

## REPORT No. 126/10<sup>1</sup>

PETITIONS P-1448-06 – ROBERTO CARLOS PEREIRA DE SOUZA AND CRISTIANO DA SILVA SOUZA; P-1452-06 – FÁBIO EDUARDO SOARES SANTOS DE SOUZA AND RODRIGO ABILIO; P-1458-06 – LEANDRO DOS SANTOS VENTURA, FABIO DOS SANTOS DA SILVA AND ADRIANO PAULINO MARTINIANO; P-65-07 – WALLACE DAMIÃO GONÇALVES MIRANDA, FLAVIO MORAES DE ANDRADE, EDUARDO MORAES DE ANDRADE, JULIO CÉSAR PEREIRA DE JESUS, JOSÉ MANUEL DA SILVA AND WILLIAM BORGES DOS REIS  
ADMISSIBILITY  
BRAZIL  
October 23, 2010

### I. SUMMARY

1. This report deals with petitions lodged on behalf of Roberto Carlos Pereira de Souza and Cristiano da Silva Souza (P-1448/06),<sup>2</sup> Fábio Eduardo Soares Santos de Souza and Rodrigo Abilio (P-1452/06),<sup>3</sup> Leandro dos Santos Ventura, Fabio dos Santos da Silva and Adriano Paulino Martiniano (P-1458/06),<sup>4</sup> Wallace Damião Gonçalves Miranda, Flavio Moraes de Andrade, Eduardo Moraes de Andrade, Julio César Pereira de Jesus, José Manuel da Silva and William Borges dos Reis (P-65/07)<sup>5</sup> (“the alleged victims”), all of which claim the international responsibility of the Federative Republic of Brazil (“Brazil,” or “the State”) for the violation of rights set forth in the American Convention on Human Rights (“the American Convention”). The petitions contend that, between May 2003 and January 2004, the alleged victims were injured, disappeared and/or killed by the Military Police of Rio de Janeiro, following a discriminatory, violent and abusive public security policy implemented by the Government of Rio de Janeiro state, which allegedly “criminalizes poverty” and disproportionately targets poor black male youth who reside in slums (*favelados*) or poor neighborhoods. Consequently, the petitioner claims that the State has violated the right to life (Article 4), the right to humane treatment (Article 5), the right to dignity (Article 11) and the right to judicial protection (Article 25) to the detriment of the alleged victims. All four petitions were presented by the non-governmental organization *Projeto Legal* (“the petitioner”).

2. The State maintains that petitions P-1448/06, P-1452/06 and P-1458/06 are inadmissible because domestic remedies have not been exhausted, as required by Article 46.1.a of the American Convention. In that regard, the State asserts that there are pending investigations and judicial processes related to the facts alleged in the petitions. Moreover, on this point, the State claims that domestic remedies in the civil sphere have not been exhausted either, since neither the alleged victims nor their representatives have pursued a civil action for compensatory damages. Lastly, the State argues that petitions P-1448/06 and P-1452/06 were not timely filed. With regard to petition P-65/07, the State has failed to present a response to this date.

3. Without prejudging the merits of the matters, and in accordance with the provisions of Articles 46 and 47 of the American Convention, the Inter-American Commission decides to declare the four petitions admissible with respect to the alleged violation of Articles 4, 5 and 25 of the American Convention. In accordance with the principle of *iura novit curia*, the IACHR also rules these petitions admissible with respect to possible violations of Articles 3 (for the allegedly disappeared victims), 7 (for all alleged victims), 19 (for the alleged victims who were children at the time of the facts) and 24 (for all alleged victims) of the American Convention, to the detriment of the respective alleged victims; Articles 5.1 and 8 of the American Convention, to the detriment of the family members of the alleged victims and

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<sup>1</sup> Commissioner Paulo Sérgio Pinheiro, a Brazilian national, did not participate in the discussion or decision of this petition, in accordance with Article 17.2.a of the IACHR’s Rules of Procedure.

<sup>2</sup> Filed by the non-governmental organization *Projeto Legal*, on December 27, 2006.

<sup>3</sup> Filed by the non-governmental organization *Projeto Legal*, on December 27, 2006.

<sup>4</sup> Filed by the non-governmental organization *Projeto Legal*, on December 28, 2006.

<sup>5</sup> Filed by the non-governmental organization *Projeto Legal*, on December 27, 2006.

the surviving alleged victim. Those provisions will be examined at the merits stage in conjunction with the general obligations established by Articles 1.1 and 2 of the American Convention. Moreover, also by virtue of the principle of *iura novit curia*, the Inter-American Commission declares these petitions admissible with regard to Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture. On the other hand, the IACHR declares this petition inadmissible as regards the alleged violation of Article 11 of the American Convention.

4. Finally, the IACHR decides to join the four petitions and to process them together in the merits stage under case number 12.778, in conformity with Article 29.1.d of the IACHR's Rules of Procedure, since they all address similar facts and appear to reveal the same pattern of conduct. The Inter-American Commission also decides to notify the parties, publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

## **II. PROCESSING BY THE IACHR**

5. Petition 1448/06 was received on December 27, 2006, and on September 4, 2007, the petitioner submitted an additional communication in response to a request from the IACHR to that effect. The relevant parts of those documents were forwarded to the State on November 16, 2007, with a two-month deadline for submitting its response. The State replied on February 20, 2008. The petitioner presented additional information on June 4, 2008. Similarly, the State presented additional information on September 29, 2008. The IACHR duly submitted these additional communications to the other party.

6. Petition 1452/06 was received on December 27, 2006, and on August 27, 2007, the petitioner submitted an additional communication in response to a request from the IACHR to that effect. The relevant parts of those documents were forwarded to the State on November 16, 2007, with a two-month deadline for submitting its response. The State replied on February 22, 2008. The petitioner presented additional information on June 6, 2008. Similarly, the State presented additional information on July 17, 2008. The IACHR duly submitted these additional communications to the other party.

7. Petition 1458/06 was received on December 28, 2006, and on August 27 and October 10, 2007, the petitioner submitted additional communications in response to a request from the IACHR to that effect. The relevant parts of those documents were forwarded to the State on December 5, 2007, with a two-month deadline for submitting its response. The State replied on December 9, 2008, and the IACHR duly submitted the State's response to the petitioner.

8. Petition 65/07 was received on December 27, 2006, and on May 7 and May 31, 2007, the petitioner submitted additional communications in response to a request from the IACHR to that effect. The relevant parts of those documents were forwarded to the State on April 15, 2008, with a two-month deadline for submitting its response. To this date, the State has not presented its response regarding this petition.

