

Favela Nova Brasilia vs. Brazil

ABSTRACT¹

This is the first case decided by the Court on the excessive use of force by police during raids in favelas around Rio de Janeiro. The Court found Brazil in violation of several articles of the American Convention as well as the Inter-American Convention to Prevent and Punish Torture.

I. FACTS

A. Chronology of Events

1. Events pertaining to the October 18, 1994 Police Incident

October 18, 1994: Forty to eighty police and military officials from Rio de Janeiro conduct a raid in Favela Nova Brasilia in the morning.² The officers invade at least five houses, either shooting the occupants on sight or detaining them and shooting them, and wrap their bodies in blankets and take them to the main square.³ In two of these homes, the officers sexually assault three women, two of which are 15- and 16-years-old.⁴ In total, the police kill thirteen men and boys, all with multiple bullet wounds.⁵

October 19, 1994: The Governor of Rio de Janeiro creates a Special Committee to investigate the October 18th raid.⁶

1. Adam Knighton, Author; John Flynn, Senior IACHR Editor; Kimberly Barreto, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 333, ¶ 2 (Feb. 16, 2017).

3. *Id.* ¶ 114.

4. *Id.* ¶ 115. The women are referred to by the Inter-American Commission of Human Rights and Inter-American Court of Human Rights as LRJ, CSS, and JFC.

5. *Id.* ¶ 116. The thirteen victims are: Alberto dos Santos Ramos, André Luiz Neri da Silva, Macmiller Faria Neves, Fábio Henrique Fernandes, Robson Genuino dos Santos, Adriano Silva Donato, Evandro de Oliveira, Alex Vianna dos Santos, Alan Kardec Silva de Oliveira, Sérgio Mendes Oliveira, Ranilson José de Souza, Clemilson dos Santos Moura, and Alexander Batista de Souza.

6. *Id.* ¶ 122.

Later in 1994: The Division of Narcotics Control (Divisão de Repressão a Entorpecentes - "DRE") conducts a police inquiry.⁷ Six police officers involved in the raid claim they only removed bodies from the location of their death in an effort to save the victims' lives.⁸ The DRE finds all deaths from the raid justified due to community resistance.⁹

November 10, 1994: The Internal Affairs Division of the Civil Police of the State of Rio de Janeiro Commission (Corregedoria Interna da Polícia Civil - "COINPOL") initiates an administrative inquiry after receiving a letter from a journalist indicating she spoke with women who were in the houses from which police took men during the raid.¹⁰ The women said that after officers handcuffed and took the men away, they found the men dead in the main square.¹¹ One of the two women also indicated that she was a victim of sexual violence.¹²

November 12, 1994: The Governor's Special Committee takes the testimonies of the three alleged victims of sexual violence.¹³ The victims report that roughly ten police officers barged into the house, began firing their weapons, and kicked the women in their ears, belly, and legs.¹⁴ The officers questioned them regarding a drug dealer's location, physically and verbally abusing them throughout the altercation.¹⁵ One victim reports that after she was forced to take off her blouse, an officer took her into the bathroom and threatened to kill her unless she allowed him to sodomize her.¹⁶ The second victim testifies that she was forced to engage in oral sex with a police officer.¹⁷ The last victim testifies that she was sleeping with her fiancé when the police entered their house.¹⁸ The officers assaulted the couple, and one policeman groped the victim's

7. *Id.* ¶ 120.

8. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 120.

9. *Id.*

10. *Id.* ¶ 121.

11. *Id.*

12. *Id.*

13. *Id.* ¶ 123.

14. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 123.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* ¶ 124.

breasts.¹⁹ Police took away the victim's fiancé in handcuffs, and his body was later with the other corpses in the main square.²⁰

November 14, 1994: The three alleged sexual violence victims undergo forensic investigations, but there are no conclusive results as too much time has passed.²¹

November 17, 1994: Criminal forensics experts, accompanied by Ms. Botelho Portugal, examine buildings associated with the police raid, but the experts are unable to conclude anything as no one made an effort to preserve potential evidence.²²

November 18, 1994: The alleged sexual violence victims identify several officers who participated in the assaults and homicides.²³

November 22, 1994: The Secretary of State for the Civil Police requests information necessary to continue the investigation from the Special Police Torture and Abuse Authority (Delegacia Especial de Tortura e Abuso de Autoridade - "DETAA"), but no one fulfills requests for several years.²⁴

December 1994: The Special Commission of Inquiry presents a report to the Governor of Rio de Janeiro that states that evidence indicates some of the dead died by execution.²⁵ As a result, the Head of Public Prosecutions appoints two officers to assist in the investigation at the request of the Secretary of State.²⁶ The Head of DETAA also initiates a police inquiry.²⁷

December 19-26, 1994: Nine DRE officers testify that they were not witnesses to any killings or sexual assaults, they did not participate in any acts of torture or abuse, and they were unaware of the killings until seeing the corpses in the street.²⁸

19. *Id.*

20. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 124.

21. *Id.* ¶ 125.

22. *Id.* ¶ 121.

23. *Id.* ¶ 125.

24. *Id.* ¶ 126.

25. *Id.* ¶ 127.

26. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 127.

27. *Id.* ¶ 128.

28. *Id.* ¶ 129.

December 30, 1994: The Head of DETAA requests further measures, but there is no further progress until 2002.²⁹

August 27, 2002: DETAA resumes the investigation of the case.³⁰

February 15, 2008: The police officer responsible for the raid testifies to the facts of the case.³¹

September 19, 2008: A search order is issued to find the relatives of the alleged victims.³²

August 14, 2009: COINPOL issues its final report ordering the closing of all criminal actions relating to the raid.³³

March 7, 2013: The Deputy Attorney General of Rio de Janeiro requests to reopen the investigation into the raid because there was never any inquiry into crimes such as homicide, robbery, torture, and abuse of power.³⁴ He precludes the sexual violence claims from the second investigation as they were already investigated.³⁵

May 16, 2013: The Public Ministry of Rio de Janeiro, with the help of the Special Action Group for the Suppression of Organized Crime (Grupo de Atuação Especial de Repressão ao Crime Organizado - "GAECO") initiate criminal actions against six of those implicated in the killings during the raid.³⁶

January 17, 2014, and September 1, 2014: Prosecutors request to locate the three alleged sexual assault victims.³⁷

July 7, 2014: The investigation and prosecution hearing continue, even though two witnesses are missing.³⁸

29. *Id.*

30. *Id.* ¶ 138.

31. *Id.* ¶ 141.

32. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 141.

33. *Id.* ¶¶ 140, 142.

34. *Id.* ¶ 144.

35. *Id.*

36. *Id.* ¶ 145.

