Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion 18/03 of September 17, 2003, paras. 103, 104 and 106.

148. From another perspective, although the laws of Brazil are not discriminatory and prima facie do guarantee apparent equality, in reality the situation is otherwise, as the bias of the State police, according to existing studies, indicates the use of unnecessary violence towards those subject to their procedures, particularly those individuals with characteristics of the black race and who reside in marginal areas (favelas). This conduct often leads to the death of the subject. It is for this reason that the mere promulgation of laws that have no practical effect does not guarantee the full enjoyment and exercise of rights. The Court has ruled as a consistent standard of jurisprudence that the formal existence of legal provisions guaranteeing equality is not sufficient. Rather, such provisions must be effective, that is, they must yield the results or responses needed for the protection of the rights embodied in the Convention.[FN105]

[FN105] Cf. I/A Court H.R., Acevedo Jaramillo et al. Case. Judgment of February 7, 2006, para. 213; Cf. I/A Court H.R., López Álvarez Case. Judgment of February 1, 2006, para. 170; Cf. I/A Court H.R., Ximenes Lopes Case. Preliminary Objection, Judgment of November 30, 2005, para. 4; Cf. I/A Court H.R., Palamara Iribarne Case. Judgment of November 22, 2005, para. 184; Cf. I/A Court H.R., Acosta Calderón Case. Judgment of June 24, 2005, para. 93; Cf. I/A Court H.R., Bulacio Case. Judgment of September 18, 2003. paras. 117 and 142; Cf. I/A Court H.R., Garrido and Baigorria Case. Judgment of August 27, 1998, para. 69; Cf. I/A Court H.R., Trujillo Oroza

Case. Judgment of February 27, 2002, para. 96; Cf. I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004, para. 151; Cf. Five Pensioners Case. Judgment of February 28, 2003, para. 164; Cf. I/A Court H.R., Hilaire, Constantine and Benjamin et al. Case. Judgment of June 21, 2002, para. 112.

149. The young Wallace de Almeida was 18 years old at the time of his death, was of African descent, poor and was serving as a soldier in the army. His rights were violated by discriminatory actions, as he was left to die from loss of blood due to a result of a bullet wound to the thigh caused by agents of the State police and was not given any assistance. Thus his life was cut off and with it the chance to develop under dignified conditions. The Court has established that it is a “duty of any State to ensure through rules opportunities that tend to guarantee that everyone has personal progress to conduct their life and develop it, this being interpreted as the life plan.”[FN106]

[FN106] See, I/A Court H.R., Case of the “Street Children” (Villagrán Morales et al). Judgment of May 26, 2001, para. 85, 89; See, I/A Court H.R., Loayza Tamayo Case. Judgment of November 27, 1998, paras. 148, 152.

150. The Commission believes that the young Wallace de Almeida lost his life as a result of discriminatory actions carried out by agents of the State, with no respect for the special situation of belonging to a group that is considered vulnerable (of African descent, poor, living in a favela). This vulnerability has been likened by the Court to a state of uncertainty and insecurity for the victim.[FN107] Consequently, the subject’s rights were violated by the State when it failed to fulfill its obligation as the guarantor of rights.

[FN107] Cf. I/A Court H.R., Case of the Yean and Bosico Girls. Judgment of September 8, 2005, para. 227.

151. Therefore, we deduce that the State has not provided adequate security in that the proper provision of such security is considered a way to ensure the adequate protection of human rights, as well as individual development,[FN108] in light of which violations of the security of such rights produces the violation of other human rights.[FN109]

[FN108] Cf. Johan Galtung, Educación en Derechos Humanos: Derechos Humanos perspectiva de Género, Amnesty International, Argentina 2004.