## **III. POSITION OF THE PARTIES**

### **A. Position of the petitioner**

#### **1. Common claims regarding all four petitions**

9. The petitioner asserts that Rio de Janeiro state authorities have long been implementing inadequate public security policies that foster the victimization of specific social and ethnic groups in an overwhelming manner. According to the petitioner, the facts reported in all four petitions took place in this context of so-called "criminalization of poverty" (*criminalização da pobreza*, also identified by the petitioner as "*matabilidade da pobreza*"), which mainly targets young, poor and black or brown-skinned males as victims of police violence, and supposedly indicates a trend of social or racial profiling related to

police violence in Rio de Janeiro.<sup>6</sup> The petitioner also indicates that the acts of police violence against the alleged victims in all four petitions occurred during the implementation of “Operation Safe Rio” (*Operação Rio Seguro*) by Rio de Janeiro’s Governor Rosângela Rosinha Garotinho Barros Assed Matheus de Oliveira (2003-2006).

10. According to the petitioner, the facts in all four petitions illustrate that, in 2003, State officials repeatedly made public statements either in explicit support of killings by police, or citing high levels of killings by police as a necessary and unavoidable product of crime control, which allegedly demonstrates implicit or explicit institutional encouragement, or at least tolerance, of police violence. As an example of the foregoing, the petitioner mentions the following statement from then Secretary of Public Security, Josias Quintal, which was supposedly published in “*O Globo*” newspaper, on February 27, 2003: “Our team is on the streets, and if there has to be an armed conflict, there will be one. If someone has to die because of that, they will die. We are coming at full throttle.”<sup>7</sup> According to the petitioner, in keeping with such mentality, a few months later, the subsequent Secretary of Public Security, Anthony Garotinho, publicly “celebrated” through the media that, after only 15 days from his appointment to that position, the police had already killed 100 people.<sup>8</sup>

11. The petitioner adds that, in addition to the aforementioned official public discourse by State authorities, other actions of the Rio de Janeiro police also indicate that they have “a green light to kill” anyone who might be perceived as a criminal suspect. Indeed, the petitioner describes that, in Rio de Janeiro, any firearm death perpetrated by the police is automatically registered as an alleged shootout or a death resulting from confrontation of the police with armed criminals. According to the petitioner, these so-called confrontations, or *autos de resistência* (records of resistance to arrest), are nothing but a catch-all category that implies the use of legitimate self-defense on the part of the police and leaves these deaths uninvestigated and unpunished. Another worrisome practice identified by the petitioner is the tampering with the crime scene by the Military Police, according to which police officers tamper with crimes scenes and remove dead victims from the place of the shooting to hospitals, in order to eliminate crime scene evidence.

12. The petitioner states that this confrontational language on issues of public security has increasingly promoted military-style police operations in Rio de Janeiro. The petitioner observes that the epitome of the foregoing is the escalating scope of action of a special operations battalion of the Military Police of Rio de Janeiro known as “BOPE” (*Batalhão de Operações Especiais*), which utilizes armored vehicles similar to war tanks in its incursions into poor communities. According to the petitioner, these military-style vehicles are colloquially known as “*caveirão*” (“big skull”), in a reference to the emblem of “BOPE” – a skull with cross swords – which is prominently displayed on the side of the vehicle. The *caveirão* is equipped with a turret on its top, able to rotate through 360 degrees, and rows of firing positions running along each side of the body of the vehicle. The petitioner stresses that police officers can fire against people from inside these vehicles without ever being seen, which also makes it impossible for them to be identified.<sup>9</sup> The petitioner further observes that, on September 24, 2003, “*O Globo*” newspaper published extracts of a mantra sung by “BOPE” officers during their training, as follows:

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<sup>6</sup> The petitioner indicated that there are plenty of studies that corroborate those assertions, and presented as supporting documentation, among others: AMNESTY INTERNATIONAL, *THEY COME IN SHOOTING: POLICING SOCIALLY EXCLUDED COMMUNITIES* (2005).

<sup>7</sup> Free translation of the Portuguese original: *Nosso bloco está na rua e, se tiver que ter conflito armado, que tenha. Se alguém tiver que morrer por isso, que morra. Nós vamos partir pra dentro.*

<sup>8</sup> The petitioner also refers to other policies which allegedly further fostered higher police lethality and abuses of authority, such as the bravery pay bonuses (*gratificação feroeste*, which is a salary bonus awarded to police officers who kill in the line of duty) and the judicial practice of issuing collective search warrants (which allow the police to search any person and/or residence, prior to any police investigation procedure, under unfounded suspicions and/or presumption of culpability), allegedly targeting poor communities as a whole.

<sup>9</sup> The petitioner presents documentation that extensively describes the actions of “BOPE” and the utilization of the *caveirão*, among others: AMNESTY INTERNATIONAL, BRAZIL – “WE HAVE COME TO TAKE YOUR SOULS”: THE *CAVEIRÃO* AND POLICING IN RIO DE JANEIRO (2005); and AMNESTY INTERNATIONAL, BRAZIL – “FROM BURNING BUSES TO *CAVEIRÕES*”: THE SEARCH FOR HUMAN SECURITY (2007).

Interrogatories are too easy to do / take the slum resident and beat him until it hurts  
 Interrogatories are too easy to finish / take the criminal and beat him until you kill him  
 This blood is very good / I have tasted it and it is harmless / it is better than coffee / it is the blood of  
 the enemy  
 Slum-resident criminals / cannot be swept away with a broom  
 They must be swept away with grenades / with rifles and machine guns.<sup>10</sup>

13. Lastly, the petitioner notes a serious phenomenon which further endangers the lives of inhabitants of Rio de Janeiro's poorest communities: the formation and proliferation of so-called militias. According to the petitioner, these are groups composed of civil and military police, ex-police, military firefighters, prison guards, former members of death squads and extermination groups, and private citizens, who take control over geographical areas and engage in unauthorized "policing". However, the petitioner argues that their motivations are routinely economic, since they charge mandatory fees for private "security" --often against violence perpetrated or fostered by the militias themselves-- and extort those unwilling to pay these fees, while justifying their control by contending that they are protecting residents from violent gangs and drug traffickers.

14. In conclusion, the petitioner contends that all these practices have resulted in an alarming increase in the statistics of homicide of poor and black male youth who reside in slums or poor communities, and are considered by the police, by the public official discourse of State authorities and by the mainstream media as "necessary casualties" (*vidas descartáveis*), "genetic garbage" (*lixo genético*), and criminals (*marginais*) in general. According to the petitioner, this severe human rights and public insecurity crisis illustrated by all four petitions has resulted in homicide rates of 129.3 deaths of black male youth per 100 thousand inhabitants in Rio de Janeiro, which the petitioner described as "genocide of poor and *favelado* black youth". The petitioner alleges that, in 2003, the Rio de Janeiro police reportedly killed 1,195 (one thousand, one hundred and ninety-five) people, and that the facts related to all alleged victims of the four petitions took place between May 2003 and January 2004, in the context described *supra*.