37. *Id.* ¶¶ 146, 147.

38. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 146.

October 23, 2014: One alleged sexual assault victim is found.³⁹

March 27, 2015: The Public Prosecutor's Office requests to serve the alleged sexual assault victim.⁴⁰

2. Events pertaining to the May 8, 1995 Police Incident

May 8, 1995: Fourteen Civil Police officers carrying rifles and machine guns enter Favela Nova Brasilia accompanied by two helicopters, allegedly to stop the delivery of an arms shipment to local drug traffickers.⁴¹ A shootout erupts between the police and alleged drug traffickers.⁴² Three officers receive injuries, and thirteen community members are killed.⁴³ A majority of the victims have multiple wounds, often near the head or skull.⁴⁴

The Department of Robbery and Theft of Financial Institutions (Delegacia de Repressão a Roubos e Furtos contra Estabelecimentos Financeiros - "DRRFCEF") receive a report regarding the raid.⁴⁵ Additionally, two officers involved in the raid submit an incident report indicating that all deaths stem from resistance to armed drug traffickers.⁴⁶ The DRRFCEF records the police investigation.⁴⁷ One police officer and six Favela Nova Brasilia residents testify.⁴⁸

May 15, 1995: The investigation official: (1) requests the examination results of seized materials; (2) identifies and prosecutes Mr. Wanderley Messias do Nascimento for narcotics possession; (3) identifies and investigates "Marcinho VP" as the alleged leader of the narcotics gang, and; (4) requests the promotion of officers involved in the raid for acts of bravery.⁴⁹

39. *Id.*

40. *Id.*

41. *Id.* ¶ 117; Favela Nova Brasilia v. Brazil, Admissibility Report, Report No. 78/98, Inter-Am. Comm'n H.R., Case No. 11.566, ¶ 9 (Sep. 25, 1998).

42. Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs, ¶ 117.

43. *Id.* ¶ 118. The victims are: Cosme Rosa Genoveva, Anderson Mendes, Eduardo Pinto da Silva, Nilton Ramos de Oliveira Júnior, Anderson Abrantes da Silva, Márcio Félix, Alex Fonseca Costa, Jacques Douglas Melo Rodrigues, Renato Inácio da Silva, Ciro Pereira Dutra, Wellington Silva, Fábio Ribeiro Castor, and Alex Sandro Alves dos Reis. *Id.* 119.

44. *Id.* ¶ 118.

45. *Id.* ¶ 130.

46. *Id.* ¶ 131.

47. *Id.* ¶ 132.

48. Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs, ¶ 132.

49. *Id.* ¶ 117.

May 23, 30, and 31, 1995: Nineteen police officers testify to the events of the raid, stating there was a conflict with heavy gunfire, they found and seized weapons and drugs, three policemen suffered wounds, and a driver takes injured members of the community to a hospital.⁵⁰

June 29, 1995: Prosecutor Ms. Maria Ignez C. Pimentel requests the driver responsible for bringing the alleged victims to the hospital be cited and brought in for testimony.⁵¹

July 6, 1995: The driver states he does not know if the alleged victims passed before or after he transported them.⁵²

September 21, 1995: The DRRFCEF delegate responsible for the investigation issues a final report about the raid, stating its purpose was to intercept an arms shipment.⁵³ In the favela, the police meet violent resistance and kill thirteen people.⁵⁴ The police find drugs and weapons but never identify their owners.⁵⁵ The delegate says that no further investigations are required and orders the case removed from the Public Prosecutor's Office.⁵⁶

January 29, 1996: Ms. Pimentel requests that the family members of the thirteen victims testify.⁵⁷

September 25, 2000: Forensic expert Ms. Tania Donati Paes Rio presents a report of the autopsies of the alleged victims of the raid.⁵⁸ She points out that multiple shots were exchanged in a gun battle, indicating a likely intent to exterminate an enemy, not a desire to stop an attack.⁵⁹ The proximity of the victim's wounds to vital areas and the fact that some of the bodies were subject to injuries from blunt objects further supports this conclusion.⁶⁰

50. *Id.* ¶ 134.

51. *Id.* ¶ 135.

52. *Id.*

53. *Id.* ¶ 136.

54. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 136.

55. *Id.*

56. *Id.*

57. *Id.* ¶ 137.

58. *Id.* ¶ 149.

59. *Id.* ¶ 150.

60. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 150.

December 15, 2003: COINPOL renumbers and resumes investigation of the case.⁶¹

November 30, 2004: Numerous clerical errors regarding case identification are fixed, and the case receives a proper designation number.⁶²

January 27, 2005, and February 13, 2006: COINPOL requests a judicial search concerning cases filed against Rio de Janeiro related to police fatalities.⁶³

August 13, 2007: COINPOL consolidates the May 8, 1995 raid case with the October 18, 1994 raid case.⁶⁴

September 23, 2008: The COINPOL delegate in charge of this inquiry issues a report concluding the killing during the confrontation occurred because of the complexity of war.⁶⁵

October 2, 2008: COINPOL forwards the case to the Public Prosecutors office.⁶⁶

June 18, 2009: The 3rd Criminal Court closes the case.⁶⁷

October 31, 2012: The Public Prosecutor's office presents a report indicating that the case should reopen because of its flaws.⁶⁸

December 11, 2012: The 3rd Criminal Court Judge refuses to reopen the case.⁶⁹

January 10, 2013: The Attorney General of the Public Prosecutor's Office begins investigations, disregarding the ruling of the 3rd Criminal Court Judge.⁷⁰

61. *Id.* ¶ 139.

62. *Id.* ¶ 152.

63. *Id.* ¶ 153.

64. *Id.* ¶¶ 140 & n. 143.

65. *Id.* ¶¶ 153, 154.

66. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 155.

67. *Id.*

68. *Id.* ¶ 156.

69. *Id.*

70. *Id.*

July 9, 2013: The Homicide division of the Public Prosecutor's Office opens a new police investigation.⁷¹

July 11, 2013: The Homicide division requests the Department of Arms and Explosives Inspection (Divisão de Fiscalização de Armas e Explosivos; "DFAE") send a weapons analysis on the arms used during the incursion.⁷²

November 18-20, 2013: Several witnesses of the raid testify.⁷³

May 7, 2015: The Court of Justice for Rio de Janeiro permits the prosecutors to file a criminal action.⁷⁴ The Court also holds that the defendants likely suffer from "psychological torture," and "investigative perpetuation," even nineteen years later.⁷⁵

3. *Events Pertaining to Ms. Mônica Santos de Souza Rodrigues and Ms. Evelyn Santos de Souza Rodrigues*

July 15, 2002: Ms. Rodrigues and Evelyn Rodrigues begin a civil procedure against Rio de Janeiro.⁷⁶ They want the state to claim responsibility for the death of Jacques Douglas Melo Rodrigues in the May 8, 1995 raid, as well as compensation.⁷⁷

September 27, 2004: The court prescribes Ms. Rodrigues' claims.⁷⁸

February 23, 2005: The court dismisses of the Rodrigues family, as they could not prove that Mr. Rodrigues died at the hands of an officer.⁷⁹

71. *Id.*

72. *Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶ 157.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* ¶ 160.

