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CASE 12.332

REPORT ON THE MERITS (PUBLICATION)

MARGARIDA MARIA ALVES AND FAMILY MEMBERS
BRAZIL

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I. SUMMARY

1. On October 17, 2000, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received a petition lodged by the Gabinete de Asesoría Jurídica a las Organizaciones Populares (GAJOP), the Center for Justice and International Law (CEJIL), the Movimiento Nacional de Derechos Humanos (MNDH), the Comisión Pastoral de la Tierra (CPT) and the Fundación de Defensa de los Derechos Humanos Margarida Maria Alves (FDDH-MMA) (hereinafter "the petitioners"), alleging the international responsibility of the Federative Republic of Brazil (hereinafter "the State," "the Brazilian State," or "Brazil") for human rights violations to the detriment of Margarida Maria Alves and members of her family.

2. The Commission approved Report on Admissibility No. 9/08 on March 05, 2008.² On March 31, 2008, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement. The parties were allowed time, in accordance with regulations, to submit additional observations on the merits. All information was duly relayed between the parties.

3. The petitioners denounced the murder, on August 12, 1983, of the alleged victim, Margarida Maria Alves, who was President of the Rural Workers Trade Union of Alagoa Grande, in the State of Paraíba, Brazil. They asserted that the motive for the crime had been Margarida Maria Alves' participation in the struggle for rural workers' rights in the region. They alleged direct participation by State agents in her death. They mentioned that the crime remained unpunished.

4. The State argued that it was meeting international standards for protecting human rights defenders and preventing rural violence. It stated that it was in the process of implementing changes to public security and to the judiciary in the state where the events occurred. It added that it had fostered specific steps to make reparation to the son of the alleged victim and symbolic reparation in memory of Margarida Maria Alves.

5. Based on considerations of fact and of law, the Inter-American Commission concluded that the Brazilian State was responsible for violating rights upheld in Article I (right to life, liberty and personal security), Article XVIII (right to a fair trial), and Article XXII (right of association) of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration") and in Articles 5 (Right to Humane Treatment), 8.1 (Due [judicial] Guarantees), and 25.1 (Right to Judicial Protection) of the American Convention on Human Rights (hereinafter "the American Convention") in conjunction with Article 1.1 of the same instrument, to the detriment of Margarida Maria Alves, and members of her family, as specified throughout the present report. The IACHR therefore made the corresponding recommendations.

¹ In accordance with Article 17(2) of the Rules of Procedure of the Commission, Commissioner Paulo Vanucchi, a Brazilian national, did not participate in the discussion or decision in the present case.

² IACHR, Report No. 9/08, Case 12.332, Admissibility, Margarida Maria Alves, Brazil, March 5, 2008.

II. POSITION OF THE PARTIES

A. Position of the petitioners

6. The petitioners alleged that Margarida Maria Alves, President of the Rural Workers Trade Union of Alagoa Grande, in the State of Paraíba, Brazil, was murdered on August 12, 1983 following various threats due to her activities as a community leader in the aforementioned region. They stated that around 6:00 p.m. a man went to the alleged victim's house and asked if she was "Margarida." When she said "yes," he had taken out a firearm from a big cloth bag he was carrying and shot her.

7. They said that Margarida Maria Alves had led labor rights campaigns, which had resulted in over 73 claims of that kind against land and agribusiness owners being filed with the Judiciary.

8. They stated that the investigations into the murder of the alleged victim had been deficient. They said that, initially, the Civilian Police had detected the involvement of four individuals, three of whom were fugitives from justice, so that criminal proceedings against them had been suspended until the action had prescribed. As regards the fourth person, the son of a local landowner, the petitioners stated that he had been tried before a jury and acquitted in 1988,

9. They said that later on new investigations were started based on the testimony of the widow of a person who had taken part in the crime, who attributed the death of the alleged victim to a political group called "Grupo da Várzea," comprised of landowners, state and federal deputies, and law enforcement agents. They said that members of the "Grupo da Várzea" were denounced in 1995 and in 1997, and that in respect of one of the perpetrators the action was declared to have prescribed. They added that, in the case of two of the alleged instigators of the crime, no proceedings were brought until 2,000, by which time they had died.

10. They said that proceedings then continued against one individual only, who was tried before a jury and acquitted in 2001.