15. Based on all the above, the petitioner claims in all four petitions that the State violated Articles 4, 5, 11 and 25 of the American Convention. The petitioner adds that the conduct of the authorities and the delays in the police investigations regarding the facts in all four petitions have effectively denied access to the remedies under domestic law. Therefore, the petitioner concludes that the exception provided for in Article 46.2.b of the American Convention is applicable to these four petitions.

## 2. Specific allegations

*Roberto Carlos Pereira de Souza and Cristiano da Silva Souza (P-1448/06)*

16. According to the petition, Roberto Carlos Pereira de Souza, black and 34 years old, owned a small junk and scrap iron shop in São João do Meriti municipality, located in the area known as "*Baixada Fluminense*", in Rio de Janeiro city's metropolitan region, Rio de Janeiro state. The petitioner observes that Mr. Pereira de Souza had an apprentice at his shop, whose name was Cristiano da Silva Souza (alias "*Baianinho*"), black or brown-skinned and 27 years old.

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<sup>10</sup> Free translation of the rhyming Portuguese original:

*O interrogatório é muito fácil de fazer / pega o favelado e dá porrada até doer*

*O interrogatório é muito fácil de acabar / pega o bandido e dá porrada até matar*

*Esse sangue é muito bom / já provei não tem perigo / é melhor do que café / é o sangue do inimigo*

*Bandido favelado / não se varre com vassoura*

*Se varre com granada / com fuzil, metralhadora.*

17. The petition alleges that, on July 24, 2003, the two alleged victims left São João do Meriti carrying 800 *reais* in cash, in order to buy a horse for the business in Duque de Caxias municipality, also located in *Baixada Fluminense*. After that, according to the petitioner, the alleged victims disappeared and were later found dead. Indeed, the petitioner alleges that three days after the disappearances, family members of Mr. Pereira de Souza initiated investigations and searches to discover his whereabouts. According to the petition, Mr. Pereira de Souza's brother, Luiz Fernandez de Souza, found both corpses abandoned at a sugar cane plantation ("*Canavial da Cidade dos Meninos*"), in Duque de Caxias.

18. The petitioner asserts that, according to the autopsy reports, Mr. Pereira de Souza was killed by a single firearm bullet and his cadaver presented a head-left side entry wound and a head-right side exit wound. The autopsy also allegedly indicated that his wrists were tied behind his back with a rope. As regards Mr. da Silva Souza, the petitioner indicates that the autopsy reports show that he was shot three times, as follows: a head-right side entry wound and two chest-front entry wounds at descending angles, all of which perforated his body and caused exit wounds. Mr. da Silva Souza also allegedly had his wrists tied behind his back with a rope. The petitioner argues that the police authorities of the 60<sup>th</sup> Civil Police District of Rio de Janeiro opened an inquiry (*Inquérito Policial* N° 328/03), but the investigations have not been conducted with due diligence. According to the original petition, three years and 5 months after the deaths of the alleged victims, this police investigation still had not been concluded. Moreover, according to the petitioner's last communication of June 4, 2008, almost five years after the occurrence of the facts, the police investigation was still incomplete and pending. In this regard, the petitioner stresses that nothing substantial had been done since right after the facts, no additional interrogatories or investigations had been conducted and the authorities were merely mechanically extending the duration of the police investigation, allegedly under the false excuse of lack of material and human resources.

19. Finally, the petitioner argues that, given the inertia of the police authorities in charge of the investigation, the mother-in-law of Mr. Pereira de Souza, Julia Preciliana Procópio, went to the region where the bodies were found and, after interviewing local residents, found out that the alleged victims were brought there by local Military Police officers in plain clothes. This fact was denounced to the authorities, according to the petitioner, but it was never investigated despite reiterated requests from prosecutors year after year.

*Fábio Eduardo Soares Santos de Souza and Rodrigo Abilio (P-1452/06)*

20. According to the petition, on June 9, 2003, Fábio Eduardo Soares Santos de Souza, black, 20 years old and his friend, Rodrigo Abilio, black, 19 years old, went to a folkloric party (*feira junina*) near their houses, in Queimados municipality, located in the area known as "*Baixada Fluminense*", in Rio de Janeiro city's metropolitan region. At about 1:30 a.m., according to the petitioner, the two youths were walking a female friend named Ana Carla home, when a Military Police SUV vehicle (Chevrolet Blazer) approached them around the corner from Ana Carla's home. The petitioner states that Ana Carla hurried home and left Fábio and Rodrigo with the police officers. Since that day, Fábio and Rodrigo are disappeared.

21. The petitioner alleges that, upon her son's disappearance and after hearing from Ana Carla what had happened, Izildete Santos da Silva, Fábio's mother, immediately went to the police to denounce her son's disappearance, on June 10, 2003. Accordingly, the petitioner indicates that Ms. Silva registered the disappearance of the two youth before the Civil Police officers at the 55<sup>th</sup> Police District in Queimados (registered under *Registro de Ocorrência* R.O. N° 001539/0055/03). The petitioner asserts that after learning more details about the episode, including the possible participation of the Military Police, the mothers of both youth, Izildete Santos da Silva and Natalina Francisca Abilio<sup>11</sup>, presented a complaint (*Queixa*) before the 24<sup>th</sup> Military Police Battalion of Rio de Janeiro, on July 15, 2003, identifying one Military Police officer, who belonged to the 24<sup>th</sup> Battalion, as one of the officers who approached the two youth at the time of their disappearance.

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<sup>11</sup> Rodrigo Abilio's mother.

