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REPORT No. 155/21

PETITION 151-15

REPORT ON ADMISSIBILITY

MARCOS REBELLO FILHO ET AL.
BRAZIL

Adopted electronically by the Commission on July 21, 2021.

Cite as: IACHR, Report No. 155/21, Petition 151-15, Admissibility, Marcos Rebello Filho et al., Brazil [Date of adoption].



I. INFORMATION ABOUT THE PETITION

Petitioner(s)	Defensoria Pública do Estado de São Paulo (Office of the Public Defender of the State of São Paulo)
Alleged victim(s)	Marcos Rebello Filho, Thiago Roberto Soares, Edson Rogério Silva dos Santos, Wagner Lins dos Santos, Diego Vieira dos Santos Miranda, Ana Paula Gonzaga dos Santos, Eddie Joey Oliveira, Ricardo Porto Noronha, Mateus Andrade de Freitas, Rogério Monteiro Ferreira, and their family members: Débora Maria da Silva (Edson Rogério Silva dos Santos' mother), Edinalva Santos (Marcos Rebello Filho's mother), Vera Lúcia Gonzaga dos Santos (Ana Paula Gonzaga dos Santos' mother and Eddie Joey Oliveira's mother-in-law), Rita de Cássia Ribeiro (Rogério Monteiro Ferreira's mother), Maria da Pureza de Araújo Noronha (Ricardo Porto Noronha's grandmother), Cleiton da Silva Noronha (Ricardo Porto Noronha's brother), Ilza Maria de Jesus Soares (Thiago Roberto Soares' mother), Maria Sônia Lins (Wagner Lins dos Santos' mother), Vera Lúcia Andrade de Freitas (Mateus Andrade de Freitas' mother), João Inocêncio Correia de Freitas (Mateus Andrade de Freitas' father)
Respondent State	Brazil ¹
Rights allegedly violated	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 25 (judicial protection) of the American Convention on Human Rights ² in connection with Article 1(1) thereof the Convention (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition	March 16th, 2015
Notification of the petition to the State	April 24, 2018
State's first response	August 1, 2018
Additional observations of the petitioner(s)	August 20, 2018; September 4, 2018; May 24, 2019; October 23, 2019; July 8, 2020
Additional observations of the State	January 25, 2019; July 18, 2019

III. COMPETENCE

Competence <i>ratione personae</i>	Yes
Competence <i>ratione loci</i>	Yes
Competence <i>ratione temporis</i>	Yes
Competence <i>ratione materiae</i>	Yes, American Convention (instrument adopted on September 25, 1992)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and international <i>res judicata</i>	No
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¹ In accordance with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Flávia Piovesan, a Brazilian national, did not participate in the discussion or decision on this matter.

² Hereinafter "American Convention" or "Convention."

³ The observations submitted by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention in relation to its articles 1(1) (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes. V. Section VI below
Timeliness of the petition	Yes. V. Section VI below

V. ALLEGED FACTS

1. The petitioner asserts that the Brazilian State is responsible for human rights violations resulting from assaults and summary executions committed by police officers in May 2006 and March 2007 in the city of Santos, São Paulo state, as well as the subsequent impunity, to the detriment of the persons executed and their families. The table below, prepared by the inter-American Commission in light of the allegations and evidence presented by the petitioner, describes and systematizes the facts alleged:

Deaths of Marcos Rebello Filho and Thiago Roberto Soares on May 14, 2006

On May 14, 2006, at around 11:30 p.m., while the young men Marcos, Thiago and Jó Farias da Silva (22 years old), were at a pizzeria/game store situated at an unnumbered property on Rua São Francisco in downtown Santos, when two hooded men on a black motorcycle and four hooded men in a black Fiat Marea car arrived. Two of them were wearing gray pants and black boots. They called Thiago (known as “Amarelinho”) outside and shot him. Then they went in and shot Marcos and Jó.

Marcos received 3 shots to the head at close range; Thiago, 9 shots (8 from behind): 2 in the head, 1 in the back, 1 in the thigh, and 5 in the forearms; and Jó, 8 shots. The first two died from their wounds and Job was left a paraplegic.

Aspects related to the investigation of the killings of Marcos Rebello Filho and Thiago Roberto Soares

During the investigations into the crime, which were registered in Police Inquiry No. 120/06 of Santos 5th Police District and registered as Police Inquiry No. 184/06 of the 1st Criminal Trial Court (*Vara Criminal e do Júri*) of Santos, it was initially found that Marcos had a record of drug possession in 1999, in São Sebastião, and that Thiago used marijuana and had a record as a teenager. This information was used to morally disqualify the boys and served to justify the actions of their executioners. The police investigation report would use that evidence as a way of qualifying the killings.

A female eyewitness (whose name is withheld for security reasons) told Marcos’ family that military police officers known by the nicknames “Bolacha,” “Bubu,” “Derinho,” and Aragão were involved in the killing of the young men.

Marcos’ mother, Edinalva, reported having passed on the contact information of this witness to the 5th Police District. When she later visited the witness’ home, she learned that the witness had been threatened and assaulted by military police officers at her home. The police officers had threatened to fake a *flagrante* [to claim, fraudulently, to have caught her in the act of committing a crime] to justify her arrest. After those threats, the witness did not identify anyone when she was formally heard at the inquiry. He said, however, that he saw four hooded people in a black Marea and that two of them were wearing gray pants and black boots, items that are part of the uniform worn by the Military Police of the State of São Paulo.

The policeman “Bolacha,” identified as Ezequiel Magalhaes da Silva and stationed at the 1st Shock Battalion, Rota de Santos, owned a black Marea exactly like the one recognized by the people who were at the pizzeria. This was discovered after a relative of the victims recognized the car, photographed the license plate, and requested that it be traced. Police officer Ezequiel gave testimony during the inquiries, but denied participation in the crime, saying that on the day of the events he had been at his mother’s house in the city of Praia Grande. Reportedly, Ezekiel subsequently left the Police Department and moved to another state.

The owner of the establishment, when heard, stated that moments before the attack a Military Police vehicle passed by the place at low speed, carefully observing the interior of the pizzeria/shop.

Thiago’s mother, Ilza Maria de Jesus Soares said in a statement to the Justice and Peace Commission of the Archdiocese of São Paulo (CJP) that Thiago had no criminal record. She said that several people witnessed the crime and told her how it happened. She also said that Thiago had already mentioned to her several instances of harassment, assaults, and threatening of young people in the neighborhood by police, saying that if anything happened to him, the person responsible would be a police officer called “Bubu.” Ilza also said that when she went to the 7th Police District, right after the crime, she encountered military police officers there armed with machine guns and hoods.

Also, in a statement to CJP, Edinalva Santos, Marcos’ mother-in-law, confirmed that it was “Bubu” who shot Thiago, because he raised his hood at a certain moment and people who were in the place reportedly saw him. Those same people reported that the shooters collected the shell casings from the scene. However, the record does not show that those people were summoned to testify. Marcos’ mother also said that her son was threatened by “Bolacha,” who had a black Marea car, and that he had already been assaulted by

another policeman named Aragão. Finally, she said that those two policemen had threatened the above-mentioned eyewitness. There is no record in the investigation of Police Officer Aragão being called to provide information about the facts.