11. As for arguments of law, the petitioners argued that the **right to life** was violated, both directly by state agents intervening directly in the murder of the alleged victim, and by the failure to conduct serious and diligent investigations into her death.

12. They argued that the **rights to judicial guarantees and judicial protection** were violated by the failure to investigate and punish those responsible for the death of the alleged victim within a reasonable period of time. They added that it was not a legally complicated case warranting such a delay and that rather the delay had to do with a lack of due diligence on the part of the State.

13. The petitioners also addressed some arguments adduced by the State. They referred in particular to the State's claim that it had performed various acts of homage in memory of Margarida Maria Alves. According to the petitioners, that was not true because those tributes had been an initiative of the "Rural Workers Trade Union Movement (MSTTR)." They repudiated the State's attempt to take credit for that action by civil society, which had stemmed precisely from protest against the way the State had behaved in this case.

B. Position of the State

14. The Brazilian State did not refer to the facts of the case. Rather, it reported on a series of measures to make reparation to family members of the alleged victim and to honor her memory, as well as to remedy the delay in the proceedings.

15. In particular, the State mentioned that it had held an inter-ministerial meeting chaired by the National Agrarian Supervisor (Ouvidor Agrário Nacional) of the Ministry of Agrarian Development (OAN) and the President of the National Commission to Combat Violence in Rural Areas (CNCVC), to discuss possibilities for cooperation in the case in question, in which a mission to João Pessoa, in the state of Paraíba, had been

coordinated. The Brazilian State indicated that, as a result of the visit, the following commitments had been undertaken: i) the appointment by the Secretary of Public Security of the state of Paraíba of a Civilian Police delegate for land issues in Paraíba; ii) the appointment by the Attorney General of Paraíba of an agrarian justice promoter, in addition to the appointment, by the Paraíba Ombudsperson's Office of a public defender for agrarian issues; and iii) the establishment, by the Commander in Chief of the Military Police in Paraíba of a community rural patrol.

16. The State reported that the Human Rights Defense Council, a State body, had looked into the proceedings against one of the alleged instigators of the crime and had presented a report in 2001, which had reached the conclusion that the homicide fitted the classical profile of a "contract killing" or "proxy murder" ("pistolaje") and that it had had to do with the struggle for land and the "coronelismo" still in effect in the region at the time of the facts of this case. The State also pointed out that the same Council had indicated that "the retrograde forces typical of that rural 'coronelismo' had undoubtedly shaped the ascertainment of the facts and the delays with criminal proceedings and trials."

17. It added that the same Council had acknowledged defects in the investigation against Aguinaldo Veloso Borges, when it referred to the "weakness of the evidence mustered in the criminal proceedings, possibly due to prior defects and omissions in the conduct of police investigations and preliminary criminal proceeding. Thus, the widely disseminated indications of fact on the alleged responsibility of the deceased landowner Aguinaldo Veloso Borges for the death of Margarita Maria Alves were not reflected in the preliminary criminal proceeding and were not corroborated with sufficient circumstantial evidence to point to his criminal liability."

18. The State pointed out that the Legal Advice Office of the Human Rights Secretariat of the Office of the President of the Republic had pushed for charges of possible administrative civil liability of the civil servants who had been involved in the investigation. Likewise, in 2013, it was agreed that that Public Prosecutors' Office (*Ministerio Público*) would bring actions to determine the responsibilities of officials for the unwarranted delay in proceedings.

19. The State reported that it had adopted a series of measures designed to make reparation for the harm done to the alleged victim and her family members. Concretely, it described how it had contacted the alleged victim's son and had pre-registered him as a beneficiary in proceedings to dispossess two persons suspected of participating in the murder of the alleged victim (Aguinaldo Veloso Borjes and Antonio Carlos Coutinho Reges) of ownership of a plot of land known as Fazenda Tanques.

20. At the same time, the State underscored the need for symbolic reparation and said that for several years it had been participating with civil society in various acts of homage to Margarida Maria Alves, such as the "March of the Margaridas," which seeks to pay tribute to the work of rural women, by supporting its dissemination and through financial agreements. The State also pointed out that it had instituted the "Margarida Alves Award for Rural and Gender Studies," which promotes gender equality in the countryside; the "Margaridas Project," and "the "Memory and Truth Project of the Secretariat for Human Rights." It had also launched the book entitled "Dead and Disappeared Rural Workers: Excluded from Transitional Justice," which highlights the alleged victim's story.