22. The petitioner describes several other attempts made by the two mothers to locate their sons, seek information about eventual investigations and request action from State authorities. On August 28, 2003, Ms. Silva denounced the disappearances and the possible participation of a Military Police officer before the General Unified Internal Affairs Unit for the Civil Police, the Military Police and Firefighters (*Corregedoria Geral Unificada das Polícias Civil, Militar e Corpo de Bombeiros*). On April 27, 2004, Ms. Silva denounced the disappearances before members of the federal human rights organ “CDDPH”, Council for the Defense of the Rights of the Human Person (*Conselho de Defesa dos Direitos da Pessoa Humana*). On April 12, 2005, Ms. Silva denounced the disappearances before the Public Prosecutor’s Office (*Ministério Público*). On April 21, 2005, Ms. Silva denounced the disappearances and the possible participation of a Military Police officer before the State Secretariat of Public Security. On July 15, 2005, Ms. Silva reiterated her complaint before the 24<sup>th</sup> Military Police Battalion. On September 14, 2005, Ms. Silva denounced the disappearances and the possible participation of a Military Police officer before the Internal Affairs Unit of the Civil Police (*Corregedoria Interna da Polícia Civil*). On September 30, 2005, Ms. Silva reiterated her complaint before the 55<sup>th</sup> Police District in Queimados. Simultaneously, the petitioner argues that Ms. Silva repeatedly wrote to Rio de Janeiro’s Governor, Mrs. Rosinha Garotinho, as well as to other Executive branch authorities, asking for help in locating the disappeared youth and requesting information about the investigations. The petitioner alleges that all those attempts were fruitless.

23. Moreover, the petitioner states that, due to her search for justice and information, Ms. Silva started receiving threats. According to the petitioner, Ms. Silva received death threats by letter, phone calls, and even in person. Indeed, the petitioner alleges that police officers visited Ms. Silva’s residence and told her: “If you keep on denouncing the disappearances and continue your search, the whole family is going to die.” The petitioner describes that Ms. Silva’s other sons also started being harassed and threatened by the police, including her son Flávio, who is mentally disabled. In view of the foregoing, the petitioner observes that, on April 12, 2004, Ms. Silva requested their inclusion in the Victim and Witness Protection Program (PROVITA – *Programa de Proteção a Vítimas e Testemunhas Ameaçadas*) through a letter sent to Rio de Janeiro’s Secretary of Human Rights.

24. According to the petitioner, Ms. Silva’s *notitia criminis* before the 55<sup>th</sup> Civil Police District resulted in a police inquiry (*Inquérito Policial* N° 95/04). However, according to the original petition, three years and 6 months after the disappearances of the alleged victims, this police investigation still had not been concluded. Moreover, according to the petitioner’s communication of August 27, 2007, the aforementioned police inquiry was archived under Process n° 2007.001.029.451-2, on March 15, 2007.

*Leandro dos Santos Ventura, Fabio dos Santos da Silva and Adriano Paulino Martiniano*  
(P-1458/06)

25. The petitioner asserts that, on May 2, 2003, nine Military Police officers carried out an operation in the slum (*favela*) known as “*Morro do Turano*”, in the northern zone of Rio de Janeiro city. According to the petition, the police officers arbitrarily arrested Leandro dos Santos Ventura, brown-skinned, 15 years old, on the street. The petitioner indicates that the police officers also arbitrarily arrested Fabio dos Santos da Silva, brown-skinned, 26 years old, and Adriano Paulino Martiniano (alias “*Sapinho*”), brown-skinned, 25 years old, at a bar where the two youth were playing videogames.

26. The petitioner states that witnesses corroborated the arrest of all three alleged victims by Military Police officers, including the owner of the bar where Fabio and Adriano were arrested, and a passerby who saw three youth being taken and beaten by Military Police officers. Later on, according to the petition, the cadaver of Adriano Paulino Martiniano was found in another *favela* – *Morro do Salgueiro*, where he was executed. The petitioner reports that his death was registered by the Military Police as resistance to arrest (*auto de resistência* registered under *Registro de Ocorrência* R.O. N° 019-02130/2003). The petitioner observes that, according to the forensic reports, his cadaver presented a head-rear entry bullet wound which had caused his death.

27. The petitioner alleges that Leandro and Fabio are disappeared to date. According to the petition, Leandro's mother, Ana Cristina Ramos, gave notice of his disappearance to the Civil Police (6<sup>th</sup> Police District) on May 6, 2003, (registered under *Registro de Ocorrência* R.O. N° 000257/1901/2003) stating that her son had been "arrested" by Military Police officers at *Morro do Turano*. Likewise, the petitioner alleges that Fabio's brother and companion, Edmilson Santos da Silva and Marília Moreira da Silva, also denounced his disappearance at the 6<sup>th</sup> Police District (registered under *Registro de Ocorrência* R.O. N° 006-01856/2003), affirming that he was last seen entering a police vehicle along with two other youth.

28. The petition states that, through a summary investigation carried out by the Military Police (*Averiguação Sumária* N° E—09/251/2558/2003), nine police officers were identified as participating in the operation at *Morro do Turano*. The petitioner stresses that this summary investigation concluded that the officers had carried out ordinary and military crimes and recommended that a police inquiry be opened by the Military Police. This Military Police inquiry (IPM 0414-03) was allegedly initiated on May 19, 2003, by means of Note (*Portaria*) N° 0414/2538/2003, and was supposedly finalized on July 21, 2003. The petitioner states that this inquiry concluded that the police officers had committed homicide – an intentional crime against life (*crime doloso contra a vida*) – which is an offense under the jurisdiction of the civilian judicial system. The files of the inquiry were then allegedly sent to the Public Prosecutor's Office (*Ministério Público*), and a prosecutor supposedly recommended that a Civil Police inquiry be initiated in December 2003. According to the petition, on December 9, 2004, the files of the Military Police inquiry were submitted to the 19<sup>th</sup> Civil Police District so that further investigations could be carried out.

29. The petitioner observes that three separate inquiries were initiated by the 19<sup>th</sup> Civil Police District, one for each alleged victim. The petitioner notes that the inquiries regarding the two allegedly disappeared victims were joined for processing and later sent to the 6<sup>th</sup> Civil Police District which had jurisdiction over *Morro do Turano*. According to the petitioner, the police inquiries regarding the three alleged victims had been pending for three years and seven months at the time the petition was presented before the IACHR. With regard to the joint inquiry related to the two disappeared youth, the petitioner states that it was allegedly submitted to the Civil Police District that specializes in homicides but they could not locate the files, which seemed to have been lost. According to the petition, on April 12, 2007, Fabio's brother declared before the police that his brother was still missing.