Débora Maria da Silva reported that on the morning of the day after the executions, she spoke by phone with the military police officer known as "Bubu," who was a distant family member of hers. The policeman told her to tell all her acquaintances, but "not the trash," not to leave their homes that day, because anyone who was on the street would be considered an "enemy of the Police." He asked Deborah if his name was being linked to the deaths of Thiago (Amarelinho), Marcos and Jó the night before. Débora said yes, and he then said that "we couldn't stand this kid anymore, saying that he had killed and humiliated an MP [military policeman]," and that the policemen made the boy "kneel down and urinate on himself before he died. Finally, he said that he was in the car and that he had passed by the place, but that he had not taken part in the executions. This policeman was also not called to testify during the police investigation.

The police investigation was closed on May 7, 2008, and the crime remained unsolved. Among the flaws in the investigation of the case, the petitioner highlighted (i) a general failure to exhaust possible lines of inquiry in the investigation and, more specifically, (ii) a failure to preserve and forensically examine the crime scene; and (iii) the lack of testimony from the police officers known as Aragão and "Bubu."

Killing of Edson Rogério Silva dos Santos on May 15, 2006

Edson was riding the motorcycle of a friend, Ricardo, when he ran out of fuel. He pushed the motorcycle to a gas station called Umarama, located at the 673 Avenida Nossa Senhora de Fátima and the corner with Rua Jovino de Melo, which was closed. From there he called Ricardo, who arrived riding the motorcycle that belonged to Edson. Soon after, together with a security guard and a gas station attendant, the 4 were approached by 8 military police officers in a [Chevrolet] Blazer and two [Volkswagen] Gols, all of them Military Police vehicles.

Ricardo told Débora Maria da Silva, Edson's mother, that he was beaten by the policemen after telling them that he had already served a full sentence for robbery many years before. Débora Maria da Silva, mother of Edson Rogério Silvados Santos, reported the fact to the Justice and Peace Commission of São Paulo in a statement on October 1, 2007.

After the search, which reportedly lasted ten minutes, Edson got on his motorcycle and went to the Portal gas station with a plastic soda bottle. Ricardo waited for Edson until 5 a.m., when he borrowed the watchman's bicycle and went to buy gasoline for his motorcycle, and then left.

Later, it was learned that Edson had been accosted near there, on Nova Cintra Hill, when he was shot five times: 3 shots in the thorax and abdomen from the front; 2 shots below the waist from behind. According to the police report, the body was found at 288 Rua Torquato Dias at 11:20 p.m. That very day Edson had swept that same street in the afternoon; he had been working for four years, with a work permit, at the company Terracom, a public sanitation concessionaire in the city of Santos.

Aspects related to the investigation of the killing of Edson Rogério Silva dos Santos

During the investigations (recorded in Police Inquiry No. 122/06 of the 5th Police District of Santos and registered as Police Inquiry No. 166/06 of the 1st Criminal Trial Court of Santos), it was found that Edson's criminal record was consulted in the Civil and Criminal Identification System of the Public Security Secretariat twenty times between 11:53 p.m. on the 15th and 5:22 p.m. on the 16th.

Police officers from the Military Police Operations Center (COPOM) who were working during the period were heard, and said that they did not remember making those inquiries.

Edson had a conviction for robbery in 1997 and had served his full sentence. The petitioner pointed out that a typical practice of death squads in Brazil was precisely to murder people with criminal records.

The police officers who first arrived at the scene were heard, but none of them confirmed that they had made the earlier approach at the gas station.

The petitioner also pointed out that a report of one of the Military Police vehicles in the area that night indicates that it took a route in Santos that was consistent with the route that Edson would probably have taken from the gas station to the place of his death.

The gas station attendant said that he did not recognize any of the police officers who attended the incident.

The attempted recognition, however, was only first made on March 12, 2008, almost two years after the murder. The petitioner mentioned that as a result of the delay in the proceedings a security guard who worked there was not heard because in the interim he had left São Paulo and moved to another state.

Edson's mother, Débora Maria da Silva, told the Peace and Justice Commission of São Paulo that Edson was approached near the gas station by two cars, and that another gas station attendant witnessed the events. She said that Ricardo (the friend who was with Edson) told her at the wake that during the approach at the gas station, the policemen beat them and told Edson: "Dead guy, you're a thief," after he confirmed that he had a criminal record. She also said that a resident of the Nova Cintra residential complex called COPOM after hearing the shots; that this resident had approached the body and spotted .380 casings and had also lifted the motorcycle and noticed that it had a little gasoline in it. This resident, however, was not heard at the inquiry. He also reported that, during the wake, several police cars were driving past the place, slashing their tires and driving at high speed. There was also a black Marea parked there, from which a person was constantly getting out, going into the wake, and then returning to the vehicle. This police intimidation that occurred at the wake has not been investigated by the authorities.

The tapes from the gas station's security cameras were only requested two months after Edson's death. By then, the footage had already been recorded over, which happened every week. Edson's mother, Mrs. Débora, had told the police chief about the existence of those tapes three days after the killing. According to Débora, when she asked the prosecutor to collect the tape, he advised her to go to the police station and claim to be a friend of his, the prosecutor, in order to get the tape collected.

Additionally, there is no crime scene examination report in the investigation.

Also not collected was the firearm projectile that was lodged in Edson's body. The coroners reported in the autopsy report that they had difficulty removing it. Edson was buried with one of the bullets that killed him still lodged in his body. The bullet was only removed upon the exhumation of the corpse in June 2012. It is not reported that any ballistic comparison was done of the projectile.

The military policeman who registered the police report was Private Aragão (the same one mentioned in connection with the killings of Marcos, Thiago and Jó Farias da Silva). When heard in this investigation, he said that he had received a call via COPOM to attend a traffic accident and that, when he arrived at the scene, he found the victim shot. There is no information in the record about the "traffic accident."

There was also no forensic examination of Edson's motorcycle. Débora said that the first time she tried to release her son's motorcycle released, the acting police chief said that it was necessary to wait because the motorcycle had to undergo an expert examination. Ten days later, since no forensics had been done, the police chief released the motorcycle.

In addition to the lack of forensics, the motorcycle had also not been preserved. When Mrs. Débora received it at a municipal yard, she found that the fuel tank had white powder on the bottom. It turned out to be sugar. She called a policeman working at the place and asked what it meant. The policeman replied that they must have done this to the motorcycle at the Police Station to damage the engine. No investigations were done in that regard.

Military Police vehicles were also seen in the vicinity of the church where the mass to mark the anniversary of Edson's death was held, passing at high speed, with hooded officers leaning out of the vehicles.

The police investigation was closed on June 23, 2008. The crime was registered as "unsolved." In requesting that the case be set aside, the Public Prosecution Service mentioned that between May 13 and May 17, 2006, there were attacks throughout the state of São Paulo encouraged by members of a criminal faction, and that, "in retaliation, the Military and Civil Police reacted to some of the attacks and there was also interference from para-police groups."

Killings of Wagner Lins dos Santos and Diego Vieira dos Santos Miranda on May 15, 2006

The cousins Wagner and Diego were returning from Wagner's sister's house in São Vicente, when, on Caminho da Divisa, Jardim Castelo, in Santos, at around 10 p.m., they heard shots and saw a large red, off-road-style motorcycle, possibly a Yamaha XT, with 2 hooded men on it. The man on the back of the motorcycle shot at them with a submachine gun. At that moment, Anderson Francisco Anchia (16 years old) and Éwerton de Castro Moreira (19 years old) were a few meters away from a bar, where the first shots were fired. Wagner was fatally struck by 6 shots from behind. Diego was hit by 1 shot in the leg; Anderson (at the bar) by 2 shots, also in the leg; and Éwerton (at the bar) by 1 shot in the back.