[FN109] Cf. I/A Court H.R., López Alvarez Case. Judgment of February 1, 2006, para. 104; Cf. I/A Court H.R., Tibi Case. Judgment of September 7, 2004, para. 147; Cf. I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004, para. 108; Cf. I/A Court H.R., Maritza Urrutia Case. Judgment of November 27, 2003, para. 87

152. Based on all the foregoing, by failing to safeguard the recognized rights of the young Wallace de Almeida, Brazil is responsible for violating Article 24 of the American Convention.

E. Violation of Article 1(1) of the Convention: obligation of the State to respect and guarantee individual rights, in conjunction with Article 2 establishing the obligation to adopt provisions of domestic law, and Article 28 establishing the federal clause

153. The above analysis demonstrates that neither the Brazilian State nor the state of Rio de Janeiro met their obligation to respect the rights and freedoms of the individuals within their jurisdiction, as provided under Article 1(1) of the American Convention, because they violated the rights embodied in Articles 4, 5, 8, 24 and 25 of that convention.

154. As the Inter-American Court has indicated, "according to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention." [FN110]

[FN110] I/A Court H.R. Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C, No. 4, para. 169

155. The second obligation established in Article 1(1) is to guarantee the free and full exercise of the rights and freedoms recognized in the Convention. The Commission concludes that by violating to the detriment of the victims mentioned in this report the rights to life, personal integrity, judicial guarantees, equality and judicial protection, the Brazilian State failed in its obligation to guarantee the free and full exercise of the rights of everyone subject to its jurisdiction.

156. In addition, Article 2 of the American Convention explains and develops a context for the general respect and guarantee obligation contained in Article 1(1). [FN111] In effect, the duty to adopt provisions of domestic law requires the States Party not only to draw up and implement legislative measures but also all measures as may be necessary to ensure the full and effective enjoyment of the rights and freedoms guaranteed by the American Convention by everyone subject to their jurisdiction (principle of useful effect). [FN112]

[FN111] I/A Court H.R., OC-7/86, Enforceability of the Right to Reply or Correction, August 29, 1986, Separate Opinion of Judge Gros Espiell, para. 6; Caballero Delgado and Santana Case. Reparations. Judgment of January 29, 1997, Dissenting Opinion of Judge Cançado Trindade, para. 9.

[FN112] I/A Court H.R., Bulacio Case, Judgment of September 18, 2003, para. 140; Five Pensioners Case. Judgment of February 28, 2003, para. 164; I/A Court H. R., Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004. Series C No. 112, paras. 205-206; I/A Court H.R., Gómez Palomino Case. Judgment of November 22, 2005, para. 91.

157. The Federal Government and the state of Rio de Janeiro should have adopted adequate measures so that Wallace de Almeida would not be subject to rules, practices, actions or omissions that, directly or indirectly, violated the general prohibition against discrimination. In addition, it was imperative for these states to provide the subject with effective and equal protection against discrimination and, in order to do so, should have taken the necessary steps to give him the different treatment necessitated by his status as an Afro-descendant.

158. Furthermore, as it had been determined, the investigation of the murder of Wallace de Almeida, perpetrated by members of the Military Police, was carried out by members of the police. By members of the military trying the persons that the investigation might reveal as responsible for the crime, means that the State violated its obligation to provide the affected parties access to an independent, autonomous and impartial body that fulfills these duties.

159. Regardless of the internal separation of powers, Brazil should have urged the state of Rio de Janeiro to adopt measures to ensure proper equality among all inhabitants, as well as access to effective, independent and impartial bodies of investigation and prosecution. Only in this way could the State have fully complied with the duty to adapt its domestic law to render effective the rights and freedoms recognized under the American Convention.[FN113]

[FN113] On this point, see, HRC, Tae Hoon Park v. Republic of Korea, Communication No. 628/1995, “The Committee finds it incompatible with the Covenant that the State party has given priority to the application of its national law over its obligations under the Covenant.”

160. This Commission notes that in the light of international law it is irrelevant to point to a State’s domestic legal system in order to justify the failure to honor obligations it has assumed.[FN114] Based on this general principle, the Commission rejects any argument the State might put forth that involves matters of a domestic nature.