77. *Id.*

78. *Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶ 160.

79. *Id.*

B. Other Relevant Facts

Favelas are Portuguese shantytowns that surround many of the large cities in Brazil.⁸⁰ Favela Nova Brasilia was settled by migrant workers in northern Rio de Janeiro during the 1950's.⁸¹ By the early 1990's, poor education, low income, and drugs plagued Favela Nova Brasilia and connected favelas, which then grew to a population of over 62,000.⁸² The drug trade in Favela Nova Brasilia drew violent, often deadly police raids.⁸³ In the state of Rio de Janeiro alone, 10,634 police homicides occurred between 2003 to 2014.⁸⁴ The victims of police violence are often young, poor, black, and unarmed.⁸⁵ More than half of those killed by police violence are between 15 and 29, 77% are black, and 93.3% are male.⁸⁶

Brazil acknowledges a desire to end extrajudicial disregard of human rights;⁸⁷ this is difficult, however, as the police killings are often said to happen in self-defense.⁸⁸ "Resistance to imprisonment" is the term often used, which impedes investigations into police killings.⁸⁹ In fact, Police authorities justified both the October 18, 1994, and May 8, 1995 killings with this term.⁹⁰ Circumstances surrounding many of the killings, however, make such justifications dubious.⁹¹ Additionally, when the deceased is found to be a possible criminal, investigations into police homicide often immediately terminate.⁹² While a special report by the United Nations indicates that killings by the police are often executions, the police are the ones who decide whether a killing is an execution or if it is justified.⁹³ Police prosecute few of the killings.⁹⁴

80. Khushboo Sheth, What are the Favelas of Brazil?, WORLD ATLAS, (Apr. 25, 2017), <https://www.worldatlas.com/articles/what-are-the-favelas-of-brazil.html>.

81. Viviana Krsticevic, Favela Nova Brasilia: The First Case on Police Violence in Brazil's Favelas Before a Human Rights Tribunal, HUFFINGTON POST, (Oct. 214, 2016), https://www.huffingtonpost.com/entry/favela-nova-brasil-ia-the-first-case-on-police-violence_us_580158abe4b06f314afeb3eb.

82. *Id.*

83. *Id.*

84. *Id.*

85. Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs, ¶ 103.

86. *Id.*

87. *Id.* ¶ 104.

88. *Id.* ¶ 105.

89. *Id.* ¶ 107.

90. *Id.*

91. Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs, ¶ 107.

92. *Id.*

93. *Id.* ¶ 108.

94. *Id.*

Events like those of the 1994 and 1995 raids are relatively commonplace in favelas. The Inter-American Court's judgment here may change the relationship between citizens and law enforcement, and hold perpetrators of future crimes accountable.

II. PROCEDURAL HISTORY

A. *Before the Commission*

November 3, 1995: The Inter-American Commission on Human Rights receives a petition from the Center for Justice and International Law (CEJIL) regarding the October 18, 1994 raid.⁹⁵

July 24, 1996: The Commission receives a petition from Human Rights Watch Americas regarding the May 8, 1995 raids.⁹⁶

September 25, 1998: The Commission issues a report on admissibility regarding the October 18, 1994 raid.⁹⁷

February 22, 2001: The Commission issues a report on admissibility regarding the May 8, 1995 raid.⁹⁸

October 31, 2011: The Commission decides to combine both cases, as they both concern a similar set of facts and reveal a pattern of conduct and issues a Merits Report.⁹⁹ It finds that the State violated Article 4(1) (Prohibition of Arbitrary Deprivation of Life) in relation to Article 1(1) (Obligation of Non-Discrimination) to the detriment of the 26 victims of the two raids.¹⁰⁰ Additionally, the Commission found the State violated Article 19 (Rights of the Child) in relation to Article 1(1) to the detriment of six of the raid victims who were minors.¹⁰¹

The Commission also found the State violated Articles 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

95. *Id.* ¶ 2.

96. *Id.*

97. See *Favela Nova Brasilia v. Brazil*, Admissibility Report.

98. See *Oliveira et al. v. Brazil*, Admissibility Report, Report No. 36/01, Inter-Am. Comm'n H.R., Case No. 12.388 (Feb. 22, 2001).

99. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 2.

100. *Favela Nova Brasilia v. Brazil*, Report on Merits, Report No. 141/11, Inter-Am. Comm'n H.R., Case No. 11.566, ¶ 145 (Oct. 31, 2011); see *infra* *fn.* 5 & 43.

101. *Id.* ¶ 155. The minor victims are: André Luiz Neri da Silva, 17 years of age; Alex Vianna dos Santos, 17 years old; Alan Kardec Silva de Oliveira, 14 years old; Macmiller Faria Neves, 17 years old; Nilton Ramos de Oliveira Junior, 17 years old; and Wellington Silva, 17 years old.

and 11 (Right to Privacy), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, as well as Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of LRJ, CSS, and JFC.¹⁰²

Next, the Commission determined that the State violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court) in relation to Article 1 (1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of the families of the raid victims.¹⁰³

Finally, the Court found the State violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, and Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Convention of Belém do Pará, to the detriment of LRJ, CSS and JFC.¹⁰⁴

102. *Id.* ¶ 176. The Commission also finds the State violated Article 19 (Rights of the Child) to the detriment of CSS and JFC, who were minors at the time of the assault. *Id.* ¶180.