*Wallace Damião Gonçalves Miranda, Flavio Moraes de Andrade, Eduardo Moraes de Andrade, Julio César Pereira de Jesus, José Manuel da Silva, and William Borges dos Reis (P-65/07)*

30. The petitioner asserts that the episode involving the six alleged victims, when 5 of them were supposedly summarily executed by the Military Police, is known as "Caju Massacre" (*Chacina do Caju*).<sup>12</sup> The petitioner describes that on January 6, 2004, two Military Police SUV vehicles (Chevrolet Blazer) entered the Caju community for an operation. According to the petition, the alleged victims, six black youth, were standing in front of a local market (*Mercadinho Ribeiro*) when they were approached by ten Military Police officers who beat them and started shooting at them. The petitioner argues that the following five alleged victims were summarily executed on the spot: Wallace Damião Gonçalves Miranda (13 years old), brothers Flavio Moraes de Andrade (19 years old) and Eduardo Moraes de Andrade (17 years old), Julio César Pereira de Jesus (16 years old), and José Manuel da Silva (26 years old). According to the petition, William Borges dos Reis (14 years old) was shot in the leg but managed to run away and find shelter. The petitioner observes that the cadavers of Flavio and Julio César were removed and taken to the E.R. of Municipal Hospital Souza Aguiar by Military Police officers, while the cadavers of Wallace, Eduardo and José Manuel were reportedly disposed of in a swamp behind a bus company, where they were later found.

31. The petitioner states that the surviving victim was traumatized when he declared before the police that he had been shot in the leg during crossfire between Military Police officers and criminals.

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<sup>12</sup> "Caju" is what the community where the alleged facts took place is called.

According to the petition, Wallace presented a subsequent declaration and, consistently with other eye witnesses, described that Military Police officers, some of whom were wearing ski masks, started shooting at him and his friends while they were unarmed and talking to one another in front of the market.

32. According to the petitioner, the Civil Police District that specializes in homicides initiated an inquiry regarding the facts (*Inquérito Policial* N° 028/2004) and the conduct of ten identified Military Police officers who participated in the operation at the Caju community. The petitioner stresses that the deaths of the alleged victims were registered by the Military Police as resistance to arrest (*auto de resistência*). At the time the petition was presented before the IACHR, the petitioner notes that this police inquiry was still pending and had been ineffective.

33. According to the petitioner's communication of May 7, 2007, the police inquiry regarding the facts was separated into two inquiries. The petitioner observes that one of them, regarding the deaths of Flávio and Julio César, concluded that two Military Police officers had killed them, an indictment (*denúncia*) was presented by the Public Prosecutor's Office and gave rise to criminal action N° 2006.001.165355-4, but no hearing or procedural activity had been carried out. The petitioner stresses that the investigation regarding the other deaths and the other Military Police officers remained pending.

## **B. Position of the State**

### **1. Common claims regarding all four petitions**

34. The IACHR observes that the State did not present observations regarding petition P-65/07.

35. With regard to the three other petitions, the State argues that they are inadmissible because domestic remedies have not been exhausted, as required by Article 46.1.a of the American Convention. In this regard, the State asserts that inquiries into the facts and judicial processes are being conducted by the appropriate authorities. Moreover, the State claims that domestic remedies in the civil sphere have not been exhausted either, since neither the alleged victims nor their representatives have pursued a civil action for compensatory damages.

36. The State also observes that the petitions present contextual information about police violence, which is unrelated to the facts regarding the alleged victims.

### **B.2. Specific allegations**

37. With regard to petitions P-1448/06 and P-1452/06 the State asserts that they do not meet the requirement of timely filing, in conformity with Article 46.1.b of the American Convention and Article 32.2 of the IACHR's Rules of Procedure. Indeed, the State observes that the petitions were not lodged within a period of six months from the final judgment, nor were they presented within a reasonable period of time, taking into account when the alleged violations took place.

38. Finally, as regards petition P-1452/06 and the decision to archive the respective police inquiry, the State argues that the judicial decision to archive a police investigation has a *rebus sic stantibus* nature, thus it does not constitute *res judicata* nor does it imply exhaustion of domestic remedies, because if the circumstances change and new evidence is presented to the authorities the police investigation may be reopened at any time.

39. Based on those considerations, the State requests that the IACHR declare petitions P-1448/06, P-1452/06 and P-1458/06 inadmissible for lack of compliance with Articles 46 and 47 of the American Convention.

## **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

### **A. Competence**

40. The petitioner has standing to lodge petitions with the Inter-American Commission pursuant to Article 44 of the American Convention. The alleged victims are 13 individuals, regarding whom the Brazilian State agreed to respect and ensure the rights set forth in the Convention. As regards the State, Brazil ratified the American Convention on September 25, 1992, thus the Inter-American Commission has competence *ratione personae* and *ratione materiae* to examine the petition.

41. The potential violations described in these petitions allegedly took place under the jurisdiction of Brazil, a State Party to the American Convention; therefore, the IACHR has competence *ratione loci*. Finally, the Inter-American Commission has competence *ratione temporis*, since the petitions describe potential violations of rights protected by the American Convention, which allegedly occurred after the American Convention was already in force for Brazil. For the reasons described *infra* (para. 60), the IACHR also takes note that the State ratified the Inter-American Convention to Prevent and Punish Torture on July 20, 1989, so this international instrument was also in force for Brazil at the time the events denounced in these four petitions took place.

## **B. Exhaustion of domestic remedies**

42. Under Article 46.1 of the American Convention, for a petition to be admitted by the IACHR, the remedies offered by the domestic jurisdiction must have been exhausted in accordance with generally recognized principles of international law. The second paragraph of Article 46 states that those provisions shall not apply when domestic legislation does not afford due process of law for the protection of the right in question, when the alleged victim has been denied access to the remedies offered by domestic law, or when there has been an unwarranted delay in rendering a final judgment under those remedies.

43. The Inter-American Commission observes that the petitioner argued that --with regard to all four petitions-- the party alleging violations had been denied access to the remedies under domestic law or had been prevented from exhausting them, as provided for under Article 46.2.b. of the American Convention. The State, on the other hand, rejected that argument and claimed that domestic remedies had not been exhausted as regards petitions P-1448/06, P-1452/06 and P-1458/06. The IACHR understands that the four petitions included in this report present different situations with relation to the requirement of exhaustion of domestic remedies; therefore, each situation needs to be examined herein.