Aspects related to the investigation of the killings of Wagner Lins dos Santos and Diego Vieira dos Santos Miranda

The investigations into the crime were recorded in Police Inquiry No. 121/06 of Santos 5th Police District and registered as Police Inquiry No. 197/06 of the 1st Criminal Trial Court of Santos.

Following the report on the incident that day, the first witness statement in the case was taken 59 days after the facts (on July 13, 2006). Surviving victims were heard, who said they were unable to recognize anyone because of how quickly the events occurred. Information was provided about the color and probable make of the motorcycle. Wagner's mother and stepfather were also heard, but asked only about the character of the fatal victim. No other relatives of the victims were heard from. The military police officers who attended the incident were also heard and said they had no information about the crime.

A female witness (who asked not to be identified for fear of reprisals) stated in an interview in Santos in January 2010, that there were about ten people at the crime scene when the ambulance arrived. Those people were not heard.

The same witness who asked not to be identified also said that all the boys were assisted by an ambulance from the Vila Noroeste Municipal Hospital, which arrived at the bar about 10 minutes after the hooded men committed the deed had acted; then it came to help them. She said that military police officers arrived at the hospital's emergency department, where they pointed their guns at the victims and asked about their criminal records. The witness also said that she found it strange that the military police officers were wearing hoods wrapped around their heads in the form of a cap, and that the weapons they carried were similar to the one used by the shooter on the motorcycle (a submachine gun).

Mr. Murilo Martins, Wagner's stepfather, said that, days after the incident, he went to the place and noticed that there was a commercial establishment nearby. He talked to the owner of the place, who said that he witnessed the events, but, right after the shots were fired, the police arrived and ordered the establishment to close.

The police have also made no attempt to locate the people who were in and around the bar during the incident, or to hear their accounts. The police also made no attempt of any kind to identify the weapon used from the recovered projectiles.

The police officers who attended the incident claimed, again, to have only received a call from COPOM to assist the victims. There was no proof of this call. It is not possible to know whether the officers arrived on the scene as a result of the call or on their own initiative.

The surviving victim stated that, in fact, no police officers showed up at the scene to provide assistance, and that the officers only presented themselves at the hospital emergency department.

The three survivors were not immediately subjected to a corpus delicti examination. Requests for those examinations were made by the police in July and August, after the survivors' testimonies. Not all the examinations were performed. With regard to Ewerton, for example, the director of the Santos Regional Medical Examiner's Office (Núcleo de Perícias Médico-Legais Regional de Santos) confirmed in a letter to the Judge of the Criminal Trial Court of Santos dated May 10, 2007, that until then there had been no record of any corpus delicti examination of Ewerton, almost a year after he had been shot in an attempted homicide. The crime scene was also not properly forensically examined.

The investigative police also did not perform other expected procedures, such as investigating the information about the color and possible model of the motorcycle (the suspected involvement of military police officers needed to be investigated, and this could have been one of the ways in which the investigation determined whether any of the officers owned a motorcycle that matched the description, among other steps that were not performed).

The police investigation was closed on May 4, 2007, and the crime remained "unsolved."

Killings of Ana Paula Gonzaga dos Santos and Eddie Joey Oliveira on May 15, 2006

Ana Paula and Eddie, who lived in a stable union, were talking at around 11 p.m. at the corner of Rua Campos Salles and Rua Braz Cubas, Vilas Mathias, near downtown Santos, when a dark car (dark green or black) pulled up with four people inside, who started shooting at them. Ana Paula, who was almost nine months pregnant, was shot five times: 1 in the left temple; 1 in the abdomen, just below the navel; 1 in the thigh from behind; 1 in the left arm from behind. The corpus delicti examination certified the death of the fetus, 48 cm long, due to "maternal unviability." The fetus had injuries to its left hand and knee. Eddie was struck by eight shots: 2 in the back, 2 in the hands, 3 in the chest, and 1 in the head from behind.

Aspects related to the investigation of the killings of Ana Paula Gonzaga dos Santos and Eddie Joey Oliveira

The investigations into the crime were recorded in Police Inquiry No. 120/06 of Santos 4th Police District and registered as Police Inquiry No. 178/06 of the 1st Criminal Trial Court of Santos.

Ana Paula's mother, Vera Lucia Gonzaga dos Santos, arrived at the crime scene a few hours later and collected bullet fragments. An expert report later stated that those fragments were insufficient to determine the caliber of the weapons used. On that occasion, Vera talked to the watchman at a nearby gas station, Mr. João Góes, who said that he had witnessed the crime. However, he was killed hours later, two blocks down on Rua Braz Cubas, according to witnesses, by a person on a black Biz motorcycle. The murder of Mr. João Góes that was recorded in Police Report No. 2241/06 of Santos 3rd Police District. There were, however, no investigations were done to ascertain any possible or probable relationship between his death and the murders of Ana Paula and Eddie. In a hearing before the Justice and Peace Commission of São Paulo, Vera said that nothing was stolen from her daughter and son-in-law, that neither of them had any criminal involvement, and that the C-section of her daughter, who was nine months pregnant, had been scheduled for May 18. She said that when they were killed, Ana Paula and Eddie were in the company of two friends, Rodrigo and "Cara Suja" (nickname); they were followed and accosted by four hooded persons who were in a dark car. Their two friends managed to escape. The driver of the car got out shooting, hitting Eddie in the leg, who pleaded with him not to harm his pregnant companion. Eddie reportedly recognized the driver, despite the hood. Ana Paula managed to pull the hood off another of the men, who was attacking her. Ana Paula and Eddie reportedly shouted out the names of the people they had managed to identify, who were military policemen known by the nicknames "Nêgo Crush," "Camarão" or "Botejara," and "Cara-de-Cavalo." One of the assailants then allegedly shot Ana Paula in the head. Then they were both machine-gunned. The assailants fled the scene. Soon after, about eight Military Police cars arrived on the scene; the officers said that the victims were still alive and that they had come to provide them assistance, but people who were at the scene (who preferred not to be identified) allegedly told Vera that that was not true. Vera also reported that four military police officers were at the wake of her daughter and son-in-law, taking down the names of the people present, among them two young men who were machine-gunned when they arrived home. Police officers were also present at the seventh day mass.

Six months after Eddie and Ana Paula's murders, the police investigation was closed on November 22, 2006, and the crime remained "unsolved."

Killings of Ricardo Porto Noronha and Mateus Andrade de Freitas on May 17, 2006

Ricardo (then aged 16) and Mateus (22) were schoolmates and had returned home because classes had been suspended due to attacks by the First Capital Command (Primeiro Comando da Capital – PCC) (a criminal organization). After leaving their backpacks at Mateus' house, they went to Pedrinho's Pizzeria, located on Rua Cananéia, Caminho São Sebastião, in the center of the Chico de Paula neighborhood, in Santos, a popular meeting place among their friends. Shortly thereafter, two motorcycles appeared, each carrying two hooded individuals, who fired at the people present. Some threw themselves to the ground, while others, like Mateus, ran off; however, he was shot about 200 meters away.

Aspects related to the investigation of the killings of Ricardo Porto Noronha and Mateus Andrade de Freitas

Ricardo and Mateus received assistance at different locations, which gave rise to the opening of Police Inquiries Nos. 123 and 124/06 of Santos 5th Police District of, filed as Inquiries Nos. 185 and 196/06 with the 1st Trial Criminal Trial Court of Santos. About a year after the facts, the investigations were joined because they were connected.

A person who lived in the vicinity of the scene testified that the shooters were on a green Honda 150 motorcycle and that, according to other witnesses, who did not want to be identified, there was also a black Fiat Marea car at the scene.