103. *Id.* ¶ 191. The victims are: Otacilio Costa, Beatriz Fonseca Costa and Bruna Fonseca Costa; Pedro Marciano dos Reis, Hilda Alves dos Reis and Rosemary Alves dos Reis; Geraldo José da Silva Filho and Georgina Abrantes; Maria da Gloria Mendes and Paulo Cesar da Silva Porto; Valdemar da Silveira Dutra and Geni Pereira Dutra; Waldomiro Genoveva, Ophelia Rosa, Rosane da Silva Genoveva and the son of Cosme Rosa Genoveva; Daniel Paulino da Silva and Georgina Soares Chick; Cesar Braga Castor, Vera Lucia Ribeiro Castor, “Michele,” and the son of Fabio Ribeiro Castor; Jose Rodrigues do Nascimento, Dalvaci Melo Rodrigues, Mônica Rodrigues, Evelin Rodrigues, Pricila da Silva Rodrigues, Samuel da Silva Rodrigues, Lucas Abreu da Silva, Cecília Cristina do Nascimento Rodrigues, Adriana Melo Rodrigues and Roseleide Rodrigues do Nascimento; Paulo Roberto Felix; Nilton Ramos de Oliveira, Maria da Conceição Sampaio de Oliveira and Vinicius Ramos de Oliveira; Ronaldo Inacio da Silva, Shirley de Almeida and Catia Regina Almeida da Silva; Vera Lucia Jacinto da Silva; Norival Pinto Donato and Celia da Cruz Silva; Zeferino Marques de Oliveira, Aline da Silva and Efigenia Margarida Alves; Alcidez Ramos, Cirene dos Santos, “Graça,” Thiago Ramos, Alberto Ramos, Maria das Graças Ramos da Silva, Rosiane dos Santos and Vera Lúcia dos Santos de Miranda; Diogo Vieira dos Santos, Helena Vianna, Adriana Vianna dos Santos, Sandro Vianna dos Santos and Alessandra Vianna dos Santos; João Batista de Souza and Josefa Maria de Souza; Lucia Helena Neri da Silva and Joyce Neri da Silva Dantas; João Alves de Moura and Eva Maria dos Santos Moura; Nilcéia de Oliveira; Valdenice Fernandes Vieira, Neuza Ribeiro Raymundo and Eliane Elene Fernandes Vieira; Edson Faria Neves, and Edna Ribeiro.

104. *Id.* ¶ 201.

The Commission ordered the state to: (1) Conduct an effective investigation of the described violations within a reasonable period, taking into account omissions, delays, negligence and obstruction by State agents; (2). Adequately compensate LRJ, CSS, JFC and the victims in Appendix X; (3) Cease using “resistance to imprisonment” to justify killings; (4) Adapt measures that provide police oversight and opportunities to punish human rights violations; (5) Create systems of accountability which ensure investigation of human rights violations; (6) Take measures to make police forces more modern and professional while adapting an internal philosophy which respects human rights; (7) Train police how to interact with the more vulnerable members of society; (8) Use laws to clearly delineate when lethal force is appropriate, taking into account the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the UN Code of Law Enforcement Officials, and the UN Principles on Effective Prevention and Investigation of Summary, Arbitrary and Extrajudicial Executions.¹⁰⁵

B. Before the Court

May 19, 2015: The Commission submits the case to the Court after the State failed to adopt its recommendations.¹⁰⁶

1. Violations Alleged by Commission¹⁰⁷

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 11 (Right to Privacy)

Article 19 (Rights of the Child)

Article 25(1) (Right of Recourse Before a Competent Court)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the American Convention

Article 1 (Obligation to Prevent and Punish Torture)

105. *Id.* “Recommendations” ¶¶ 1-8.

106. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 3.

107. *Id.* ¶¶ 2, 6.

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.

2. Violations Alleged by Representatives of the Victims¹⁰⁸

Same violations alleged by the Commission, plus:

Article 1(1) (Obligation of Non-Discrimination)

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 11(1) (Right to Honor and Dignity)

Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity)

Article 11(3) (Right to Protection from Attacks against Private Life, Family, Home, Correspondence, Honor, and Dignity)

Article 25 (Right to Judicial Protection)

August 17, 2015: The petitioners request to access the Victim's Legal Assistance Fund.¹⁰⁹

November 9, 2015: The State submits seven preliminary objections: (1) the case is inadmissible because the Commission published its Merits Report before submitting it to the Court; (2) the Court lacks *ratione personae* jurisdiction to hear the case with respect to several victims; (3) the Court lacks *ratione temporis* jurisdiction to hear the events prior to the State's recognition of Court's jurisdiction and in relation to the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women and the Inter-American Convention to Prevent and Punish Torture; (4) the Court lacks *ratione materiae* jurisdiction to hear the case because Ms. Rodrigues did not request an appeal; (5) the Court lacks *ratione materiae* jurisdiction for the alleged violations of the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention to Prevent, Punish, and Eradicate Violence against

108. Favela Nova Brasilia v. Brazil, Report on Merits, ¶ 1.

109. Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs, ¶ 6.

Women; (6) the petitioners failed to exhaust domestic remedies; and (7) the petitioners did not submit the case within a reasonable time.¹¹⁰

December 3, 2015: The President-in-Office approves the use of the Legal Assistance Fund to aid the alleged victims.¹¹¹

October-November, 2016: The Public Defender of the Union, the Nucleus of Human Rights of the Pontifical Catholic University of Rio de Janeiro, the HEGOA Institute for International Cooperation and Development, and the Specialized Nucleus of Citizenship and Human Rights of the Public Defender of the State of São Paulo submit amicus briefs to the Court.¹¹²

February 16, 2017: The Court begins deliberations on the case.¹¹³

III. MERITS

A. *Composition of the Court*¹¹⁴

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

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

February 16, 2017: The Court issues its Judgment on Merits, Reparations, and Costs.¹¹⁵

The Court decided unanimously:

110. *Id.* ¶ 18.

111. *Id.* ¶ 8.

112. *Id.* ¶ 11.

113. *Id.* ¶ 16.

114. Judge Roberto F. Caldas, a Brazilian national, did not participate in deliberations for this case. See *Id.* at n.1.

115. See *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs.

To reject five of the State's preliminary objections,¹¹⁶ because:

The Court dismissed the State's first preliminary objection regarding the publishing of the Commission's Merits Report.¹¹⁷ The Commission may publish the Merits Report after it has submitted the case to the Court because the State already knows the analysis and recommendations contained in the report.¹¹⁸ Here, the state identified a publication link dated five months after the case was submitted to the Court.¹¹⁹ The Court found this did not violate any procedural rules.¹²⁰

The Court dismissed the State's fourth preliminary objection for ratione materiae incompetence because the Court is not a court of fourth instances and does not apply national law outside of human rights violations.¹²¹ It is necessary for the Court here to determine the appropriateness and effectiveness of the State's domestic legal proceedings.¹²²

In regards to the State's fifth preliminary objection, the Court emphasized that it has already established it has the jurisdiction to hear violations of the Inter-American Convention against Torture and Other Cruel, Inhumane, and Degrading Treatment.¹²³ Additionally, Article 12 of the Convention of Belém do Pará grants jurisdiction to the Court to review violations.¹²⁴ Accordingly, the Court dismissed the State's fifth preliminary objection.¹²⁵

The Court dismissed the State's sixth preliminary objection for failure to exhaust domestic remedies because the State did not raise the objection at the appropriate time, which is during the admissibility phase of the petition before the Commission.¹²⁶ Moreover, the State did not list which

116. *Id.* "Decides," ¶ 1.