44. Preliminarily, as a general matter, the Inter-American Commission must reiterate that in cases such as the ones at hand, which allegedly involve criminal offenses prosecutable *sua sponte* in Brazil --including forced disappearance of persons, summary executions and aggravated assault-- the suitable and effective remedy is normally a criminal investigation and trial before the ordinary judicial system. Therefore, the IACHR determines that for facts such as the ones dealt with by all four petitions, ordinary criminal proceedings initiated and pursued *sua sponte* by the State are the appropriate judicial remedies for clarifying the events, prosecuting those responsible, and establishing the corresponding criminal sanctions, in addition to enabling other forms of redress. As the Inter-American Commission has repeatedly asserted, in cases such as the ones at hand, a civil action for compensation need not be pursued or exhausted prior to involving the inter-American system, since that remedy would not respond to the principal claims being raised in these petitions concerning what is alleged to have been a lack of due diligence to investigate, prosecute and punish the violations supposedly perpetrated by State agents.<sup>13</sup>

45. Having established above that it must examine the police investigations and the judicial procedures carried out by the Brazilian authorities, the IACHR next looks at the development of those procedures as regards the four petitions. First of all, the IACHR notes that, as regards petitions P-1448/06, P-1458/06 and P-65/07, the parties agree that the corresponding criminal proceedings --

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<sup>13</sup> IACHR. Report No. 51/10, Petition 1166-05, Admissibility, *Tibú Massacres* (Colombia), March 18, 2010, paras. 110 and 120; Report No. 38/10, Petition 1198-05, Admissibility, *Ivanildo Amaro da Silva et al.* (Brazil), March 17, 2010, paras. 29 and 33; and Report No. 61/09, Petition 373-03, Admissibility, *Josenildo João de Freitas Jr. et al.* (Brazil), July 22, 2009, para. 28.

including police investigation and criminal trial-- remain pending a final judgment. Indeed, with respect to petition P-1448/06, the file before the IACHR indicates that, almost five years after the occurrence of the facts denounced, the investigation carried out by the Civil Police was still incomplete and pending (*supra* paras. 18 and 35). Similarly, with regard to petition P-65/07, the file before the IACHR indicates that, three years and four months after the occurrence of the facts denounced, there was no final judgment nor was there a first instance judgment regarding the deaths of the alleged victims (*supra* paras. 32 and 33). In fact, the information available to the Inter-American Commission specifies that two separate inquiries were carried out by the Civil Police. Accordingly, the death of two of the alleged victims had reached the Judiciary after the police inquiry determined that two Military Police officers had killed them and an indictment was presented, while the deaths of three alleged victims and the facts related to William Borges dos Reis remained under investigation by the Civil Police.

46. The Inter-American Commission observes that the facts denounced in petitions P-1448/06 and P-65/07 were initiated between July 24, 2003 and January 6, 2004, respectively. The IACHR file contains no indication that a criminal action regarding the deaths of the alleged victims and the assault against William Borges dos Reis has concluded or produced a final judgment. Moreover, the State has presented no specific information on particular circumstances applicable to these two petitions that would justify, for the purposes of the admissibility ruling, the length of time that has gone by since the facts took place and during which the domestic courts have not issued a final judgment. The IACHR notes in this regard that the Inter-American Court of Human Rights has held that the prior exhaustion rule must never “lead to a halt or delay that would render international action in support of the defenseless victim ineffective,”<sup>14</sup> nor be interpreted in a way that would cause a prolonged or unjustified hindrance of access to the inter-American system. Therefore, the IACHR rules that the exception provided for in Article 46.2.c of the American Convention is applicable with respect to petitions P-1448/06 and P-65/07.

47. With regard to petition P-1458/06, the file before the IACHR indicates that, four years and five months after the occurrence of the facts denounced, the police inquiry was still incomplete and pending (*supra* paras. 29 and 35). Moreover, the Inter-American Commission observes that the initial investigations into the alleged summary execution of Adriano Paulino Martiniano and the forced disappearances of the other two alleged victims were primarily carried out by the Military Police. The IACHR has repeatedly asserted that, in general, military judicial systems do not offer effective remedies to deal with violations of human rights. Therefore, cases involving the military jurisdiction are not necessarily subject to the requirement of prior exhaustion of domestic remedies before lodging a petition with the Inter-American Commission.

48. With specific regard to Brazil, in its decision on the admissibility of petition P-11.820 (*Eldorado dos Carajás*) in 2003, the IACHR concluded that it “does not consider the military police to have the independence and autonomy needed to impartially investigate alleged violations of human rights allegedly carried out by military police.”<sup>15</sup> The IACHR has emphasized that even when a criminal process is underway before the ordinary jurisdiction, the mere investigation of violations of human rights by military justice entails problems:

[w]hen the military justice system conducts the investigation of a case, the possibility of an objective and independent investigation by judicial authorities which do not form part of the military hierarchy is precluded.<sup>16</sup>

49. Therefore, the IACHR determines, in line with its constant doctrine, that although formally there does exist a remedy in Brazil for investigation of human rights violations perpetrated by the Military Police, the conditions that apply render such investigations inadequate, and accordingly a petitioner need

<sup>14</sup> I/A Court H. R., *Velásquez Rodríguez Case*, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, para. 93.

<sup>15</sup> IACHR, Report No. 4/03, Admissibility, Petition 11.820, *Eldorado dos Carajás* (Brazil), February 20, 2003, para. 27. See also IACHR, *Report On the Situation of Human Rights in Brazil*, OEA/Ser.LV/II.97, Doc. 29 rev. 1, Chapter III (September 29, 1997), paras. 77 and 95(i)

<sup>16</sup> IACHR, Report No.4/03, Admissibility, Petition 11.820, *Eldorado dos Carajás* (Brazil), February 20, 2003, para. 28.

not exhaust such a remedy.<sup>17</sup> The Inter-American Commission concludes that petition P-1458/06 is admissible, in accordance with the exception to the rule of prior exhaustion of domestic remedies set forth in Article 46.2.a of the American Convention.<sup>18</sup>

50. Finally, as regards petition P-1452/06, it is an undisputed fact that the court decision to archive the police investigation was issued on March 15, 2007 (*supra* paras. 24 and 38). Regarding this matter, the IACHR has consistently held that in Brazil a court decision to archive a police investigation is final, since it is not subject to any legal appeal.<sup>19</sup> In accordance with Brazilian law, specifically the Code of Criminal Procedure, there is no appeal against a court ruling to archive a police investigation.<sup>20</sup> Therefore, once this judgment has been handed down, for the purposes of admissibility, domestic remedies have been exhausted.<sup>21</sup> The IACHR therefore determines that this petition meets the requirement set forth in Article 46.1.a of the American Convention.