21. The State also reported that it had taken steps to see that the family receives compensation, and that public apologies are given acknowledging the State's liability for the delays in the proceedings. The State did not later report on any concrete steps to live up to those promises.

22. Finally, the State indicated that it had established the Program for Protecting Human Rights Defenders with a view to preventing attacks against them. It said it includes coordination among government and civilian organs and entities for settling disputes.

III. DETERMINATIONS OF FACT

A. The context of violence against labor rights defenders in rural areas at the time of the facts, including North Eastern Brazil

23. The IACHR and other national and international organizations have ascertained the existence of a context of violations of the human rights of trade unionists and agrarian workers in the North and North-East of Brazil in the 1980s and 1990s, in connection with disputes over land.³ The IACHR has said that both the population and numerous authorities attribute the human rights violations to "inaction, negligence and incapacity of the police and the courts; and to the notorious connections between these criminal groups and some authorities."⁴

24. For its part, in its 1983 Report, Amnesty International called the Brazilian authorities' attention to the failure to investigate numerous murders of trade union members and human rights activities in rural areas.⁵ At the same time, in 1984, the same organization drew attention to the large numbers of murders of people involved in the rural trade union movement and underscored the apparent acquiescence of local authorities with the perpetrators, evidenced by the failure to investigate the crimes, and it cited the case of Margarida Maria Alves, as an example in that context.⁶ The same problem was also denounced by Amnesty International in 1985⁷ and in 1990, focusing on the North East part of Brazil.⁸

25. For its part, Human Rights Watch stated in its 1992 report entitled "The Struggle for Land in Brazil: Rural Violence Continues" that rural violence was a chronic problem, exacerbated by the lack of State diligence in investigating the cases registered. According to that report, of the 1,681 murders of rural workers tabulated by the Pastoral Land Commission (Comissao Pastoral da Terra, CPT) from January 1, 1964 through January 31, 1992, there have been trials in only twenty-six cases, of which a mere fifteen resulted in convictions.⁹

26. The Commission points out that, according to different public media, between 1980 and 1983, 28 farm workers were murdered,¹⁰ just in the North-East of the country, allegedly on the orders of local landowners engaged in the principal economic activities of their states.

27. The IACHR has pointed out that the people in Brazil who direct and pursue the claims of rural workers are those most directly affected by acts of violence intended to create widespread fear and, consequently, dissuade other human rights defenders and to intimidate and silence the victims' claims and demands. The Commission has stated that the close relations between the instigators of the crimes and local power structures have ensured impunity for practically all cases of rural violence in Brazil.¹¹

28. The Commission also takes note of the Report of 2013 of the Human Rights Secretariat of the Office of the President of the Republic, entitled "Camponeses Mortos E Desaparecidos: Excluídos da Justiça de Transição" [Dead and Disappeared Rural Workers: Excluded from Transitional Justice], which documented the murder of 75 trade unionists in Brazil between 1961 and 1988, including Margarida Maria Alves, who, it states,

³ IACHR, Report on the Situation of Human Rights in Brazil. OEA/Ser.L/V/II.97, Doc. 29 rev.1, September 29, 1997, Chapter VII, Land Ownership and the Rights of Rural Workers, par. 6.

⁴ IACHR, Report on the Situation of Human Rights in Brazil. OEA/Ser.L/V/II.97, Doc. 29 rev.1, September 29, 1997, Chapter VII, Land Ownership and the Rights of Rural Workers, par. 41; See, for instance, IACHR, Report No.24/98, Case 11.287, Joao Canuto de Oliveira, Brazil, April 7, 1998.

⁵ Amnesty International. Amnesty International Annual Report 1983, January 1, 1983.

⁶ Amnesty International. Amnesty International Annual Report 1984, January 1, 1984.

⁷ Amnesty International. Amnesty International Annual Report 1985, January 1, 1985.

⁸ Amnesty International. Amnesty International Annual Report 1990, January 1, 1990.

⁹ Human Rights Watch (HRW). The struggle for land in Brazil – rural violence continues. May 1992, p. 8.