Aragão, the police officer who registered the incident and who is mentioned in connection with the executions described above, reported that he had been called, via COPOM, to assist the victims, that he had not seen any witnesses at the scene, and that he did not know how many of shots had been fired.

The police investigation, which was originally closed on May 8, 2007, determined that Mateus “was reportedly involved in narcotics,” indicated the circumstances were a “settling of scores” or “erasing of traces,” and noted that such situations made it “very difficult” to get to the bottom of the case. That reasoning outraged Mateus’ father, Mr. João Inocêncio Correia de Freitas. At his request, the investigation was reopened on June 28, 2007. When interviewed in May 2008, Mr. John showed that his son was studying in the 3rd year of high school, helped out at a place, and that he had no involvement with drugs. Finding that there were no further steps to be taken, the Public Prosecution Service requested that the case be closed again, recognizing that: “Regrettably, on that day and at that time we were living in a situation in which ‘organized crime,’ put established society itself at risk by violently attacking it, causing the death of several public agents, custodial officers, and even ‘civilians,’ as well as causing injuries to those same people and damage to buildings, public vehicles, and buses used for public transportation. In reprisal, not only the regular police, but also other ‘para-police’ groups regarded as ‘death squads,’ began to attack people with suspicious attitudes and, unfortunately, many others who had nothing to do with the situation of lawlessness and insecurity that was unfolding. [...] In view of this, it is now perfectly clear to me that these two young men were attacked completely by mistake.” The investigation was permanently closed on May 15, 2008.

The petitioner mentioned several elements that justified investigative steps that were never carried out. In that regard,

- Maria da Pureza de Araújo Noronha, Ricardo’s grandmother, said that neighbors saw police officers changing clothes at a gas station near the scene (these witnesses were not questioned in the inquiries).

- The owner of the pizzeria reported that he went to the district police station and provided information, but that he did not sign any statement. He reported that, days later, someone called the pizzeria apologizing because they had killed innocent people.

- Mateus’ father said that Military Police officers only showed up at the hospital (the emergency department at Santa Casa in Santos), when he was asked routine questions. On that occasion, he witnessed a nurse angry at the police officers, who he told to “stop killing children.”

- This nurse, who would probably have recognized the policemen, was also not questioned in the inquiries.

- The parents of the young men were only interviewed at the district police station two months after the facts, after they went there to complain about the delay.

- The police officer in charge of the case, Aragão, is the same police officer involved in other cases that ended up being closed. The black Fiat Marea car, present in the first case, was again mentioned by witnesses.

- Several of the numerous people who were present at the scene were not interviewed, and even the statements made by the owner of the pizzeria at the district police station were not included in the investigation.

Killing of Rogério Monteiro Ferreira on March 17, 2007

Rogério Monteiro Ferreira was shot to death on March 17, 2007. According to the police report, the incident occurred at around 2:15 a.m. at Diva’s Bar, located at Avenida Jovino de Mello 735, Santos. Several people were in the bar when a motorcycle arrived carrying two helmeted men, who shot into the bar. Rogerio was shot twice after coming out of the bathroom. Then the shooter approached and fired more shots. In total, four shots hit Rogerio, all from behind, with one in the head. According to a statement given to the Justice and Peace Commission of the Archdiocese of São Paulo, on January 23, 2008, the victim’s mother, Rita de Cássia Monteiro, said he had been taken to the emergency department of the Northwest Zone and later to Santa Casa, where he died.

Aspects related to the investigation of the killing of Rogério Monteiro Ferreira

The investigations into the crime were recorded in Police Inquiry No. 119/07 of Santos 5th Police District and registered as Police Inquiry No. 116/07 of the 1st Criminal Trial Court of Santos.

The owner and an employee of the bar were questioned and said that the attackers were wearing hoods and helmets. The employee said that the shooter was tall and brown-skinned, as he had seen his hand at the time of the shooting. Both also said that there had been two other previous attempted murders outside the establishment.

At least five other witnesses were not questioned: the four friends who were with Rogério at the time of the incident and Maria Ilza, the sister-in-law of Rita (Rogério’s mother), who, as Rita told the Justice and Peace Commission, was passing at the time of the incident, hid behind a phone booth, saw the shooters leaving the bar, and noticed, when one of them lifted his hood, that his face had “pock marks.” Rita also mentioned that another person had been injured at the time of the events and had survived; the investigating officer’s July 2007 report does not mention this information either.

On March 17, 2007, one hour before Rogerio was murdered, Mr. Ademário Santana Júnior was shot near “Diva’s Bar,” also by bikers. The prosecutor who followed the cases of the attacks against Rogério and Ademário considered that both had or followed “the same *modus operandi*.” Ademário’s case was investigated in Police Inquiry No. 120/07, which contains a statement from Ademário that he could not identify the perpetrators because they were wearing helmets. Despite the similarities between different armed attacks in Santos, including the ones against Ademário and Rogério, there was no investigation of the crime of conspiracy to commit crimes.

On May 5, 2007, hooded men killed more people in Baixada Santista. Once again they broke into a bar and shot at the people present, killing three of them. A brother of Rogerio, not identified for security reasons, was one of the victims of this new attack, and managed to survive. Family members of the victims who were at the scene before the shooting reported that, as in other attacks in the area, police officers were patrolling near the scene and using their radios shortly before the crime. The bar that attacked in this incident was on the same street where Marcos Rebello Filho and Thiago Roberto Soares were murdered.

Rita also told the Justice and Peace Commission, on January 23, 2008, that Rogério’s brother was approached on September 25, 2007, by a Military Police vehicle, around 10 p.m., as he was going to the bakery to buy milk for his son. He was put in the car and kept in it until 2 a.m., when he was taken to Nova Cintra Hill. There he was beaten by six Military Police officers, one of whom said he was going to kill him, just as he had his brother. Finally, they took him to the 1st Police District, where he was falsely charged with possession of 1 brick of marijuana. He was convicted on that charge in criminal case No. 834/07 before the 2nd Criminal Court of Santos, and is serving a sentence at a prison in the interior of São Paulo state. When questioned in court in the criminal trial in which he was convicted of drug trafficking, the victim’s brother confirmed that one of the arresting officers had threatened to kill him, just as he had done to his brother. In a conversation with his mother, during a prison visit, the victim’s brother said he knew the name and was able to recognize the police officer who made that statement, but that he would only do so confidentially, because he feared for his wellbeing. Rita also said that, the day after the first attack that took place at the pizzeria/game store in which Thiago and Marcos were killed, this brother of Rogerio was on the street with some friends, when a Military Police vehicle passed by and “Bubu” warned them to “be careful with the ninjas, because if they were they would die like the three from the night before.”

The police investigation into Rogerio’s death was closed on March 18, 2008, and the crime remained unsolved.