[FN114] Vienna Convention, Art. 27

161. According to any of these arguments, the conclusion that the State has violated the American Convention to the detriment of Wallace de Almeida remains intact, in that when Article 2 states “in accordance with their constitutional processes,” it leaves it up to the state of Rio de Janeiro or the Brazilian government to select the means whereby it will fulfill its international commitment and, since only “the result of implementation, i.e., the respect for and guarantee of rights,”[FN115] this Commission can only conclude that the efforts of both the federal and state governments to comply with the American Convention have been inadequate.

[FN115] NOWAK, Manfred, *op cit.*, note 13, p. 53, para. 49. See also, ECHR, General Recommendation No. 20, Non-Discriminatory Implementation of Rights and Freedom, paras. 1 and 5.

162. With respect to the failure to comply with the federal clause, this Commission wants to emphasize that in the case of the state of Rio de Janeiro, the obligation arising from Article 2 of the American Convention is strengthened and made precise, due to its federal structure, by Article 28 thereof. This provision, also interpreted in the light of Article 1(1), flatly rules out the State's ability to invoke the complexity of its structure in order to evade obligations it has undertaken.[FN116]

[FN116] On this point, see IACHR, Case 10.180 Mexico, Report No. 8/91, February 22, 1991, "The Government of Mexico asserts that the National Government is not required by virtue of the safeguard included in Article 28 of the San Jose Convention to take any measure to ensure that the competent authorities of the State of Nueva León adopt or modify, in some way or another, the legislation they desire and that constitutes their internal system (...) The position of the Mexican Government is entirely inconsistent with the responsibility undertaken by the Mexican State upon ratification of the American Convention on Human Rights," paras. 40-42. See also HRC, *Toonen v. Australia Case*, Communication No. 488/1992.

163. In this regard, the purpose of safeguarding human rights imposed by the American Convention in general and the cited provisions in particular makes no reference to the domestic distribution of powers or organization of the component entities of a federation.[FN117]

[FN117] On this subject, see HRC, *Pohl v. Austria*, *op. cit.*, note 17, para. 9.2.

164. This position is fully applicable to Article 28 of the American Convention, the meaning of which requires federal states to honor their international obligations throughout their territory. In this regard, it cannot be overlooked that the states within a federation, as part of the State, are equally bound by the provisions of international treaties ratified by the federal government.

165. Both the federal government and the state of Rio de Janeiro should have considered that the "suitable measures" indicated in Article 28 of the American Convention, as providing specifics for Article 2 thereof, must produce results consistent with the full performance of the obligations of the State Party.

166. The Commission notes that this is the interpretation of Article 28 of the American Convention that is most consistent with Articles 27 and 31 of the Vienna Convention and Article 29 (a) of the American Convention. A different interpretation of the obligation contained in the federal clause would lead to the absurdity of converting the protection of human rights into a solely discretionary decision, subject to the whim of each of the States Party.

IX. CONCLUSIONS

167. Based on the considerations of fact and law presented above, the Inter-American Commission confirms its conclusion regarding the existence of a violation of the rights to life, personal integrity, judicial guarantees, equality, and judicial protection that are enshrined, respectively, in Articles 4, 5, 8, 24 and 25 of the American Convention. This is with the understanding that in terms of state responsibility for violation of Articles 4, 5 and 24 of the American Convention, the injured party is Wallace de Almeida, while with respect to violations of Articles 8 and 25, consistent with Article 1(1) of the Convention, the injured parties are his relatives. The Commission also determines that there has been a violation of the obligations imposed by Article 1(1) of the American Convention to respect and guarantee the rights established therein, by Article 2, which establishes the duty to adopt domestic law provisions to render effective the rights contained in the Convention, and by Article 28 on the obligation of both the federal government and the state of Rio de Janeiro to comply with the provisions contained in the Convention.