¹⁰ Information provided in the Report by Centro de Defesa dos Direitos Humanos, which records murders related to the struggle for land in Brazil between 1980 and 1983 in the form of a map. Appendix 1. "Violência e impunidade – Usineiros ameaçam trabalhadores e dirigente, na Paraíba" – News item in the daily "O Trabalhador Rural", written by CONTAG - Confederação Nacional dos Trabalhadores na Agricultura, August 1983. Appendix 4 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

¹¹ IACHR, Report No. 25/09, Case 12.310 Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, par. 46-48.

was murdered on August 12, 1983 by “pistoleiros” hired by major “landowners” [*fazendeiros*]. The report also points out that the size of territory and long period of time in which the crimes were committed can only be explained by the participation or omission of State institutions.¹²

29. The Final (2014) Report of the “Comissão Camponesa da Verdade (CCV),” a body comprised of several organizations assisting Brazil’s National Truth Commission,¹³ also documented the murder of the alleged victim within this context of violence.¹⁴

30. Finally, the Final Report of the Parliamentary Investigation Commission charged with continuing investigations into hired killings in the Central-West and Northern regions, especially the area known as “Bico do Papagaio,” documented the case of Margarida Maria Alves and stated that it had been in retaliation for her defense of workers’ causes. It urged the Public Prosecutors’ Office and the Office of the Attorney General to investigate the crime.¹⁵

B. Regarding Margarida Maria Alves, her work in defense of the rights of rural workers, and threats and attacks prior to her death.

31. Margarida Maria Alves was born in 1933. At the time of the facts of the case, she was 50 years old and organizing campaigns in defense of the rights of rural workers in the Alagoa Grande region in Paraíba.¹⁶ As noted in her case file, her family members are: 1) her husband Severino Cassemiro Alves, who died in August 2012; ii) her son José de Arimatéia Alves; and iii) her sister Joaquina Maria Marinho.

32. Both parties mention that the work of the alleged victim was widely acknowledged in the region, by both federal and local authorities.

33. It transpires from the file that prior to her death the alleged victim received a series of threats. Thus, members of the trade union indicated that she had been threatened by a state deputy who had warned her not to bring labor suits.¹⁷ The petitioners states that she had been the victim of aggressive acts by the owner of a refinery one year before her death.¹⁸ Other people said she had been threatened by the “Grupo de Varzea,” which, as mentioned in the foregoing section, was known to be a political and economic group comprised of state and federal deputies, law enforcement officers, landowners, and others.¹⁹

¹² Human Rights Secretariat of the Office of the Presidency, Memory and Truth Project, Dead and Disappeared Rural Workers: Excluded from Transitional Justice, 2013, p. 58-66.

¹³ Article published in Cnv.gov.br, Comisión Nacional de la Verdad recibe a miembros de la Comisión Camponesa de la Verdad, November 20, 2012.

¹⁴ Comissão Camponesa da Verdade, Final Report. Violaciones de Derechos en el Campo [Human Rights Violations in Rural Areas] 1946-1988, December 2014, p. 81.

¹⁵ Appendix 2. Final Report of the Parliamentary Investigation Commission charged with continuing investigations into hired killings in the Central-West and Northern regions, especially the area known as “Bico do Papagaio,” January 1994. Volume 8-Part I. Appendix 3a to the document containing Observations by the State, dated October 23, 2013, p. 5.

¹⁶ Appendix 3. Book entitled “Construtores da justiça e da paz – Margarida Alves,” written by Guilherme Salgado Rocha, 1996. Appendix II to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

¹⁷ Appendix 10. “Uma carta de Margarida a Agnaldo” – An article published in the newspaper “O Norte”, on August 28, 1983. Appendix 4 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

¹⁸ Appendix 12. Negative response to the request to the Civil Registry and Police Station Offices, filed by the Secretariat for Public Security of Alagoa Grande for information regarding any record of complaints or threats undergone by Margarida Maria Alves. August 15, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 32.

¹⁹ Appendix 14. Testimony by Mr. Marcelo Pinto Carneiro. Appendix 11 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000. According to information in the public domain, members of the Varzea Group included 3 federal deputies, 5 state deputies, and 50 state prefects. It controlled at least 10 of the 27 representatives of Paraíba in the Electoral College. See: Article published in Brasil.gov.br, Margarida Alves, February 16, 2012; Comissão Camponesa da Verdade, Final Report, Human Rights Violations in Rural Areas, 1946-1988, p. 81.