2. For its part, the State claimed that the state of São Paulo experienced a “public security crisis” in 2006 that was marked by “riots and threats of widespread attacks on public institutions, places and services” by members of the criminal organization PCC, and that this crisis “led to more-effective and forceful action by police agencies for the restoration of public safety and order,” with the adoption of “measures to restore public safety, public order, as well as the safety of people and property.” The Brazilian State emphasized that the use of public force and rational use of force do not contradict the Convention *per se*, as long as state agents do not act in an arbitrary manner.⁴

3. The State argued that the petitioners have not offered sufficient evidence to attribute the killings to the State, and that the crimes reported by the petitioner were followed up by the appropriate public agencies, the Civil Police, the Public Prosecution Service, and the courts. In that regard, they mention that steps were taken to “investigate the causes and responsibilities related to the executions,” including (i) the opening of police inquiries (police inquiry 166/06 of the 1st Criminal Trial Court of Santos, police inquiry 178/06 of the 1st Criminal Trial Court of Santos, police inquiry 184/06 of the 1st Criminal Trial Court of Santos, police inquiries 185 and 196/06 of the 1st Criminal Trial Court of Santos, police inquiry 116/07 of the 1st Criminal Trial Court of Santos, and police inquiry 120/07 of Santos Police District); (ii) the opening, in 2009, of 857 administrative procedures involving delegates of the Civil Police of the State of São Paulo, in the respective Inspector General’s Office (*Corregedoria Geral*) of the Civil Police.⁵

4. The State informed that four police inquiries did not proceed for lack of grounds to bring charges and were closed (Cases 0022615-40.2006.8.26.0562; 0024977-15.2006.8.26.0562; 0025499-42.2006.8.26.0562; and 016958-83.2007.8.26.0562); and that three other police inquiries, joined in Police Inquiry No. 146/2012 (Cases 0025498-57.2006.8.26.0562; 0026944-95.2006.8.26.0562; and 0026941-43.2006.8.26.0562), were in progress, and the respective expert ballistic comparison report was still pending.⁶

5. The State also held that police investigations were opened in the six homicide cases that are the subject of this petition and that, as the Public Prosecution Service informed, “[a]t the end of the investigations conducted by the Judicial Police, although the material existence of the crimes was demonstrated, the same was not true as regards their authorship, which culminated in the investigations being closed.” Subsequently, in December 2010, the Group for Special Action and Combating Organized Crime

⁴ State’s brief of August 1, 2018.

⁵ State’s brief of August 1, 2018.

⁶ State’s brief of August 1, 2018.

(GAECO), Santos office, opened Criminal Investigation No. 71/2010 to look into the possibility of reopening the investigations related to the murders denounced here. The State reported that the investigation was still in progress, “awaiting expert examination of evidence (ballistic comparisons) following the seizure of firearms in the context of the earlier execution of search warrants.”⁷

6. The aforementioned Santos office of GAECO, the State claimed, opened Criminal Investigation (PIC) No. 94.0563.0000071/201-8, to look into the possibility of reopening the investigations related to the murders committed in May 2006. Several steps were taken by the prosecutors, “culminating in the provisional arrest of 18 police officers and, later, in the indictment of several people, including Military Police officers.” In the city of São Paulo also “starting in 2006, a number of investigations into death squads, several of them involving the participation of Military Police officers, were opened.”⁸

7. In addition, according to the State, the Criminal Operational Support Center (CAO Criminal) of the Attorney General’s Office instituted “several administrative procedures,” including (i) Protocol No. 25/2010 to “follow up by the Public Prosecution Service of São Paulo on the various crimes committed from March 12 to 21, 2006,” in response to a communication from Amnesty International; (ii) Protocol No. 05/2009, opened in response to a request from the Harvard Law School International Human Rights Clinic and Global Justice, through which the Criminal CAO requested all the prosecutors concerned to provide copies of the statements provided in police investigations or criminal actions related to the crimes committed between March 12 and 21, 2006.⁹

8. The State also informed that the Attorney General’s Office of the State of São Paulo received and replied to letters from São Paulo City Council and the State Council for the Defense of Human Rights on the same subject, and that the same Attorney General’s Office issued Regulatory Act No. 955/2016, governing the actions of the Public Prosecution Service of São Paulo in deaths resulting from police intervention, as well as the flow and centralization of the relevant information. In addition, according to the State, the Special Action Group for External Control of Police Activity (GECEP) was created by Regulatory Act No. 650 of June 18, 2010, in order to promote public assistance and the receipt of representations or requests from individuals or entities in relation to irregularities or criminal offenses committed by police agencies in the performance of their duties. The GECEP “opened and appropriately conducted a preparatory administrative proceeding to investigate possible abuses of authority committed by civil and/or military police officers between May 13 and 18, 2006, in the repression of violence unleashed by criminal members of the PCC.” That proceeding was set aside with judicial approval.¹⁰

9. Also, in the framework of the Public Prosecution Service, the State said that that agency signed a cooperation agreement with the State Council for the Defense of Human Rights (CONDEPE) to establish “a prompt and effective reporting mechanism for homicides committed with the suspected involvement of death squads or state agents.”¹¹

10. The State also mentions that the São Paulo Public Prosecution Service and the National Council of the Public Prosecution Service held a public hearing attended by representatives from civil society. The hearing took place on April 7, 2015. Its main objective was “to assess the facts reported by Mothers of May Movement (*Movimento Mães de Maio*) in order to discuss appropriate measures in follow-up to the conclusion of the Protocol of Intentions for the Reduction of Barriers to Access to Justice for Black Youth in Situations of Violence, signed by several bodies: National Council of the Public Prosecution Service (CNMP), National Council of Justice (CNJ), Secretariat for the Promotion of Racial Equality, National Secretariat for Youth of the Office of

⁷ State’s brief of August 1, 2018.

⁸ State’s brief of August 1, 2018.

⁹ State’s brief of August 1, 2018 (mentioning, also, that GAECO “took several statements and was gathering evidence for which experts were still conducting tests, in particular examinations of projectiles found in the corpses and respective ballistic examinations. Furthermore, the duty records were surveyed of the Military Police officers possibly involved in the facts under investigation and referenced at a given point in the testimonies collected”).

¹⁰ State’s brief of August 1, 2018.

¹¹ State’s brief of August 1, 2018.

the President of the Republic, Federal Council of the Brazilian Bar Association, and National Council of Public Defenders General.”¹²

11. The State also said that the Office of the Human Rights Ombudsperson of São Paulo had opened two civil inquiries to gather information about the deaths that occurred in May 2006, which were being processed in a regular manner: Civil Inquiry No. 14.0725.0000382/2015-4, with the purpose of investigating the causes and seeking solutions, through public policies, for the high rates of police lethality in the State of São Paulo, as a result of the actions of the Civil and Military Police; and Civil Inquiry No. 14.0725.0001580/2014-1, with the purpose of providing for the adoption of measures within the scope of human rights (protection of the rights of trans individuals) due to the “wave of violence that culminated in hundreds of deaths.” And that other criminal actions were filed to clarify and ascertain “the circumstances surrounding the so-called ‘crimes of May 2006.’”¹³

12. The State argues that the context of attacks and threats of attacks by the PCC in May 2006 made it difficult to collect evidence, especially witness statements, which led to the closure of some police investigations. Those closures, however, “are provisional in nature (without prejudice) and do not preclude the cases’ reopening should new evidence come to light.” In that regard, the Criminal Investigation No. 94.0563.0000071/2010-8 was instituted with the purpose of reopening the investigations, “and build on the investigative steps taken until then.”¹⁴

13. The State also refers to the requests made by the petitioner that the State provide compensatory damages and says that it “has sought to implement internally the actions suggested by the petitioner in favor of the victims and their families.”¹⁵ The following table contains the information presented by the State according to the requests in question:

REQUESTS	ARGUMENT OF THE STATE
<p>In order make good the obligation to investigate and impose punishment, it is necessary to transfer the investigations from the jurisdiction of the State Court to that of the Federal Court, with the express determination to conduct expert examinations that have not been carried out and to hear or rehear the victims and witnesses mentioned, with guarantees for the protection for those who need it.</p>	<p>On May 18, 2010, Preparatory Proceeding on Motion to Change Jurisdiction (PPIDC-PGR) No. 1.00.000.005535/2010-00 was opened, which, as of July 2019, was in progress.</p> <p>With the aim of determining if the requirements were met for filing a motion to change jurisdiction, information was requested regarding the progress of the investigations by the GAECO, which opened a criminal investigation (PIC No. 94.0563.0000071/2010-8). As of July 2019, those proceedings were ongoing.</p> <p>On May 9, 2016, the Office of the Attorney General of the Republic filed motion to change jurisdiction No. 98625/2016 - ASJTC/SAJ/PGR with the Superior Court of Justice, in relation to the events that occurred in Parque Bristol, a neighborhood in the capital of the state of São Paulo, on May 14 and December 4, 2006, having also occurred in the context of the “crimes of May.”</p> <p>In addition, in December 2010, the GAECO had opened PIC No. 71/2010 in order to determine the responsibility for reopening the investigations related to the murders committed in May 2006, including the facts involving the victims mentioned in the petition before the IACHR.</p> <p>In 2017, a multidisciplinary working group was created, comprising representatives of civil society, as well as the Public Defender Office, the Secretary of Public Safety. At the first working meeting, the creation was proposed of a network to facilitate the flow of information in a swift and transparent manner in cases of crimes involving the police. Since then, the working group has held periodic meetings to discuss new ways of working and an action model for public institutions to combat violence committed by agents of the state.</p>

¹² State’s brief of August 1, 2018.

¹³ State’s brief of August 1, 2018.

¹⁴ State’s brief of August 1, 2018.

¹⁵ State’s brief of July 18, 2019.

Reparation for material and moral injury through the payment of compensation to the victims and their families and public acknowledgement by the State of the violations that occurred. Rehabilitation measures (provision of, or payment for, psychological and medical assistance for the victims who so desire).

To ascertain the responsibility of the state of São Paulo in the episode that became known as the “crimes of May,” which involved the regions of greater São Paulo, Baixada Santista, and large urban centers in the interior of the state of São Paulo, on December 14, 2018, the Office of the Human Rights Ombudsperson of the State of São Paulo filed public civil action No. 1062551-10.2018.8.26.0053, against the Public Treasury of the State of São Paulo, requesting:

(i) that the state of São Paulo be ordered to pay compensation for material injury caused the victims’ families, such as funeral expenses; medical, hospital, and psychological treatment, medication, and loss of earnings, by means of individual approval;

(ii) that the state of São Paulo be ordered to pay compensation for the individual moral injury caused, by means of individual approval, in the amount of R\$ 136,150.00 for the relatives of the fatal victims, and R\$ 68,075.00 for the non-fatal victims;

(iii) that the state of São Paulo be ordered to pay compensation for broader social damages in the amount of R\$ 76,788,600.00 to be allocated to the State Fund for Reparation of Damaged Diffuse and Collective Interests, as envisaged in state law No. 13.555/2009;

(iv) that the state of São Paulo be ordered to provide psychological assistance to the relatives of the victims who so desire, specific to the situations addressed in the lawsuit in question, by professionals provided or hired by the state for that purpose and for the time necessary, at the professionals’ discretion;

(v) that the state of São Paulo be ordered to issue a public, formal apology to the victims and their families in a widely publicized public act, in addition to publishing a clear and objective text on its official website and social networks, as well as in at least three editions of large-circulation newspapers in the capital and interior of São Paulo (at least in the Baixada Santista and Campinas areas), in advertisements of at least a quarter page;

(vi) that the state of São Paulo be ordered to produce a video recording the testimonies of the victims’ relatives, who so desire, to be kept available on the state government’s official website, as well as on its social networks, with a visible link to it for an indefinite period of time, as well as in the state’s public archives;

(vii) that the defendant be ordered to pay the procedural costs, the values of which to be restated as appropriate.

Non-recurrence measures (construction of a monument in the city of Santos and the drafting and adoption of administrative and legislative norms establishing that cases of summary execution be investigated as a priority, consistent with the standards established by international law; training for police officers and members of the Public Prosecution Service on follow-up of investigations and treatment of victims).

- On May 9, 2014, Santos City Council honored the Mothers of May Movement by awarding it the Braz Cubas Medal of Merit. The aforementioned tribute was based on the exemplary work done by the entity and represented the attention given by the Brazilian State to the events that occurred.

- Law No. 14,981 of April 5, 2013, was passed, including “Mothers of May Day” in the state’s tourism calendar, in honor of the victims of the events that occurred between May 2006 and March 2007 and their relatives.

- Law No. 15,501 of July 16, 2014, was passed, instituting the “State Week for Victims of Violence in the State of São Paulo,” marked annually in the week between May 12 and 19.

- The Legislative Assembly of the State of São Paulo (ALESP) established the Democracy Truth Commission in 2015. The purpose of that Commission is to raise public awareness and collect testimonies from people who experienced the events discussed in this petition.

- ALESP has also adopted the following measures:

(i) Event: on June 8, 2006, the ALESP Human Rights Commission held a meeting to discuss the topic “Developments in relation to the wave of violence in the State of São Paulo that began on May 12, with the presence of Dr. Pedro Gilberti, Public Defender General”;

(ii) Public hearing in Santos: a public hearing was held by the Human Rights Commission in Santos on June 9, 2010. According to information in the Official Gazette (Diário Oficial) of the State of São Paulo of 06/10/2010, the Military Police removed 23 police officers for investigation;

(iii) Introduction of a bill: on 11/17/2010, item 16 on the agenda of the Human Rights Commission was Case RGL # 4360/2010, authored by the Mothers of May Movement from Baixada Santista, requesting the presentation of a proposal instituting the State Week for Victims of Violence. Deputy Raul Marcelo, the rapporteur, submitted an opinion proposing a bill instituting “state week for victims of violence in the state of São Paulo”;

(iv) Mothers of May Movement Award: on 10/26/2011, the ALESP Human Rights Commission nominated the Mothers of May Movement from Baixada Santista for the Santo Dias Human Rights Award. The Movement received the award at a solemn session of the ALESP on 12/05/2011;

(v) Hearing of victims, relatives and witnesses: on 11/18/2011, the Human Rights Commission held a meeting at Santos City Hall to hear accounts from members of the Mothers of Santos Movement (*Movimento Mães de Santos*);

(vi) Award for the Mothers of May Movement: on 12/05/2011, the “Mothers of May Movement” received the Santo Dias Award for the Defense of Human Rights;

(vii) Introduction of a bill: on 02/29/2012, Deputy Telma de Souza presented Bill No. 91/2012, proposing the inclusion of Mothers of May Day in the calendar of the state of São Paulo, to be celebrated on May 12. The bill became Law No. 14,981 of 2013.

(viii) Parliamentary Commission of Inquiry (CPI): the minutes of the meeting of 16/10/2013 of the CPI constituted to investigate the disappearance of people, contain an item 3, concerning an invitation to the Mothers of May Movement to a meeting of the CPI. According to the minutes, it was decided that the invitation would be made to the *Mães da Sé* and *Mães em Luta* movements;

(ix) Ceremony to remember the events: the Official Gazette of the State of São Paulo of 05/14/2014, contained a story about the participation of Deputy Telma de Souza in a ceremony to remember “the crimes of May”;

(x) Subcommittee for the study of violence in the state of São Paulo: on 02/20/2015, a meeting of the Subcommittee for the study of violence in the state of São Paulo (under the Commission for the Defense of the Human Rights, Citizenship, Participation and Social Issues) –at the request of the Mothers of May Movement, with the support of the then Secretariat for Human Rights of the Presidency of the Republic– was scheduled on the agenda.