X. RECOMMENDATIONS

168. Based on the analysis and conclusions in this report, the Inter-American Commission on Human Rights reiterates the following recommendations to the State of Brazil:

1. That a thorough, impartial and effective investigation of the facts, be conducted by independent judicial bodies of the civilian/military police, in order to establish and punish those responsible for the acts involved in the murder of Wallace de Almeida, and the impediments that kept both an effective investigation and prosecution from taking place.
2. Fully compensate the relatives of Wallace de Almeida both morally and materially for the human rights violations established in this report, and in particular,
3. Adopt and implement the measures needed for effective implementation of the provision in Article 10 of the Brazilian Code of Criminal Procedure,
4. Adopt and implement measures to educate court and police officials to avoid actions involving racial discrimination in police operations, in investigations, in proceedings and in criminal convictions.

XI. ACTIONS SUBSEQUENT TO REPORT No. 73/06

169. On November 16, 2006, the Commission forwarded Report No. 73/06 to the State, granting it a period of two months to adopt the recommendations contained therein. On this same date, as provided by Article 43(3) of the Rules of Procedure of that body, the Commission notified the petitioners about the adoption of the report on the merits and forwarded it to the State and requested them to state their position on bringing the case before the Inter-American Court. On December 4, 2006, the Commission, confidentially, provided the petitioners with certain considerations regarding Report No. 73/06

170. On December 19, 2006, the petitioners claimed that the Brazilian State was continuing to violate the rights stated in the Report, and therefore requested that the case be brought before the Court.

171. On January 16, 2007, the State filed a motion for a six month extension to the time period provided by Article 51(1) of the Convention to implement the recommendations put forth by the Commission in the report that had been adopted on the merits of the case, in view of the fact that almost all of the state authorities were new, which would have hampered full implementation of the recommendations.

172. On January 30, 2007, the Commission granted the extension requested by the State to be able to implement the recommendations, and therefore the deadline for submitting the case to the Court lapsed on August 16, 2007. Additionally, in said letter, the IACHR requested the State to submit a preliminary report on measures adopted to implement the recommendations of Report No. 73/06 up to April 30, 2007, and a report on said measures up to July 30 of the same year.

173. On April 27, 2007, the State requested an extension of 30 days to submit to the Commission a preliminary report on implementation of the recommendations. This extension was granted by the IACHR on May 8, 2007.

174. On August 3, 2007, the State moved for another extension of six months based on an alleged lack of coordination between the Federal Government of Brazil and the Government of the state of Rio de Janeiro, apparently prompted by the changing of political and administrative authorities that was occurring in the state of Rio's government. On August 9, 2007, the Commission forwarded said letter to the petitioners and requested them to submit their observations, as to whether they object to granting the State's motion for another extension and suggest that the case be immediately submitted to the Inter-American Court.

175. On August 14, 2007, the IACHR granted an extension to the State of Brazil for a period of four months for it to have more time to implement the recommendations issued by the Commission in Report 73/06 and aid in implementation of the measures adopted to provide reparation for the consequences of the violation of the rights set forth in said report, and therefore the deadline for submitting the case before the Court would expire on December 16, 2007. Moreover, the Commission requested the State of Brazil to submit reports on October 16 and November 17, 2007 regarding the measures adopted to implement the recommendations and resolve the situation at issue.

176. On September 11, 2007, the Commission summoned the State and the Petitioners to a working meeting for the purpose of moving forward on the agreements and commitments of the State with regard to the recommendations made by the Commission.

177. Said meeting took place on October 11, 2007, in the context of the 130th Regular Period of Sessions. On this occasion, the State asserted that the Government of the state of Rio de Janeiro had made the commitment to fulfill the recommendations. Additionally, the State reported that at the beginning of October of 2007, a decree was issued by the Governor of said State whereby he assigned the Office of the Prosecutor of the state of Rio de Janeiro to this task,

in its capacity as the state-level entity responsible for cases heard in the Inter-American System of Human Rights Protection. The State of Brazil, through the Special Secretariat for Policies of Promotion of Racial Equality (SEPPPIR), also indicated that efforts have been undertaken to train and promote racial equality among law enforcement agents in some states of the federation, and that they expect to implement crosscutting measures on these subjects. In turn, the petitioners pointed out that several years had elapsed since the crime had occurred and that very little progress had been made by the State regarding fulfilling the recommendations of Report No. 73/06.