¹⁹ Appendix 15. “Viúvo acusa os usineiros – Líder assassinada em Alagoa Grande” – Article published in the newspaper “A União”, August 14, 1983. Appendix 04 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

34. Likewise, Severino Cassemiro Alves, Margarida Maria Alves' husband, said she had been threatened by some landowners, who had said that her days were numbered.²⁰ Luiz Silva, who at the time of the facts of the case was President of the Trade Union of Rural Workers in the town of San Sebastián de Umbuzeiro and Director of the Rural Workers' Educational and Cultural Center, stated that on the day prior to her murder, the alleged victim had taken part in a meeting at the Center at which she had told all those present that she was receiving threats.²¹

35. According to a statement by Severino Barbosa Sobrinho, an inhabitant of Alagoa Grande, a guard at the estate belonging to the son of Aguinaldo Veloso Borges, a landowner and then federal deputy identified as a member of the "Grupo de Varzea," had stated nine days before the death of the alleged victim that she would have "a very short life" for having provoked the wrath of Aguinaldo Veloso Borges by filing complaints with the Prosecutor's Office regarding alleged irregularities at his sugar cane refinery and calling for him to "pay what he owed his workers" ("*se pague a los trabajadores sus derechos*").²²

36. Evani Serafim da Silva, a worker at the refinery owned by João Carlos de Melo, another alleged member of the Grupo de Várzea, stated that she had been physically assaulted by Fernando Antônio Pereira Cruz de Melo, her boss's son, after she had gone to the Rural Workers Trade Union to look for medicine for her daughter. She said that her alleged attacker had told her that if she had any more contact with Margarida Maria Alves, he would kill them both.²³

37. As noted in information in the public domain, the alleged victim complained to the police in May 1983 that she was being threatened by the owners of the Ribeiro refinery and other refineries.²⁴

38. At the same time, according to information in the public domain, on May 1, 1983, in her Labor Day speech in the Sapé-PB public square,²⁵ she denounced that she was receiving threats.²⁶

39. According to the Final Report of the Comissão Camponesa da Verdade (CCV), prior to her death, Margarida Alves had been the victim of constant threats aimed at making her stop working in the Workers' Trade Union. That report states that:

The threats were reported to the authorities and publicized by Margarida during trade union activities and in the press. The threats were attributed to the well-known Grupo de Várzea (...) which had considerable political clout in the state of Paraíba.²⁷

40. The State did not report -- and there are no indications in the file of -- any follow-up to said information prior to the alleged victim's death, aimed at identifying sources of risk and providing her with protection.

C. The death of the alleged victim.

²⁰ Appendix 15. "Viúvo acusa os usineiros - Líder assassinada em Alagoa Grande" - Article published in the newspaper "A União", August 14, 1983. Appendix 04 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

²¹ Appendix 19. Testimony of Luiz Silva. Volume 1- Part 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 49 -51.

²² Appendix 16. Testimony of Severino Barbosa Sobrinho. Date illegible. Police Investigation 023/83- Volume 2. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 218 -219.

²³ Appendix 18. Testimony of Evani Serafim da Silva, on August 22, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 64.

²⁴ Article published by the Center for the Defense of Human Rights, May 1982. Appendix 4 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

²⁵ Testimony by Marcelo Pinto Carvalheira. Appendix 11 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

²⁶ Article published in globo.com, Assassinato de Margarida Maria Alves completa 30 anos na Paraíba, August 11, 2013; article published by paraiba.criativa.com.br, Proyecto de Ley no. 4288 de 2016 de la Comisión de Cultura.

²⁷ Comissão Camponesa de la Verdad, Final Report. Violaciones de Derechos en el Campo [Human Rights Violations in Rural Areas]1946-1988, December 2014, p. 81.

41. It is an uncontested fact that the alleged victim died on August 12, 1983, after an individual shot her several times in the face with a firearm. Six bullets were found in her brain.²⁸

42. As for the circumstances of her death, the murder occurred at 6:00 p.m. inside her home.²⁹ The alleged victim was accosted by a hired killer ("pistoleiro"), who asked her whether she was "Margarida". When she said yes, he took a firearm from a large cloth bag he was carrying and shot the alleged victim.³⁰

43. The son of the alleged victim, José de Arimatéia Alves, who at the time was eight years old, stated that " to this day I still see my mother's body covered in blood, an enormous trauma I bear."³¹ He added: " I remembered the persecution my father and I suffered at the time, the fear, the terror that we might be the next victims. I grew up with an enormous desire for revenge, became an alcoholic, and for a time I wanted not to live, I had nobody's support or psychological counseling; inside me I carry the profound sequels of that horrible episode in my life."³²

