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REPORT No. 31/19
PETITION 570-09
REPORT ON ADMISSIBILITY

EDIVALDO BARBOSA DE ANDRADE ET AL.
BRAZIL

Adopted electronically by the Commission on March 31, 2019.

Cite as: IACHR, Report No. 31/19. Petition 570-09. Admissibility. Edivaldo Barbosa de Andrade et al. Brazil. March 31, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Conectas Direitos Humanos, Francisca Evangelista Alves de Souza, Helenita Barbosa de Andrade, and Maria José de Lima Andrade
Alleged victims:	Edivaldo Barbosa de Andrade et al. ¹
State denounced:	Brazil ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), and 25 (judicial protection), all with respect to Article 1.1 of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	May 14, 2009
Notification of the petition to the State:	April 27, 2015
State's first response:	August 28, 2015
Further observations of the petitioners:	December 6, 2017

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*, NATURE, EXHAUSTION OF DOMESTIC REMEDIES, AND TIMELINESS

Duplication of procedures and international <i>res judicata</i>:	No
Rights declared admissible:	Articles 4 (life), 5 (humane treatment), Article 8 (fair trial), and 25 (judicial protection), all with respect to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention
Exhaustion of domestic remedies or applicability of an exception:	Yes, application of the exception provided in Article 46.2.c of the American Convention
Timeliness:	Yes, as set forth in section VI

¹ Other alleged victims: Fábio de Lima Andrade, Israel Alves de Souza, Eduardo Barbosa de Andrade, and Fernando Elza.

² As provided in Article 17.2.a of the Rules of Procedure of the Commission, IACHR member Flávia Piovesan, a Brazilian national, did not participate in the discussions or decision on this matter.

³ Hereinafter "American Convention" or "Convention".

⁴ The observations of each party were duly conveyed to the other party.

V. ALLEGED FACTS

1. Francisca Evangelista Alves de Souza, Helenita Barbosa de Andrade, and Maria José de Lima Andrade, together with the nongovernmental organization *Conectas Direitos Humanos* (hereinafter “the petitioners”), denounce the impunity of police officers involved in the summary execution of Edivaldo Barbosa de Andrade, Fábio de Lima Andrade, Israel Alves de Souza, and Fernando Elza (hereinafter “the alleged victims”), and the attempted murder of Eduardo Barbosa de Andrade, an event they call the “Bristol Park Massacre.” They argue that the events constitute excessive use of force by the police in the context of events that took place between May 12 and May 21, 2006, in the city of São Paulo, known as the “crimes of May 2006.” They allege that on May 12, 2006, the criminal organization *Primeiro Comando da Capital*, or Capital First Command (hereinafter “PCC”), began a series of coordinated attacks on public buildings, especially in the public security area; rebellions at forts, public jails, and lockups throughout the State; and, later, attacks on public transportation vehicles and banks. They point out that 564 people were murdered and 110 were wounded in those ten days, including civilians and police officers.

2. They state that on the night of May 14, 2006, Edivaldo, Eduardo, Fábio, Fernando, and Israel were shot at with firearms several times by three hooded men who fled the scene. They state that the police were alerted and that the responding officers failed to secure the crime scene, claiming it was an “extremely dangerous” neighborhood. The police also allegedly failed to gather evidence of the crime, so it was the mothers of the alleged victims who collected three bullets and one shell, and later delivered them to authorities at the Police Station.

3. The five alleged victims were taken to the hospital; Edivaldo, Fábio, and Israel died. A police inquiry was undertaken and, in the depositions, the surviving alleged victims, Eduardo and Fernando, stated that various bullets had been fired at their backs and their heads; this was corroborated by the expert postmortem analyses. They state that a vehicle similar to the one used in the attack was seen in a Military Police Battalion, but the investigation did not go beyond an exchange of letters on the matter with the corps command and, although the vehicle was recognized as Military Police property, no expert analysis or further investigation was conducted.

4. They state that on the day of the events, other shootings with firearms had occurred, leaving 29 wounded and 115 dead, but this circumstance was not mentioned in the investigations, and no attempt was made to connect or compare the assaults on the alleged victims with the other shootings. The petitioners stress that, after the PCC attacks, the roles were reversed and the police proceeded to summarily execute supposed members of that organization. Not until November 2007 were the mothers of the fatally shot victims (now petitioners) heard, when they repeated that some police officers had taken part in the crimes in reprisal for the PCC attacks.

5. The petitioners state that on December 4, 2006, Fernando was murdered a few meters from the place where his attempted murder had taken place. The gunshots were allegedly fired from inside a vehicle, which immediately fled the scene. They state that a police inquiry was undertaken and concluded that this had been an ambush; the inquiry was closed on July 13, 2007, without identifying the parties responsible. They allege likewise that, again, in this case, no attempt was made to connect the murder with the attempt made during the massacre or with the other crimes of May 2006. On November 5, 2008, the investigations into the massacre were closed without identifying the parties responsible. On November 18, 2008, the Office of the Public Prosecutor requested that the police inquiry should be shelved; the judge granted this request the following day and that decision was published on November 26, 2008.