178. On November 26, 2007, the State of Brazil submitted its report implementation of the recommendations put forth by the Commission in Report No. 73/06.

179. On December 17, 2007, the Commission notified the parties regarding the decision taken on December 15, 2007, to not bring the case before the Inter-American Court. The IACHR further required the State, within a period of six months, more precisely by June 17, 2008, to submit a report on the measures adopted to implement the recommendations established in Report 73/06.

180. On December 18, 2007, the State submitted a letter requesting another extension to implement measures in compliance with the recommendations of the Commission.

181. On July 18, 2008, the Inter-American Commission adopted Report No. 34/08 – the text of which is reproduced above – pursuant to Article 51.1 of the American Convention. On August 13, 2008, the Inter-American Commission transmitted the report to the State of Brazil and to the petitioners, as stipulated in Article 51.2 of the American Convention, and granted the State one month to report on compliance with the recommendations indicated above. The State submitted information on compliance with the recommendations of the IACHR in the instant case on August 4, 2008, September 15, 2008 and November 7, 2008. For their part, on October 23, 2008 the petitioners presented information on the measures adopted in order to comply with the recommendations of the Inter-American Commission.

XII. ANALYSIS OF COMPLIANCE WITH THE RECOMMENDATIONS

A. The carrying out of a thorough, impartial, and effective investigation of the facts by independent judicial organs under civilian police/military jurisdiction in order to establish and punish those responsible for the facts relating to the murder of Wallace de Almeida and the obstacles that had prevented effective investigation and prosecution

182. On October 18, 2007, the Attorney General's Office (Ministerio Público) filed a formal accusation with the Fourth Criminal Court in the Jurisdiction of the Capital (Jury Tribunal) against military policemen João Jacques Soares Busnello, Edgar Mendes Santos, and Roberto Dias de Oliveira, who had been identified in the police investigation as those who had fired the shots that killed Wallace de Almeida. That accusation was, however, rejected by the lower court judge on November 30, 2007, since, in his understanding, there was not enough evidence to identify the perpetrators of the crime. In light of that decision, on December 10, 2007, the Office of the Attorney General lodged an appeal in the strict sense (*recurso em sentido estrito*) with the

Court of Justice of Rio de Janeiro. However, on June 26, 2008, the appeal court also decided unanimously to turn down the appeal as it considered the criminal accusation of the Attorney General's Office to be inconsistent. As a result, to this day those responsible for the murder of Wallace de Almeida remain unpunished. Both parties have indicated that, as of the day they sent their last communications, the Prosecutor at the Attorney General's Office was waiting for the return of the file on the case in order to determine what additional steps could be taken.

B. Full reparation to the family of Wallace de Almeida, including both emotional and material damages, on account of the human rights violations established in this Report

183. The Office of the Rio de Janeiro State Attorney General, the institution in charge of matters relating to the inter-American human rights system, pursuant to Decree No. 40.970 of October 5, 2007, drafted a legal opinion in which it recommended that the Government of that State take steps to make reparation to the family members of the victim for physical or emotional harm to them, as established by the Inter-American Commission. During the meeting of the parties on October 20, 2008, the petitioners were told that the Government of Rio de Janeiro was verifying whether funds were available in the current year's budget to pay for material damages. They were also asked to submit a proposal regarding the amount of money they sought in damages. Both parties have stated that the Governor of the state of Rio de Janeiro is willing to comply with this recommendation. However, so far, the Inter-American Commission has not received information indicating actual compliance with its recommendation.