44. Several neighbors, such as Ivaldo Fernandes Chaves³³ and Natanael Marinho³⁴, said that after hearing the gunshots, they went to the alleged victim's house and were able to see the murderer escaping with other people waiting for him in a vehicle.³⁵

45. According to the denunciation filed by the Public Prosecutors' Office with the Judiciary in Paraíba, the alleged victim's murderer escaped in a red Opala, with the number plate EX0690, from Nove Cruz in the state of Rio Grande do Norte, accompanied by two other persons who were waiting for him inside the vehicle. According to the Public Prosecutors' Office, one of them was Amauri José do Rego.³⁶ Later on, the police investigation concluded that the number plate cited was "cold," i.e., false, and matched that of another vehicle.³⁷

46. Marinete da Fonseca Chavez, an eye witness of what happened, stated that the vehicle carrying the murderers of the alleged victim had been driving past the home of the alleged victim, as many as three times, on the evening prior to the murder.³⁸ The alleged victim's husband confirmed Marinete da Fonseca's statement.³⁹

47. Archbishop Marcelo Pinto Carvalheira declared that the day after the murder of the alleged victim it was rumored in the city that those who had ordered the murder were Aguinaldo Veloso Borges, his son-in-law José Buarque de Gusmão and other members of the "Grupo da Várzea."⁴⁰

²⁸ Appendix 21. Autopsy report, August 13, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 103 -104.

²⁹ Appendix 22. Report filed by the Public Prosecutors' Office to the Judiciary in Paraíba, on December 22, 1983. Appendix 6 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

³⁰ Appendix 15. "Viúvo acusa os usineiros – Líder assassinada em Alagoa Grande" – Article published in the newspaper "A União", on August 14, 1983. Appendix 4 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

³¹ Appendix 23. Personal statement by José de Arimatéia Alves, the only son of trade union leader Margarida Maria Alves. E-mailed to the IACHR on March 25, 2012.

³² Appendix 23. Personal statement by José de Arimatéia Alves, the only son of trade union leader Margarida Maria Alves. E-mailed to the IACHR on March 25, 2012.

³³ Appendix 24. Testimony by Ivaldo Fernandes Chaves, on August 13, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 17.

³⁴ Appendix 25. Testimony by Natanael Marinho, on August 13, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 19.

³⁵ Appendix 25. Testimony by Natanael Marinho, on August 13, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 19.

³⁶ Appendix 22. Report filed by the Public Prosecutors' Office to the Judiciary in Paraíba, on December 22, 1983. Appendix 6 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

³⁷ Appendix 29. Police Investigation 023/83- December 8, 1983 Appendix 05 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

³⁸ Appendix 30. Testimony of Marinete da Fonseca Chaves, August 13, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 18.

³⁹ Appendix 29. Police Investigation 023/83- December 8, 1983 Appendix 5 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

⁴⁰ Appendix 14. Testimony by Mr. Marcelo Pinto Carvalheira. Appendix 11 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

48. Several people testified that the perpetrators of the crime were Antonio de Almeida Regis and the Amaro and Amauri José do Rego⁴¹ brothers and that, after committing the crime, they had escaped in the direction of the town called Rio Tinto, where they had dined with Amauri José do Rego's lover. They said that those individuals had received 500,000 cruzeiros, a rifle, and a red Opala car for committing the crime.⁴²

49. Thus, Djailton Hugo dos Santos testified on October 17, 1983 that he had seen Amauri José do Rego in the town of Alagoa Grande on the eve of the crime, accompanied by Antonio Carlos Coutinho Regis and aboard a red Opala vehicle.⁴³ On November 22, 1983, Manoel Josué de Barros declared that Amauri José Do Rego and his brother Amaro José do Rego had sold a red wine-colored Opala vehicle and had bought another vehicle in the town of Nazaré da Mata.⁴⁴

50. Josirene Mendes de Oliveira Rego, the wife of Amauri José do Rego, testified on December 6, 1983, stating that her husband was intending to flee the city, because he had called the house where she lived and said that he would not be returning, and that she could feel free to marry again. She added that it had struck her as strange that he should say all that over the phone but that after reading in the newspapers about his participation in the death of a woman from Alagoa Grande called Margarida, she had understood everything.⁴⁵