- The federal legislature established the Parliamentary Commission of Inquiry into Youth Murders (CPIADJ) in response to request No. 115 of 2015, with the aim of investigating the murder of young people in Brazil and creating mechanisms to prevent and combat it. The need to launch an investigation was pointed out by the National Youth Council (Conjuve) and by several social movements. The CPIADJ requested data from state governments, the Public Prosecution Service, and the judiciary on the investigation, prosecution, and processing of criminal cases related to homicides of young people between 12 and 29 years old, disaggregating the information by the victims’ sex, age, and skin color. The involvement of public security agencies in the murder of young people was also the subject of investigation. On this point, in addition to numerous public hearings, information was sought on homicides committed by the police, including a description of victims’ profiles and how such incidents are registered and investigated.

In the context of the Chamber of Deputies, the purpose of the investigations was to examine, within 120 days, the social and economic causes, reasons, consequences, and costs of violence, killings, and disappearances of young people. Submitted in July 2015, the final report drafted by the Chamber of Deputies covered homicides that occurred against young people across the country. That report highlighted the report presented by the representative of the Mothers of May Movement, Débora Maria da Silva, about the events involving her son, Edson Rogério Silva dos Santos, on the night of May 15, 2006, in Baixada Santista, São Paulo.

- As a result of the work of the aforementioned parliamentary commission, a bill was presented that instituted the National Plan against Youth Homicide that aimed to reduce levels of violence against young people within ten years. The bill passed the Federal Senate in March 2018 and was under consideration by the Chamber of Deputies.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

14. The State contends that the petition is inadmissible for not stating facts that would tend to establish human rights violations attributable to the Brazilian State, since (i) measures to restore public security and public order were adopted by police officers in response to a public security crisis caused by the criminal organization PCC, consistent with a rational use of public force; (ii) the petitioner had not presented sufficient evidence to attribute the killings to State agents and, as for the duty to investigate and punish those responsible, the State organs had not remained in active.

15. The State also argues that the petition is inadmissible “under the rule of prior exhaustion of domestic remedies, combined with the fourth-instance formula, since the measures adopted by the Civil Police, the Public Prosecution Service and the judiciary of the State of São Paulo prove that there has been no inertia on the part of the State bodies responsible for pursuing, charging, and holding the accused criminally responsible for the murder of the victims mentioned, with the absence of sufficient evidence of criminal authorship being, in some cases, a cause for the lack of criminal accountability.”¹⁶

16. Finally, the State argues that the petition should be declared inadmissible in view of the supervening information or evidence related to the different measures adopted by the State at the domestic level to clarify and ascertain individual responsibilities related to the killings and to provide reparation for the moral and material injuries to the victims and their families. In that regard, the State requested, *inter alia*, that the Brazilian State be granted the opportunity to attempt redress through its internal channels.¹⁷

17. The petitioner affirms that although the State has said that “there are still remedies available and they have proven to be adequate to protect the legal situation in question,” the State has not clearly demonstrated which domestic remedies have not been previously exhausted, in violation of Article 31.3 of the IACHR Rules of Procedure.

18. In addition, the petitioner recalls that all the inquiries instituted against police officers were set aside (*arquivados*), a fact that prevented the criminal accountability of those involved. Despite the State’s contentions that the setting aside of inquiries is not with prejudice, there is no legal recourse under Brazilian law against a decision to set aside a police inquiry. In that regard, the Convention provides for the possibility that the exhaustion provision not be applied when domestic remedies are unavailable for *de facto* or *de iure* reasons.

19. In addition, the petitioner pointed out that it is not necessary to exhaust remedies in the civil jurisdiction before resorting to the inter-American system, since the crux of the matter are the summary executions perpetrated by agents of the State, followed by failures in the investigations and impunity for those responsible; and that, with regard to civil actions, although eight civil suits for moral and material damages were filed against the State of São Paulo, six of them were denied and set aside, and the two that resulted in favorable judgements produced risible judgments, as in the case of Mrs. Débora Maria da Silva (Case No. 0019146-44.2010.8.26.0562), whose established pension payment was only one third of a legal minimum wage. Also disregarded, both in Débora’s suit and in the suit concerning Vera Lúcia Andrade de Freitas and João Inocêncio Correa de Freitas (Case No. 0017540-78.2010.8.26.0562), was the request to order the State to comply with an obligation of action, consisting of an “apology” to be made by the head of the executive branch and the erection of a monument in honor of the victims of the May 2006 crimes.

20. The petitioner also claims that there has been an unwarranted delay in domestic proceedings, since more than 14 years have elapsed since the executions without their clarification and without those responsible having been identified. The petitioner also mentions that the unwarranted delay is evident from

¹⁶ State’s brief of August 1, 2018.

¹⁷ State’s brief of July 18, 2019.

different facts, including the following: (i) in 2020, almost 10 years after the filing of the request for federalization in order to avoid impunity for the crimes (Preparatory Proceeding on Motion to Change Jurisdiction (PPIDC-PGR) No. 1.00.000. 005535/2010-00, filed on May 18, 2010), the requesters had still not received a definitive response from the Office of the Attorney General of the Republic; (ii) the aforementioned federalization or change of jurisdiction proceeding was also at a standstill for a long period – at least from July 2015 to July 2019; (iii) in 2020, 15 years after the motion to change jurisdiction (IDC) was introduced in the Brazilian legal system, the State had not yet taken the necessary steps to adopt legal or normative rules in that regard and, as a consequence, there were very few cases in which requests for change of jurisdiction were accepted by the courts; (iv) motion to change jurisdiction No. 98625/2016 – ASJTC/SAJ/PGR (IDC No. 9), concerning the massacre that occurred in Parque Bristol on May 14, 2006, in the context of the Crimes of May and mentioned by the State in July 2019, was still, in 2020, four years after its registration, without even a scheduled trial date; (v) the aforementioned IDC No. 9 also demonstrates the state’s failure to observe human rights, since the motion to change jurisdiction states that the investigation by state bodies was “merely protocolary,” “[which] led to the absence of practical results in terms of holding the perpetrators to account and which, individually considered, also constitutes a serious violation of human rights capable of engaging the country responsibility in international courts” (to cite the motion to change jurisdiction itself).

21. Likewise, the petitioner indicated that (i) according to information provided by the State itself, 12 years after the deaths the investigations were still pending (In this regard, in one of the addenda that the State submitted in its July 2019 brief to the IACHR, dated February 2018 and relating to PIC No. 94.0563.0000071/2010-8, the GAECO public prosecutor said that the investigations were still ongoing, “in particular, awaiting the analysis of the expert ballistic comparison in police inquiry 0017836-32.2012.8.26.0562”); (ii) PIC No. 94.0563.0000071/2010-8, opened by the GAECO in December 2010, still had investigations pending in 2018 and, in 2020, the petitioner was even unable to obtain up-to-date information about the status of the investigation; (iii) important investigative steps had still not been carried out, such as the performance of all forensic tests in relation to the crime scene, the vehicle, and the corpus delicti of the surviving victims; the inquiry and search for data on police activity in the area where the crimes were committed; the investigation of the activities of death squads (“none of the police investigations conducted by the local district units of the Civil Police of São Paulo met the minimum standards of a proper homicide investigation and were set aside with the identities of those who planned and committed the homicides still unknown”); (iv) the failures in investigation have to do with a context of impunity for police officers who commit homicides, marked also by high closure rates for cases classified as “resistance to arrest followed by death” (autos de resistência) by the police.