6. Given such impunity, in May 2009, the petitioners lodged a petition to transfer jurisdiction⁵ (hereinafter “IDC”) over both police inquiries. Only in May 2016 did the Office of the Federal Public Prosecutor apply to the Superior Tribunal of Justice (hereinafter “STJ”) for a transfer of jurisdiction. However, the petitioners allege, two years went by, and no measure was taken.

7. The petitioners point to a context of excessive use of force by police and a high fatality rate in operations by public security agents in Brazil. With particular respect to extrajudicial executions that took place in May 2006—identified by the petitioners as death squads made up of State agents—they provide data collected and analyzed by the Regional Medical Council of the State of São Paulo and by the University of the State of Rio de Janeiro (UERJ), which allegedly demonstrate the pattern of actions taken in that period. They state that most of the gunshot wounds found on the bodies—including those of the alleged victims—were on the back of the body and the head.

8. The State, for its part, maintains that the police inquiry was initiated on May 15, 2006, at which time the Police Chief requested all necessary examinations of both the site and the bodies. It also affirms that all the depositions and statements were taken, demonstrating effective and impartial action by the police to unravel the facts of the crime and continue the investigations. The State also affirms that the evidence did not constitute proof of executions in the manner described by the petitioners and that the investigations had indeed been correlated and did take into account the violent context of that time. The State emphasizes that the death of Fernando occurred six months after the PCC attacks and the petitioners were assisted by attorneys who found nothing irregular in the conduct of the police inquiries. Lastly, the State affirms that, contrary to the Petitioners' allegations, there is no proof of a link between the criminal events reported in the wave of PCC attacks and those that took place in Bristol Park.

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

9. Concerning the exhaustion of domestic remedies, the petitioners first state that these were exhausted on November 26, 2008, upon publication of the decision to grant the request to shelve the police inquiry, and they stress that such decision is not subject to appeal. Nevertheless, they say, in May 2009 they presented an IDC request, and the case has been pending before the STJ for two years.

10. The State, conversely, argues that the shelving of the police inquiry does not constitute *res judicata*, since, should new evidence arise, the investigations can resume, and criminal proceedings can be initiated. The State also mentions that the Office of the Public Prosecutor can institute a criminal proceeding on its own initiative, apart from the police investigations, and that such action can be set in motion by the parties through the presentation of new evidence. The State thus maintains that, after the inquiry was shelved, the petitioners did not again seek action from the Office of the Public Prosecutor by submitting additional information. Lastly, the State alleges that the shelving of the inquiry does not impede access to reparations, which were not sought by the Petitioners.

11. The Commission stresses that no treaty provisions or regulatory provisions exist to govern specifically the length of time that would constitute “unjustified delay,” so each case must be

⁵ Also known as federalization of serious crimes against human rights.

assessed individually to determine whether such a delay has occurred⁶. In this case, the Commission notes that 12 years have elapsed with no identification of the parties responsible, despite attempts by the petitioners to bring this about domestically. The Commission thus finds the aforementioned length of time sufficient for application of the exception provided in Article 46.2.c of the American Convention.

12. In addition, the Commission reaffirms that, in cases such as this, it is not necessary to exhaust a civil action before turning to the inter-American system, because that remedy would not satisfy the principal claim set forth in this petition, i.e., the alleged summary killing of the alleged victims, followed by the lack of due diligence in the investigation, in the filing of a criminal action, and the punishment of those responsible⁷.

13. Article 32.2 of the Rules of Procedure of the Commission establishes that, in cases in which exceptions to the prior exhaustion of domestic remedies are applied, the petition must be presented within a reasonable period of time in the judgment of the Commission. In reaching that determination, the Commission must consider the date on which the alleged violation of rights occurred and the circumstances of the particular case. In the complaint in question, the Commission decided for application of the exception to the exhaustion of domestic remedies, under Article 46.2.c of the American Convention since the investigation archiving in November 2008. Therefore, having examined the context and the particulars of this case, the Commission deems the petition to have been submitted within a reasonable period of time and the admissibility requirement concerning the presentation deadline has been met.

VII. ANALYSIS OF COLORABLE CLAIM

14. Therefore, bearing in mind the considerations of fact and of law set forth by the parties and the nature of the matter presented, the Commission finds that the events described, if proven, could constitute violations of Articles 4 (life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection), all with respect to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention.

VIII. DECISION

1. To declare this petition admissible with respect to Articles 4, 5, 8, and 25, all in relation to Articles 1.1 and 2 of the American Convention;

2. To notify the parties of this decision; to continue to examine the merits of the matter, and to publish this 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 31st day of the month of March, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, and Luis Ernesto Vargas Silva, Commissioners.

⁶ IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruiz Fuentes. Guatemala. March 5, 2008, para. 68.

⁷ IACHR, Report No. 78/16, Petition 1170-09. Admissibility. Almir Muniz da Silva. Brazil. December 30, 2016, para. 32.