D. Internal processes for investigating the death of the alleged victim

1. Investigations by the Civilian Police

51. On October 31, 1983, the Paraíba state Civilian Police began an investigation, carried out some pre-trial proceedings, and began receiving testimony.⁴⁶ It determined that the license plate attached to the vehicle used by the perpetrators had been "cold," i.e. tampered with.⁴⁷

52. On September 3, 1983, a statement was taken from Aguinaldo Veloso Borges, who states that he did not know Margarida Maria Alves and had never had any direct, or indirect, relations with her.⁴⁸

⁴¹ Appendix 33. Testimony of José Galdino de Araújo Filho, October 17, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 217 -218.

⁴² Appendix 33. Testimony of José Galdino de Araújo Filho, October 17, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 217 -218.

⁴³ Appendix 35. Testimony of Djailton Hugo dos Santos, on October 17, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 219 -220.

⁴⁴ Appendix 29. Police Investigation 023/83- December 8, 1983 Appendix 5 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000. p. 312.

⁴⁵ Appendix 29. Police Investigation 023/83- December 8, 1983 Appendix 5 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000. p. 313.

⁴⁶ Appendix 37. Term used by the police commissioner (*Termo de designación del Delegado*) Secretariat for Public Security of Paraíba, August 12, 1983. Police Investigation 023/83- Part 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 14.

⁴⁷ Appendix 41. Official letter from the Transit Department of the state of Rio Grande do Norte, in which, on August 25, 1983, the State claims to recognize the car's number plate as pertaining to a station wagon owned by Manoel Lino da Silva. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 79-81 Appendix 29 Police Investigation 023/83- December 8, 1983 Appendix 5 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

⁴⁸ Appendix 43. Testimony of Aguinaldo Veloso Borjes, September 3, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 116 -118.

53. On September 13, 1983, the investigation deadline was extended.⁴⁹ On September 29, 1983, several people were arrested who matched the witnesses' descriptions.⁵⁰ The suspects were subjected to eye witness recognition. However, as they were not recognized as alleged perpetrators,⁵¹ they were released.⁵²

54. The investigation deadline was extended again on November 8, 1983. The Police then directed its attention to the group comprised of Amauri José do Rego, Amaro José do Rego and a third person known as "Toinho" or "José", as well as Antônio Carlos Coutinho Régis, the alleged instigator.⁵³

55. The police investigation reached the conclusion on December 8, 1983 that that the perpetrators of the murder of Margarida Maria Alves were Amauri José do Rego, Amaro José do Rego, "Toinho" or "José" (unidentified) and Antônio Carlos Coutinho Régis (as the instigator), and ordered their pre-trial detention.⁵⁴ However, the perpetrators could not be located.⁵⁵ The aforementioned report states that:

(...) there is abundant evidence that Amauri José del Rego had been present in the town of Alagoa Grande at least on the eve of the crime; that he is the owner of a red wine colored Opala vehicle with characteristics identical to that used to commit the crime (...); statements that mention that he was carrying a caliber 12 shotgun in a burlap bag, the exact same conditions under which the weapon was used at the time of the crime; the accounts of witnesses (...) who state that Toinho said that the group had received 500,000 cruzeiros to carry out the crime (...). As for the participation of Antonio Carlos Coutinho Regis, not only was he seen in Alagoa Grande on the eve of the crime in the company of Amauri; there is also the testimony recorded on folios 99 to 100 to the effect that the same vehicle had been occupied by two people and that in the morning of the day prior to the crime he had been to the home on the estate of the father of the accused (...).⁵⁶

⁴⁹ Appendix 44. Decision by the Paraíba state Secretariat for Public Security on September 13, 1983. Police Investigation 023/83- Volume 1 Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 149.

⁵⁰ Appendix 45. Arrest warrant, September 29, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 189.

⁵¹ Appendix 46. Police lineup, on October 4, 1983 Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 197 -202.

⁵² Appendix 47. Release from detention, October 6, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 257; Appendix 48 Release permit, November 16, 1983. Police Investigation 023/83- Volume 2. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 52 -53.

⁵³ Appendix 49. Decision by the Paraíba state Secretariat for Public Security on Tuesday, November 08, 1983. Police Investigation 023/83- Volume 2. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 29 -30.

⁵⁴ Appendix 29. Police Investigation 023/83- December 8, 1983 Appendix 5 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000. p. 315.