117. *Id.* ¶ 29.

118. *Id.* ¶ 27.

119. *Id.* ¶ 28.

120. *Id.*

121. *Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶ 55.

122. *Id.* ¶ 57.

123. *Id.* ¶ 66.

124. *Id.* ¶ 67.

125. *Id.*

126. *Id.* ¶ 79.

*domestic remedies were available and did not explain why they were effective.*¹²⁷

*Finally, the Court dismissed the State's seventh preliminary objection because the objection was primarily submitted to challenge the failure to exhaust domestic remedies.*¹²⁸ *However, as discussed above, the State failed to properly object to this issue.*¹²⁹

To partially accept two of the State's preliminary objections,¹³⁰ because:

*The Court decided to partially accept the Court's second preliminary objection regarding the identification of the alleged victims.*¹³¹ *While the Commission must generally identify alleged victims before it publishes its Merits Report, the Court may consider additional victims under exceptional circumstances, such as mass or collective violations.*¹³² *Here, the Court determined that the Commission had difficulty identifying victims due to: (1) the context of the case; (2) the human rights violations were collective in nature; (3) there was a lack of identification documents; (4) 22 years passed since the first police raid; and (5) the State caused some registration omissions.*¹³³ *The Court stated the collective nature of the violations and passage of time was not enough to permit the Court to name additional victims.*¹³⁴ *Moreover, the petitioners had 22 years to identify the family members of the 26 people killed and three women raped in the two raid and failed to send a complete list of the families.*¹³⁵ *Accordingly, the Court stated it would only consider the alleged victims names in the Commission's Merits Report.*¹³⁶

*Regarding the State's third preliminary objection, the Court noted that the State accepted the jurisdiction of the Court in December 1998.*¹³⁷ *Accordingly, while the Court cannot examine human rights violations*

127. *Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶ 80.

128. *Id.* ¶ 85.

129. *Id.* ¶ 88.

130. *Id.* ¶ "Decides," ¶ 2.

131. *Id.* ¶ 40.

132. *Id.* ¶ 36.

133. *Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs*, ¶ 38.

134. *Id.* ¶ 39.

135. *Id.* ¶ 40.

136. *Id.*

137. *Id.* ¶ 49.

which occurred during the 1994 and 1995 police raids, it can examine allegations regarding the State's investigation and prosecution of the raids after December 1998.¹³⁸

The Court found unanimously that Brazil had violated:

Article 8 (1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of the victims,¹³⁹ because:

Parties of the State are required to provide judicial remedies to victims of human rights violations.¹⁴⁰ Where, as in this case, there are extrajudicial killings, the State must initiate investigations.¹⁴¹ The Court has held that these investigations require a level of due diligence that protects the rights of victims to a fair trial.¹⁴² Additionally, in the context of extremely violent incidents, a higher level of due diligence is required.¹⁴³ The due process requirements from Article 8 (Right to a Fair Trial) of the Convention apply not only to the judicial process but to

138. *Id.* ¶¶ 49-50.

139. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, "Declares," ¶ 3. The Court named the following as victims of this violation: Alcides Ramos, Thiago da Silva, Alberto da Silva, Maria das Graças Ramos da Silva, Rosiane dos Santos, Vera Lúcia dos Santos de Miranda, Lúcia Helena Neri da Silva, Joyce Neri da Silva Dantas, Edson Faria Neves, Mac Laine Faria Neves, Valdenice Fernandes Vieira, Neuza Ribeiro Raymundo, Eliane Fernandes Vieira, Rogério Genuíno dos Santos, Jucelena Rocha dos Santos, Robson Genuíno dos Santos Junior, Norival Pinto Donato, Celia da Cruz Silva, Nilcéia de Oliveira, Diogo Vieira dos Santos, Helena Vianna dos Santos, Adriana Vianna dos Santos, Sandro Vianna dos Santos, Alessandra Vianna Vieira, Zeferino Marques de Oliveira, Aline da Silva, Efigênia Margarida Alves, Sérgio Rosa Mendes, Sônia Maria Mendes, Francisco José de Souza, Martina Martino de Souza, Luiz Henrique de Souza, Ronald Marcos de Souza, João Alves de Moura, Eva Maria dos Santos Moura, João Batista de Souza, Josefa Maria de Souza, Waldomiro Genoveva, Océlia Rosa, Rosane da Silva Genoveva, Diogo da Silva Genoveva, Paulo Cesar da Silva Porto, Daniel Paulino da Silva, Georgina Soares Pinto, Nilton Ramos de Oliveira, Maria da Conceição Sampaio de Oliveira, Vinicius Ramos de Oliveira, Geraldo José da Silva Filho, Georgina Abrantes, Paulo Roberto Felix, Otacílio Costa, Beatriz Fonseca Costa, Bruna Fonseca Costa, Dalvaci Melo Rodrigues, Mônica Santos de Souza Rodrigues, Evelyn Santos de Souza Rodrigues, Pricila da Silva Rodrigues, Samuel da Silva Rodrigues, Lucas Abreu da Silva, Cecília Cristina do Nascimento Rodrigues, Adriana Melo Rodrigues, Roseleide Rodrigues do Nascimento, Shirley de Almeida, Catia Regina Almeida da Silva, Valdemar da Silveira Dutra, Geni Pereira Dutra, Vera Lúcia Jacinto da Silva, Cesar Braga Beaver, Vera Lúcia Ribeiro Castor, Michele Mariano dos Santos, William Mariano dos Santos, Pedro Marciano dos Reis, Hilda Alves dos Reis and Rosemary Alves dos Reis.

140. *Id.* ¶ 174.

141. *Id.* ¶ 178.

142. *Id.* ¶ 180.

143. *Id.* ¶ 208.

investigative processes that would bring about a criminal action.¹⁴⁴ Therefore, the State must avoid delay and create an investigative body that is sufficiently independent of the responsible parties.¹⁴⁵

In this case, the DRE was in charge of both the 1994 incident and the later investigations.¹⁴⁶ The Court found that this form of organization does not provide enough objectivity or impartiality, directly impacting the investigation.¹⁴⁷ Similarly, the 1995 incident showed only superficial analysis coupled with multiple missed deadlines.¹⁴⁸ The fact that the authority responsible for the 1995 raid was also responsible for the investigations likely explains such negligence.¹⁴⁹

Article 8 also requires that investigations be made in a reasonable time, meaning the time between initiation of investigation and the final judgment may not unreasonably lapse.¹⁵⁰ The 1994 and 1995 raids were investigated for 15 and 14 years respectively.¹⁵¹ Though complexity can increase the length of investigations, the Court did not find that these raids were particularly complicated.¹⁵²

The lack of diligent investigations coupled with the long delays lead the Court to conclude that Brazil violated Article 8 (Right to a Fair Trial) of the Convention.¹⁵³

Article 25 (Right to Judicial Protection), in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention, to the detriment of the victims,¹⁵⁴ because:

144. *Id.* ¶ 185.

145. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 189.

146. *Id.* ¶ 206.

147. *Id.*

148. *Id.* ¶ 214.

149. *Id.* ¶ 216.

150. *Id.* ¶ 217.

151. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 219, 226.

152. *Id.* ¶ 227.

153. *Id.* ¶ 231.

154. *Id.* “Declares,” ¶ 4. The Court named the following as victims of this violation: Alcides Ramos, Thiago da Silva, Alberto da Silva, Maria das Graças Ramos da Silva, Rosiane dos Santos, Vera Lúcia dos Santos de Miranda, Lúcia Helena Neri da Silva, Joyce Neri da Silva Dantas, Edson Faria Neves, Mac Laine Faria Neves, Valdenice Fernandes Vieira, Neuza Ribeiro Raymundo, Eliane Fernandes Vieira, Rogério Genuíno dos Santos, Jucelena Rocha dos Santos, Robson Genuíno dos Santos Júnior, Norival Pinto Donato, Célia da Cruz Silva, Nilcéia de Oliveira, Diogo

Stated generally, Article 25 (Right to Judicial Protection) of the Convention requires States to provide effective judicial remedies against human rights violations.¹⁵⁵ Furthermore, the court has said that these remedies must provide effective results or responses.¹⁵⁶

Regarding the 1994 raid, investigations did not analyze the merits of the case, nor did they take appropriate steps towards material judicial protection.¹⁵⁷ This, coupled with the fact that a judicial solution is still pending 22 years after the incident, leads the court to conclude that the State violated the right to judicial protection.¹⁵⁸ The investigation of the 1995 raid was similarly plagued by very few investigations, which were often irrelevant and afforded no progress towards justice.¹⁵⁹ Because of the pretense that the victims died from legal actions by police, the victim's relatives did not have a proper form of judicial protection.¹⁶⁰ From the preceding information, the Court concludes that Brazil violated the right of judicial protection.¹⁶¹

Articles 25 (Right to Judicial Protection) and 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention as well as Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhumane, and Degrading Treatment), and 8 (Obligation to

Vieira dos Santos, Helena Vianna dos Santos, Adriana Vianna dos Santos, Sandro Vianna dos Santos, Alessandra Vianna Vieira, Zeferino Marques de Oliveira, Aline da Silva, Efigenia Margarida Alves, Sergio Rosa Mendes, Sônia Maria Mendes, Francisco José de Souza, Martinha Martino de Souza, Luiz Henrique de Souza, Ronald Marcos de Souza, João Alves de Moura, Eva Maria dos Santos Moura, João Batista de Souza, Josefa Maria de Souza, Waldomiro Genoveva, Océlia Rosa, Rosane da Silva Genoveva, Diogo da Silva Genoveva, Paulo Cesar da Silva Porto, Daniel Paulino da Silva, Georgina Soares Pinto, Nilton Ramos de Oliveira, Maria da Conceição Sampaio de Oliveira, Vinicius Ramos de Oliveira, Geraldo José da Silva Filho, Georgina Abrantes, Paulo Roberto Felix, Otacílio Costa, Beatriz Fonseca Costa, Bruna Fonseca Costa, Dalvac Melo Rodrigues, Mônica Santos de Souza Rodrigues, Evelyn Santos de Souza Rodrigues, Pricila da Silva Rodrigues, Samuel da Silva Rodrigues, Lucas Abreu da Silva, Cecília Cristina do Nascimento Rodrigues, Adriana Melo Rodrigues, Roseleide Rodrigues do Birth, Shirley de Almeida, Catia Regina Almeida da Silva, Valdemar da Silveira Dutra, Geni Pereira Dutra, Vera Lúcia Jacinto da Silva, Cesar Braga Beaver, Vera Lúcia Ribeiro Castor, Michele Mariano dos Santos, William Mariano dos Santos, Pedro Marciano dos Reis, Hilda Alves dos Reis and Rosemary Alves dos Reis.

155. *Id.* ¶ 232.

156. *Id.* ¶ 233.

157. Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs, ¶ 236.

158. *Id.* ¶ 239.

159. *Id.* ¶ 240.

160. *Id.* ¶ 241.

161. *Id.* ¶ 242.

Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, and Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women, to the detriment of LRJ, CSS, and JFC,¹⁶² because:

The Court has ruled that rape is a form of torture, which requires the State to investigate and institute criminal proceedings where appropriate.¹⁶³ Regarding the three alleged rape victims, LRJ, CSS, and JFC, the court found a lack of diligence in their investigation.¹⁶⁴ No one took measures for their protection during their testimonies, none of them received medical, sanitary or psychological care, and none received compensation for the physical violence against them.¹⁶⁵ In fact, when the case reopened in 2013, their rapes were not considered crimes that required examination.¹⁶⁶ Furthermore, when the three victims identified the offenders, no investigation was started.¹⁶⁷

Because there was no state action, the Court considers the rape and acts of torture against the three victims to be violations of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention as well as Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhumane, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter American Convention to Prevent and Punish Torture.¹⁶⁸ Article 19 (Rights of the Child) was not violated because all victims were of age when the Court gained jurisdiction.¹⁶⁹

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mônica Santos de Souza Rodrigues; Evelyn Santos de Souza Rodrigues; Maria das Graças da Silva; Samuel da Silva Rodrigues; Robson Genuine dos Santos Jr; Michelle Mariano dos Santos; Bruna Fonseca Costa; Joyce Neri da Silva

162. *Id.* “Declares,” ¶ 5.

163. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 252.

164. *Id.* ¶ 256.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* ¶ 258.

169. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 259.

Dantas; Geni Pereira Dutra; Diogo da Silva Genoveva; João Alves de Moura; Helena Vianna dos Santos Otacílio Costa; Pricila Rodrigues; William Mariano dos Santos; LRJ; CSS and JFC,¹⁷⁰ because:

The Court finds that relatives of victims of human rights violations can be victims themselves because of suffering resulting from the violations against their loved ones.¹⁷¹ Evidence in written and oral witness statements showed the emotional impact on relatives and loved ones.¹⁷² The lack of investigations regarding the death of loved ones increases the emotional impact.¹⁷³ Additionally, the average daily activities of these people were affected, as many had invested heavily in their family instead of other opportunities.¹⁷⁴ The Court concludes that the impact upon these relatives is a violation of Article 5 (Right to Humane Treatment) of the Convention.¹⁷⁵

The Court found unanimously that Brazil did not violate:

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of the victims,¹⁷⁶ because:

170. *Id.* “Declares,” ¶ 6.