51. In conclusion, the IACHR hereby determines that the terms of Articles 46.2.c, 46.2.a, and 46.1.a have been complied with by petitions P-1448/06 and P-65/07, P-1458/06, and P-1452/06, respectively. Finally, with respect to the petitions in which the Inter-American Commission determined the applicability of exceptions to the rule requiring the exhaustion of domestic remedies, it must be pointed out that those exceptions are closely related to the possible violation of certain rights protected by the American Convention, such as the guarantees of access to justice. Those issues will be examined, where relevant, by the IACHR during the merits stage, in order to verify whether they in fact constitute violations of the American Convention.<sup>22</sup>

### C. Timeliness of the petition

52. Article 46.1.b of the American Convention requires that petitions be lodged within a period of six months following notification of the final judgment. On the other hand, Article 32.2 of the IACHR's Rules of Procedure provides that:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the [Inter-American] Commission. For this purpose, the [Inter-American] Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

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<sup>17</sup> See, *inter alia*, IACHR, Report No. 39/10, Admissibility, Petition 150-06, *Nélio Nakamura Brandão and Alexandre Roberto Azevedo Seabra da Cruz* (Brazil), March 17, 2010, para. 34; Report No. 4/03, Admissibility, Petition 11.820, *Eldorado dos Carajás* (Brazil), February 20, 2003, para. 31; Report No. 23/02, Merits, Case 11.517, *Diniz Bento da Silva* (Brazil), February 28, 2002, para. 25; and Report No. 32/04, Merits, Case 11.556, *Corumbiara Massacre* (Brazil), March 11, 2004, paragraph 265.

<sup>18</sup> See, *mutatis mutandi*, IACHR Report No. 96/09, Admissibility, Petition 4-04, *Antônio Pereira Tavares et al.* (Brazil), December 29, 2009, para. 35.

<sup>19</sup> IACHR, Report No. 37/02, Admissibility, Case 12.001, *Simone André Diniz* (Brazil), October 9, 2002, paras. 25-27; Report No. 80/05, Case 12.397, Inadmissibility, *Hélio Bicudo* (Brazil), October 24, 2005, para. 27; Report No. 41/07, Petition 998-05, Admissibility, *Lazinho Brambilla da Silva* (Brazil), July 23, 2007, para. 57; and Report No. 118/09, Petition 397-04, Inadmissibility, *Nelson Aparecido Trindade* (Brazil), November 12, 2009, para. 22.

<sup>20</sup> IACHR, Report No. 80/05, Case 12.397, Inadmissibility, *Hélio Bicudo* (Brazil), October 24, 2005, para. 28; and Report No. 41/07, Petition 998-05, Admissibility, *Lazinho Brambilla da Silva* (Brazil), July 23, 2007, para. 57.

<sup>21</sup> See IACHR, Report No. 6/10, Admissibility, Case 262-05, *José do Egito Romão Diniz* (Brazil), March 15, 2010, paras. 25 and 26.

<sup>22</sup> IACHR, Report No. 61/09, Petition 373-03, Admissibility, *Josenildo João de Freitas Jr. et al.* (Brazil), July 22, 2009, para. 31; IACHR, Report No. 72/08, Petition 1342-04, Admissibility, *Márcio Lapoente da Silveira* (Brazil), October 16, 2008, para. 75; Report No. 23/07, Petition 435-06, Admissibility, *Eduardo José Landaeta Mejía et al.* (Venezuela), March 9, 2007, para. 47; Report No. 40/07, Petition 665-05, Admissibility, *Alan Felipe da Silva, Leonardo Santos da Silva, Rodrigo da Guia Martins Figueiro Tavares et al.* (Brazil) July 23, 2007, para. 55.

53. Having ruled above that domestic remedies were exhausted on March 15, 2007, with respect to petition P-1452/06, the Inter-American Commission establishes that the petition --presented on December 27, 2006-- complies with Article 46.1.b of the American Convention.<sup>23</sup>

54. As regards petitions P-1448/06, P-1458/06 and P-65/07, the Inter-American Commission must determine, in accordance with Article 32.2 of its Rules of Procedure, whether the petitions were lodged within a reasonable period of time. The petitions were filed on December 27, 2006 (P-1448/06 and P-65/07) and December 28, 2006 (P-1458/06), three years and five months, two years and eleven months, and three years and seven months, respectively, after the facts described therein started to occur. Given the circumstances of these three petitions, particularly the allegations of denial of justice related to the investigations and criminal procedures which remain in their initial stages, as well as the fact that two victims allegedly remain disappeared, the Inter-American Commission concludes that the petitions were lodged within a reasonable period of time. Consequently, the requirement set by Article 32.2 of the IACHR's Rules of Procedure has been met.

#### **D. Duplication and *res judicata***

55. Nothing in the present files indicates that the subject of these petitions is pending in any other international proceeding for settlement, or that it is substantially the same as another petition previously studied by the Inter-American Commission or by any other international organization. Hence, the requirements set forth in Articles 46.1.c and 47.d of the American Convention have been met.

#### **E. Colorable Claim**

56. For purposes of admissibility, the Inter-American Commission must determine whether the facts reported in the petition tend to establish a violation of the rights guaranteed by the American Convention, as required by Article 47.b thereof, or whether the petition should be rejected as "manifestly groundless" or "obviously out of order." At this stage in the proceedings it falls to the IACHR to carry out a *prima facie* evaluation, not to establish alleged violations of the American Convention or other applicable treaties, but to examine whether the petition describes facts that could tend to establish violations of rights protected by the inter-American instruments. This examination in no way constitutes a prejudgment or preliminary opinion on the merits of the case.<sup>24</sup>

57. The petitions under examination allege a public security policy that intentionally and disproportionately targets young, poor and black males as victims of police violence, thus allegedly demonstrating a trend of social and/or racial profiling related to police violence in Rio de Janeiro. If proven true, the alleged facts regarding forced disappearances and summary executions perpetrated by the Military Police, in a context of implicit or explicit institutional encouragement, or at least tolerance, of police violence, would tend to establish grave human rights violations.

58. As regards the specific potential violations, the IACHR observes that four of the alleged victims were allegedly forcedly disappeared in 2003. This is the case of Fábio Eduardo Soares Santos de Souza and Rodrigo Abilio (P-1452/06), who allegedly were disappeared in the early hours of June 10, 2003, after being last seen with Military Police officers. It is also the case of Leandro dos Santos Ventura and Fábio dos Santos da Silva (P-1458/06), who allegedly were disappeared after being arrested by Military Police officers at the *favela Morro do Turano*, on May 2, 2003. With regard to these four alleged victims and their forced disappearances, following the *jurisprudence constante* of the inter-American system of human rights, the IACHR declares the petitions admissible with regard to Articles 3, 4, 5 and 7

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<sup>23</sup> The IACHR notes that this petition was presented before the aforementioned exhaustion of domestic remedies; however, the Inter-American Commission observes that, in principle, a determination of whether or not the admissibility requirements are met must be made at the time that the admissibility report is adopted.