C. Adoption and implementation of the measures required for effective application of Article 10 of the Brazilian Code of Criminal Procedure

184. The State has pointed out that the Government of the state of Rio de Janeiro has hired a consulting firm -- Instituto de Desenvolvimento Gerencial -- to conduct a study of the state's public security system, with a particular focus on the investigation methods employed by the police and ways of avoiding a backlog of cases. However, the petitioners have said that they have heard nothing about the findings of said study. Meanwhile, on March 12, 2008, the acting Governor of the state of Rio de Janeiro, Luiz Fernando de Souza, authorized the State Attorney General's Office to direct the competent authorities to comply with this recommendation. The Attorney General's Office therefore proceeded to write official notes to that effect to the Secretary for Public Security of Rio and to the Public Prosecutor in the Attorney General's Office.

D. Adoption and implementation of appropriate measures directed at justice system and police officers to prevent actions involving racial discrimination in police operations, investigations, trials, and sentencing

185. On March 12, 2008, the acting Governor of Rio de Janeiro, Luiz Fernando de Souza, authorized the State Attorney General's Office to direct the competent authorities to comply with the above recommendation. Accordingly, the State Attorney General's Office issued official letters to the following authorities in Rio de Janeiro: the President of the Court of Justice of Rio de Janeiro, the Secretary for Public Security, the Secretary for the Administration of Penitentiaries, and the chief Prosecuting Attorney (Procurador Geral de Justiça) in the Office of

the Attorney General (Ministerio Público). For their part, the petitioners reiterated that the training given to civilian police officers in Rio de Janeiro is discriminatory and racist and they underscored their concern at the teaching materials used in that training. They said that, in a discriminating manner, it singled out black youths as drug traffickers, a bias that encouraged discriminatory police behavior, as described by the IACHR in paragraphs 137-152 of this Report.

XIII. PUBLICATION

186. The Inter-American Commission notes that the State has taken some steps toward complying with the recommendations made in the instant case. However, it is clear that the measures adopted so far do not amount to a thorough, impartial, and effective investigation of the kind recommended in the Report on the Merits, nor do they indicate effective steps to prevent a repetition of the acts described in the complaint. As for the recommendation regarding reparation, the IACHR takes note of the State's declared readiness to comply and urges it to make reparation for both emotional and material damages inflicted on the members of Wallace de Almeida's family.

187. As a matter of fact, more than 10 years have elapsed since the murder of Wallace de Almeida, without the State showing evidence of a diligent investigation to identify, try, and sentence those responsible for the crime in question. That being so, the Inter-American Commission reiterates that the State of Brazil is responsible for violations of the rights to life, humane treatment, and equal protection established, respectively, in Articles 4, 5, and 24 of the American Convention, to the detriment of Wallace de Almeida. Likewise, the Inter-American Commission considers that the State also violated the rights to a fair trial and judicial protection, contemplated in Articles 8 and 25 of the Convention, to the detriment of the family members of the victim. The IACHR further determines that there have been violations of the following obligations imposed by the American Convention: the obligation under Article 1.1 to respect and ensure the rights recognized therein; the obligation, under Article 2, to adopt provisions in domestic law to give effect to the rights established in that Convention; and the obligation under Article 28 for both the Federal Government and the Government of the state of Rio de Janeiro to comply with the provisions of the American Convention.

188. By virtue of the foregoing considerations and the provision contained in Article 51.3 of the American Convention, the IACHR decides to reiterate the recommendations contained in paragraph 168 supra, and to publish this report and include it in its Annual Report to the OAS General Assembly. Pursuant to its mandate, the Inter-American Commission on Human Rights will continue to evaluate measures adopted by the State of Brazil until the recommendations have been fully implemented.

Done and signed in the city of Washington, D.C., on March 20, 2009. (Signed): Víctor E. Abramovich, First Vice-president ; Felipe González, Second Vice-president; Sir Clare K. Roberts, Florentín Meléndez, ad Paolo Carozza, members of the Commission.