171. *Id.* ¶ 269.

172. *Id.* ¶ 270.

173. *Id.* ¶ 272.

174. *Id.*

175. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 27.

176. *Id.* “Declares,” ¶ 7. The Court named the following as victims for this violation: Cirene dos Santos, Edna Ribeiro Raimundo Neves, José Francisco Sobrinho, José Rodrigues do Nascimento, Maria da Glória Mendes, Maria de Lourdes Genuine, Ronaldo Inácio da Silva, Alcides Ramos, Thiago da Silva, Alberto da Silva, Rosiane dos Santos, Vera Lúcia dos Santos de Miranda, Lucia Helena Neri da Silva, Edson Faria Neves, Mac Laine Faria Neves, Valdenice Fernandes Vieira, Neuza Ribeiro Raymundo, Eliane Elene Fernandes Vieira, Rogério Genuino dos Santos, Jucelena Rocha dos Santos, Norival Pinto Donato, Celia da Cruz Silva, Nilcéia de Oliveira, Diogo Vieira dos Santos, Adriana Vianna dos Santos, Sandro Vianna dos Santos, Alessandra Vianna Vieira, Zeferino Marques de Oliveira, Aline da Silva, Efigenia Margarida Alves, Sergio Rosa Mendes, Sonia Maria Mendes, Francisco José de Souza, Martinha Martino de Souza, Luiz Henrique de Souza, Ronald Marcos de Souza, Eva Maria dos Santos Moura, João Batista de Souza, Josefa Maria de Souza, Waldomiro Genoveva, Océlia Rosa, Rosane da Silva Genoveva, Paulo Cesar da Silva Porto, Daniel Paulino da Silva, Georgina Soares Pinto, Nilton Ramos de Oliveira, Maria da Conceição Sampaio de Oliveira, Vinicius Ramos de Oliveira, Geraldo José da Silva Filho, Georgina Abrantes, Paulo Roberto Felix, Beatriz Fonseca Costa, Dalvaci Melo Rodrigues, Lucas Abreu da Silva, Cecília Cristina do Nascimento Rodrigues, Adriana Melo Rodrigues, Roseleide Rodrigues do Nascimento, Shirley de Almeida, Catia Regina Almeida da Silva, Valdemar da Silveira Dutra, Vera Lucia Jacinto da Silva, Cesar Braga Beaver, Vera Lucia Ribeiro Beaver, Pedro Marciano dos Reis, Hilda Alves dos Reis and Rosemary Alves dos Reis.

*The Court cannot determine the impact upon these people's mental integrity due to incomplete investigations of what occurred in 1994 and 1995.*¹⁷⁷

Article 22(1) (Freedom of Movement and Residence), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of CSS, JFC, and LRJ,¹⁷⁸ because:

*The fact that CSS, JFC, and LRJ were forced to abandon their homes lacked further proof, and therefore cannot be considered in the Merit Report.*¹⁷⁹

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Obligation to Investigate

Due to the insufficiency of prior investigations, the Court requires that the state reopen investigation related to the deaths in 1994 and 1995.¹⁸⁰ In order to ensure a proper investigation, state authorities must provide the judge, the prosecutor, or other judicial authorities with access to any information requested.¹⁸¹ Regarding the acts of sexual violence, the investigation must include a gender perspective, research regarding sexual violence, and participation during investigation and prosecution.¹⁸²

2. Psychological and Psychiatric Treatment of Victims

As the surviving victims and relatives of victims do not have access to psychological treatment, the State must offer immediate, appropriate

177. *Id.* ¶ 272.

178. *Id.* "Declares," ¶ 8.

179. *Id.* ¶ 281.

180. *Id.* ¶ 292.

181. *Id.*

182. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 293.

psychological treatment free of charge.¹⁸³ To the degree possible, this treatment should occur in places chosen by the victims.¹⁸⁴

3. Publication of Judgment

The Court finds that the judgment itself is a form of reparation.¹⁸⁵ As such, the State must publish a summary of the judgment in the Official Gazette, a nationally circulated newspaper, and on the Official website of the Government of the State of Rio de Janeiro.¹⁸⁶ Additionally, an electronic version shall be promoted by the State's Twitter and Facebook accounts, as well as the websites for the Special Human Rights Department of the Ministry of Justice, Ministry of Foreign Affairs, Civil Police of the State of Rio de Janeiro, the Public Security Secretariat of the State of Rio de Janeiro, and the Government of the State of Rio de Janeiro.¹⁸⁷

4. Public Act of Recognition of Responsibility and Display of Commemorative Plaques

The State shall have a public ceremony, with consultation with the victims and their representatives, where it recognizes international responsibility for its actions.¹⁸⁸ During the event, two plaques must be inaugurated and later placed in the main square of the Favela.¹⁸⁹

5. Creation and Adoption of New Public Policies

The Court requires the State to set goals to reduce instances of police violence.¹⁹⁰ Additionally, the Court will monitor compliance with the fulfillment of the goals and add further goals if necessary.¹⁹¹ The state must also research and disseminate statistics related to police homicides.¹⁹² Finally, the Court requires the implementation of a program for the treatment of rape victims.¹⁹³

183. *Id.* ¶ 295.

184. *Id.*

185. *Id.* ¶ 297.

186. *Id.* ¶ 300.

187. *Id.*

188. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 305.

189. *Id.* ¶ 306.

190. *Id.* ¶ 322.

191. *Id.*

192. *Id.* ¶ 316.

193. *Id.* ¶ 324.

6. Legislative Reform

The State must adopt legislation enabling victims of state violence to have effective investigations free from prejudice.¹⁹⁴

7. Reduction of Police Lethality

Draft Law No. 4,471 / 2012 would ensure proper diligent evidence collection and investigation.¹⁹⁵ The Court urges the state to approve this measure.¹⁹⁶ Similarly, it urges the state to approve Administrative Rule No. 553/2011, which would provide a guide for police when there is a death resulting from police action.¹⁹⁷ Finally, the Court requires the abolition of the concept of “opposition” and “resistance” to police action.¹⁹⁸

8. Further Measures

The State shall assess whether the 1994 and 1995 incidents fall under the “incident of displacement of competence” provision in the constitution.¹⁹⁹ Further, judicial authorities shall receive evidence of police violence soon after it occurs.²⁰⁰

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

194. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 329.