<sup>24</sup> IACHR, Report No. 61/09, Petition 373-03, Admissibility, *Josenildo João de Freitas Jr. et al.* (Brazil), July 22, 2009, para. 36.

of the American Convention, in conjunction with the obligation to respect rights recognized therein, as provided for in its Article 1.1.<sup>25</sup>

59. The IACHR notes that the remaining alleged victims were purportedly victims of extrajudicial, summary or arbitrary executions allegedly perpetrated by Military Police officers. In all situations described in the petitions, the petitioner argues that the alleged victims were supposedly seen under the custody of Military Police officers prior to their subsequent execution. Moreover, the petitioner alleges that they might have been beaten and/or tortured prior to their execution. According to the information, one of the remaining alleged victims, 14-year-old William Borges dos Reis (P-65/07) managed to survive the attack. Notwithstanding the foregoing, if proven, the allegations related to the purported intention and objective to summarily execute him along with the other 5 alleged victims in that petition,<sup>26</sup> would tend to establish a violation of Articles 4, 5 and 7 of the American Convention with respect to the eight alleged victims who were supposedly executed, as well as the surviving alleged victim, in conjunction with the obligation to respect rights recognized therein, as provided for in Article 1.1 of the American Convention.<sup>27</sup>

60. Moreover, in virtue of the principle of *iura novit curia*, the Inter-American Commission decides that the petitioner's allegations regarding acts intentionally performed by public servants acting in that capacity that potentially amount to torture, tend to establish a violation of the rights guaranteed under Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to all thirteen alleged victims.

61. All four petitions have described that the alleged victims were youth of African descent who lived in poor neighborhoods (*favela* or similar) in Rio de Janeiro, and who might have been targeted because of their age and their social and racial characteristics. In this regard, as it has done in the past,<sup>28</sup> the IACHR will examine at the merits stage the relation between police violence against youth and their race and social status in Brazil. Therefore, also in virtue of the principle of *iura novit curia*, the Inter-American Commission declares these petitions admissible with regard to a potential violation of Article 24 of the American Convention, in conjunction with the obligation to respect rights recognized therein, as provided for in its Article 1.1.

62. The IACHR takes note that five of the alleged victims were supposedly children under the age of 18 at the time of the facts, as follows: Wallace Damião Gonçalves Miranda was 13 years old (P-65/07), William Borges dos Reis was 14 years old (P-65/07), Leandro dos Santos Ventura was 15 years old (P-1458/06), Julio César Pereira de Jesus was 16 years old (P-65/07), and Eduardo Moraes de Andrade was 17 years old (P-65/07). Consequently, also in virtue of the principle of *iura novit curia*, the Inter-American Commission declares these petitions admissible with regard to potential violations of Article 19 of the American Convention, in conjunction with the obligation to respect rights recognized therein, as provided for in its Article 1.1, to the detriment of the aforementioned alleged victims.

63. In addition, the Inter-American Commission considers that if the allegations regarding the lack of due diligence in the criminal investigations, as well as the allegations of implicit or explicit institutional encouragement, or at least tolerance, of police violence on the part of State authorities, are proven, they could tend to establish violations of Articles 8 (in virtue of the principle of *iura novit curia*) and

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<sup>25</sup> Since they were not alleged by the petitioner, the IACHR declares Articles 1.1, 3 and 7 admissible by virtue of the principle of *iura novit curia*.

<sup>26</sup> See, *mutatis mutandi*, IACHR, Report No. 40/10, Petition 590-05, Admissibility, *Márcio Aurélio Gonçalves* (Brazil), March 17, 2010, para. 33. See also I/A Court, *Case of La Rochela Massacre*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 126, citing ECHR. *Acar and Others v. Turkey*; and *Makaratzis v. Greece*

<sup>27</sup> Since they were not alleged by the petitioner, the IACHR declares Articles 1.1 and 7 admissible by virtue of the principle of *iura novit curia*.

<sup>28</sup> See, *inter alia*, IACHR, *Report on the Situation of Human Rights in Brazil*, Chapter IX, para. 24; Report No. 33/04, Case 11.634, Merits, *Jailton Neri da Fonseca* (Brazil), March 11, 2004, paras. 35-39; and Report No. 26/09, Case 12.440, Merits, *Wallace de Almeida* (Brazil), March 20, 2009, paras. 61-67 and 137-152.

25 of the American Convention, in conjunction with the general obligations provided for in its Articles 1.1 and 2.

64. Also according to the principle of *iura novit curia*, the IACHR holds that, given the nature of the alleged violations described in this petition --which include forced disappearances and extrajudicial, summary or arbitrary executions-- in a context of police violence affecting specific communities, as well as particular threats, fear of retaliation and the treatment received by surviving family members who have searched for justice; those elements could tend to establish violations of Article 5.1 of the American Convention with respect to the family members of the alleged victims who might be identified at the merits stage.<sup>29</sup>

65. Finally, the Commission considers that the petitioner has not presented basic elements to establish *prima facie* their claim concerning a potential violation of the right to honor and dignity, protected under Article 11 of the American Convention. Therefore, the IACHR declares that this claim is inadmissible, according to Article 47.b of the American Convention.

66. In conclusion, the IACHR decides that the petition is not “manifestly groundless” or “obviously out of order;” and as a result, declares that the petitioner has met *prima facie* the requirements set by Article 47.b. of the American Convention as regards potential violations of Articles 3, 4, 5, 7, 8, 19, 24 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 of the same instrument, as detailed above. Likewise, the IACHR declares these petitions admissible in relation to possible violations of Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture. On the contrary, the Inter-American Commission rules that, in conformity with Article 47.b of the American Convention, these petitions are inadmissible as regards the alleged violation of Article 11 of the same instrument.

## V. CONCLUSIONS

67. The Inter-American Commission concludes that it is competent to examine the merits of this case, and decides that the petitions are admissible under Articles 46 and 47 of the American Convention. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

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<sup>29</sup> See, *mutatis mutandi*, IACHR. Report No. 38/10, Petition 1198-05, Admissibility, *Ivanildo Amaro da Silva et al.* (Brazil), March 17, 2010, para. 40; and Report No. 61/09, Petition 373-03, Admissibility, *Josenildo João de Freitas Jr. et al.* (Brazil), July 22, 2009, para. 38.

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

**DECIDES:**

1. To rule these petitions admissible as regards the alleged violation of the rights protected in Articles 3, 4, 5, 7, 8, 19, 24 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 of the same instrument;
2. To rule these petitions admissible as regards potential violations of the rights protected in Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture;
3. To rule these petitions inadmissible, with regard to the alleged violation of Article 11 of the American Convention;
4. To notify both parties about this decision;
5. To continue with its analysis of the merits of this case;
6. To publish this decision and to include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 23<sup>rd</sup> day of the month of October, 2010.  
(Signed): Felipe González, President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, and José de Jesús Orozco Henríquez, members of the Commission.