22. The petitioner also said that (i) public civil suit (ACP) No. 1062551-10.2018.8.26.0053, also mentioned by the State, was only filed on December 14, 2018, i.e., more than 12 years after the fact; (ii) due to this delay, the court of first instance dismissed the suit in June 2019, considering the five-year statute of limitations provided in art. 1 of Decree No. 20,910/1932; (iii) within the framework of that same suit, in November 2019, the appeals filed by the Public Prosecution Service and the Public Defender’s Office of the State of São Paulo, through its Specialized Citizenship and Human Rights Center, were dismissed, and the Special and Extraordinary Appeals filed by the Public Defender’s Office were both denied in June 2020.

23. First, the Inter-American Commission notes that the petitioner has reported facts in a manner sufficient to allow both the State to mount a defense, and the Commission to analyze the case. The Commission must conduct a *prima facie* analysis for the sole purpose of determining whether the facts presented tend to establish a possible violation of human rights, as well as whether the facts are not manifestly groundless or out of order.¹⁸ In the present matter, the facts described meet that requirement. The State’s submissions as to whether there was rational use of public force or about the lack of sufficient elements to attribute the killings to State agents can be examined at the merits stage and do not have the power to render the petition inadmissible.

24. As for the State’s claim that the petition should be declared inadmissible in view of supervening information or evidence that the State has adopted at the domestic level measures to clarify and

¹⁸ IACHR, Report No. 93/17, Petition 48-08, Admissibility, Ernesto Lizarralde Ardila et al., Colombia, August 8, 2017, para. 13.

ascertain individual responsibilities for the killings and to repair the moral and material injuries suffered by the victims and their families, the Commission clarifies that inherent changes in the evolution of the circumstances of the facts at the domestic level do not prevent the admissibility of petition or a finding that violations were committed,¹⁹ and that considerations about reparations correspond to the merits stage.²⁰

25. Regarding the exhaustion of domestic remedies, the Commission notes that in situations that include crimes against life and personal wellbeing, the domestic remedies to be exhausted are those related to the criminal investigation and punishment of those responsible.²¹

26. Under Article 46.2 (c) of the American Convention, the exhaustion rule does not apply when there is unwarranted delay in the adoption of a decision under the domestic remedies in question. There are no specific provisions in the Convention or Rules of Procedure that define the length of time that constitutes unwarranted delay. Therefore, the Commission evaluates each case to determine whether a delay exists.²²

27. The evidence presented by the parties indicates that more than 15 years after the killings, the crimes remain unsolved. Without prejudging the merits, there are sufficient indications that this lapse of time has no factual or legal justification. In this sense, the elements brought by the petitioner related to the limits of the police investigations are illustrative, as is the profusion of measures reported by the State, despite which it has not been possible, after so much time, to exhaust the lines of inquiry and perform the necessary steps to solve the crimes in question.

28. In order to avoid impunity in cases of possible gross human rights violations, the Inter-American Commission had already recommended to the Brazilian State, in 1997, the adoption of a measure to enable the federalization of the investigation and processing of crimes of this type.²³ In the instant case, two motions to change jurisdiction (IDC) prove illuminating about the unwarranted delay. One of them is IDC No. 9, mentioned by the State before the IACHR in the present case as a measure to “offer a response to the victims and the relatives of the victims of the crimes that occurred between May 2006 and March 2007 in the state of São Paulo.”²⁴ In the motion itself, the Federal Public Prosecution Service states that the investigation of the crimes had been “merely protocolary,” and that this is the cause of the absence of “practical results in terms of holding the perpetrators to account.”²⁵ The other, Preparatory Proceeding on Motion to Change Jurisdiction (PPIDC-PGR) No. 1.00.000.005535/2010-00, was filed on May 18, 2010; according to information from the State itself,²⁶ it has seen no significant procedural developments and, according to the petitioner, in 2020 had yet to have any concrete effects.

29. Considering the elements presented by the parties and the above considerations, the IACHR concludes that the exception to the rule of exhaustion of domestic remedies provided in Article 46(2)(c) of the American Convention applies in the present case. As for the timeliness of the petition, considering that the alleged killings occurred in 2006 and early 2007 and that the petition was filed in 2015, the Commission considers that the petition was filed within a reasonable time.

30. Finally, the Commission wishes to clarify, as it has on previous occasions,²⁷ that the application of the exceptions allowed under Article 46 of the Convention to determine the admissibility of a

¹⁹ IACHR, *Digest of the Inter-American Commission on Human Rights on its Admissibility and Competence Criteria*, OEA/Ser.L/V/II.175, Doc. 20, March 4, 2020, par. 266.

²⁰ Similarly, IACHR, Report No. 55/08, Petition 532-98, Admissibility, Workers dismissed from Empresa Nacional de Puertos S.A. (ENAPU), Peru, July 24, 2008, par. 46.

²¹ IACHR, Report No. 72/18, Petition 1131-08, Admissibility, Moisés de Jesús Hernández Pinto and Family, Guatemala, June 20, 2018, par. 10.

²² IACHR, Report No. 14/08, Petition 652-04, Admissibility, Hugo Humberto Ruiz Fuentes, Guatemala, March 5, 2008, par. 68.

²³ IACHR, *Report on the Situation of Human Rights in Brazil*, September 29, 1997, Chapter III, Police Violence, Impunity, and Exclusive Military Jurisdiction for the Police, D. Conclusions, par. 95 (j).

²⁴ State’s brief of July 18, 2019.

²⁵ Cf. Brazil, Federal Public Prosecution Service, *Incidente de Deslocamento de Competência No. 98625/2016 - AS/TC/SAJ/PGR*, May 9, 2016, p. 5. Available at <<http://www.mpf.mp.br/pgr/documentos/FederalizaoCrimesdeMaio.pdf>> (accessed May 26, 2021).

²⁶ State’s brief of July 18, 2019, Annex 1.

²⁷ See, for example, IACHR, Report No. 72/03, Petition 12.159, Admissibility, Gabriel Egisto Santillan, Argentina, October 22, 2003, par. 59.

petition does not imply any prejudgment of the merits of the petition. The criterion used by the Commission to analyze the petition during the admissibility phase is preliminary in nature. Consequently, while the Commission concludes that the record of the case supports its admissibility, the causes and effects that prevented exhaustion of domestic remedies will be examined when dealing with the merits of the dispute, in order to determine whether they constitute violations of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

31. This petition includes allegations regarding assaults and killings, acts of intimidation, and arbitrary detention (most notably in relation to Rogério Monteiro Ferreira), as well as alleged failures to investigate and prosecute the crimes, which have resulted in impunity. One of the victims named was 16 years old. It also includes allegations regarding a lack of domestic legal provisions that may have contributed to this outcome, such as the alleged lack of remedies against decisions to set aside a police investigation and alleged failure to introduce in a timely manner regulations on the motion to change jurisdiction.

32. In light of these considerations and having examined the factual and legal arguments presented by the parties, the Commission finds that the petitioner's submissions are not manifestly groundless and require a examination as to merits, given that the allegations, if found to be true, could tend to establish violations of the rights protected at Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 19 (rights of the child), and 25 (judicial protection) of the American Convention, all connection with Articles 1(1) (obligation to respect rights) and 2 (duty to adopt provisions under domestic law) thereof.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 4, 5, 7, 8, 19, and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof.

2. To notify the parties of this decision, continue with the examination of the merits of the matter, publish the decision, and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 28th day of the month of July, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.