195. *Id.* ¶ 336.

196. *Id.*

197. *Id.*

198. *Id.* ¶ 335.

199. *Id.* ¶ 344.

200. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 345.

2. Non-Pecuniary Damages

To recompense for psychological and material damage, all named victims shall receive \$35,000.²⁰¹ Additionally, the three victims of sexual crimes shall receive a further \$15,000.²⁰²

3. Costs and Expenses

For expenses such as travel, translation, photocopies, and salary, the State must reimburse \$20,000 to ISER and \$35,000 to CEJIL.²⁰³ The State must also refund \$7,387.51 to the Victim's Legal Assistance Fund, which disbursed this amount to aid in the court processes.²⁰⁴

4. Total Compensation (including Costs and Expenses ordered):

\$ 2,500,000 USD²⁰⁵

C. Deadlines

The victims have six months from the date of notification to request psychiatric treatment.²⁰⁶

The State has six months from the notice of judgment to publish the judgment summary in the Official Gazette, a nationally circulated newspaper, and on the Official website of the Government of the State of Rio de Janeiro.²⁰⁷

The State has until the end of the term year to post the judgment summary on the State's Twitter and Facebook accounts, the websites for the Special Human Rights Department of the Ministry of Justice, Ministry of Foreign Affairs, Civil Police of the State of Rio de Janeiro, the Public Security Secretariat of the State of Rio de Janeiro, and the Government of the State of Rio de Janeiro.²⁰⁸

201. *Id.* ¶ 353.

202. *Id.*

203. *Id.* ¶¶ 357-58.

204. *Id.* ¶¶ 360-63.

205. This is an approximate estimate based on the compensation ordered to all victims as well as costs and expenses.

206. *Id.* ¶ 295.

207. *Favela Nova Brasilia v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, ¶ 300.

208. *Id.*

The State has one year from judgment notification to carry out the act of recognition of international responsibility.²⁰⁹

The state shall pay the non-pecuniary damages and the costs and expenses within a year of judgment notification.²¹⁰

V. INTERPRETATION AND REVISION OF JUDGMENT

February 5, 2018: The representatives and the State made requests to clarify several points in the judgment.²¹¹ These clarifications related to: the investigation into violations of human rights, the adequacy of representation for victims and their families, Jurisdiction of the Inter-American Convention to Prevent and Punish Torture, and payment.²¹²

A. *Composition of the Court*²¹³

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

Pablo Saavedra Alessandri, Secretary
 Emilia Segares Rodríguez, Deputy Secretary

B. *Merits*

The Court found unanimously that it was impossible to apply “procedural obstacles” to violent acts and by extension, rape, could not be precluded due to “procedural obstacles.”²¹⁴ Therefore, it was improper to exclude the investigation into the crimes of rape.²¹⁵ The Court found unanimously, that the original judgment addressed any issues about the

209. *Id.* ¶ 305.

210. *Id.* ¶ 363.

211. *Favela Nova Brasilia v. Brazil*, Interpretation of Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 345, ¶ 14 (Feb. 5, 2018).

212. *Id.*

213. Judge Roberto F. Caldas, a Brazilian national, did not deliberate in the present case in accordance with Articles 19.2 of the Statute and 19.1 of the Rules of Procedure of the Court. *Id.* at n.1.

214. *Id.* ¶ 29.

215. *Id.*

victim's representation.²¹⁶ The Court found unanimously that Jurisdiction regarding the Convention to Prevent and Punish Torture is an irrelevant issue as it had already been addressed in the judgment and need not be clarified.²¹⁷ The Court found unanimously that if the payments cannot be in Dollars, they shall be in Reals.²¹⁸ Any calculations of interest must be made in Reals as well.²¹⁹

VI. COMPLIANCE AND FOLLOW-UP

July 10, 2018: The Public Prosecutor's Office for Rio de Janeiro reopened investigations of the 1994 and 1995 incident.²²⁰

August 8, 2018: A legislative proposal passed, ensuring that the Public Prosecutor's Office can properly investigate public security personnel.²²¹

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 333, \(Feb. 16, 2017\).](#)

216. *Id.* ¶ 34.

217. *Favela Nova Brasilia v. Brazil*, Interpretation of Preliminary Objections, Merits, Reparations and Costs, ¶ 41.

218. *Id.* ¶ 59.

219. *Id.* ¶ 65.

220. MP Reopens Investigations of Slaughtering Occurred in the 1990s in Rio's Favela, ESTADAO, (Jul. 19, 2018), <https://brasil.estadao.com.br/noticias/rio-de-janeiro,mp-reabre-investigacoes-de-chacinas-ocorridas-nos-anos-90-em-favela-do-rio,70002396637>. 014

221. Project Gives the Public Prosecutor's Office Prerogative to Investigate Abuses of Agents in Public Security Organs, SENADO NOTICIAS, (Aug. 8, 2018), <https://www12.senado.leg.br/noticias/materias/2018/08/13/projeto-da-ao-ministerio-publico-prerrogativa-para-investigar-abusos-de-agentes-de-orgaos-de-seguranca-publica>.

3. Provisional Measures

[Favela Nova Brasilia v. Brazil, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. \(Dec. 3, 2015\).](#)

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[Favela Nova Brasilia v. Brazil, Interpretation of Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 345, \(Feb. 5, 2018\).](#)

A. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[Favela Nova Brasilia v. Brazil, Admissibility Report, Report No. 78/98, Inter-Am. Comm'n H.R., Case No. 11.566, \(Sep. 25, 1998\).](#)

[Oliveira et al. v. Brazil, Admissibility Report, Report No. 36/01, Inter-Am. Comm'n H.R., Case No. 12.388 \(Feb. 22, 2001\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Favela Nova Brasilia v. Brazil, Report on Merits, Report No. 141/11, Inter-Am. Comm'n H.R., Case No. 11.566, \(Oct. 31, 2011\).](#)

5. Application to the Court

[Favela Nova Brasilia v. Brazil, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.566, \(May 19, 2015\).](#)

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[Project Gives the Public Prosecutor's Office Prerogative to Investigate Abuses of Agents in Public Security Organs, SENADO NOTICIAS, \(Aug. 8, 2018\), https://www12.senado.leg.br/noticias/materias/2018/08/13/projeto-da-ao-ministerio-publico-prerrogativa-para-investigar-abusos-de-agentes-de-orgaos-de-seguranca-publica.](https://www12.senado.leg.br/noticias/materias/2018/08/13/projeto-da-ao-ministerio-publico-prerrogativa-para-investigar-abusos-de-agentes-de-orgaos-de-seguranca-publica)

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