⁵⁵ Appendix 29. Police Investigation 023/83- December 8, 1983 Appendix 5 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000. p. 315.

⁵⁶ Appendix 29. Police Investigation 023/83- December 8, 1983 Appendix 5 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000. p. 315.

2. Judicial file 003.1983.0000067 (1983)

56. Pursuant to the police investigation, on December 22, 1983, the Public Prosecutors' Office filed an accusation against Amauri José do Rego, Amaro José do Rego, and Antônio Carlos Coutinho Régis "Carlinhos", for the crime of murder, as the perpetrators thereof.⁵⁷ Nevertheless, judicial proceedings against Amauri José do Rego and Amaro José do Rego were suspended because both of them were at large, as fugitives from justice.⁵⁸ Between 1985 and 1999, several arrest warrants were issued against Amauri José do Rego⁵⁹ y Amaro José do Rego⁶⁰.

57. On July 5, 1988, following a trial by jury, Mr. Antônio Carlos Coutinho Régis was acquitted since it was considered that he had had no part in the crime.⁶¹ The Court ruling does not specify the reasons why the accused was considered innocent.⁶² On July 7, 1988, the Public Prosecutors' Office appealed that ruling, arguing that it contradicted the evidence in the file, and requested a re-trial with another Judgment Council (*Consejo de Sentencia*).⁶³

58. On May 17, 1990, the Paraíba Court of Justice admitted the appeal, stating that the ruling had flatly contradicted the testimony and ran contrary to the totally convincing evidence that the accused had been one of the perpetrators of the crime. That being so, it ordered that the accused Antônio Carlos Coutinho Régis be retried before a juried court.⁶⁴

59. Later on, the husband of the alleged victim asked that the case be transferred to another court, arguing that the members of the jury were being influenced by the defendant Antônio Carlos Coutinho Régis and his family⁶⁵ and that "a kind of consensus existed among members of the jury that because the accused had played a less important part he should again be declared innocent."⁶⁶

⁵⁷ Appendix 22. Report filed by the Public Prosecutors' Office to the Judiciary in Paraíba, on December 22, 1983. Appendix 6 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000; Appendix 50. Copy of the accusation against Amauri José do Rego, Amaro José do Rego and Antônio Carlos Coutinho Régis, January 5, 1984. Volume III of the Police Investigation 023/83. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 91 -93.

⁵⁸ Appendix 51. Notification via newspaper to Amauri José do Rego and Amaro José do Rego, January 9, 1984. Police Investigation 023/83- Volume 2. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 98 -99.

⁵⁹ Appendix 52. Arrest warrant, February 26, 1985. Police Investigation 023/83- Volume 3. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 292; Appendix 53 Arrest warrant, December 17, 1985. Police Investigation 023/83- Volume 4- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 49; Appendix 54 Arrest warrant, Wednesday, January 23, 1991. Police Investigation 023/83- Volume 4- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 291; Appendix 55 Arrest warrant, May 28, 1991. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 29-32 Appendix 56. Arrest warrant, October 5, 1995. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 296 -297.

⁶⁰ Appendix 53. Arrest warrant, December 17, 1985. Police Investigation 023/83- Volume 4- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 49; Appendix 54 Arrest warrant, Wednesday, January 23, 1991. Police Investigation 023/83- Volume 4- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 291; Appendix 55 Arrest warrant, May 28, 1991. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 29-32 Appendix 56. Arrest warrant, October 05, 1995. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 296 -297.

⁶¹ Appendix 58. Judgment handed down by the (juried) Court of the District of Alagoa Grande, on July 5, 1988. Police Investigation 023/83- Volume 4. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 228 and 229.

⁶² Appendix 57. Judgment of the Alagoa Grande district court, July 5, 1988. Appendix 8 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

⁶³ Appendix 59. Appeal filed by the Public Prosecutors' Office to the Judiciary in Paraíba, on July 7, 1988. Appendix 09 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

⁶⁴ Appendix 60. Judgment of the Alagoa Grande district court, May 17, 1990. Police Investigation 023/83- Volume 4- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 270 -273.

⁶⁵ Appendix 61. Request for exclusion from proceedings (*pedido de desforamento procesal*), June 17, 1991. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 84 -87.

⁶⁶ Appendix 61. Request for exclusion from proceedings (*pedido de desforamento procesal*), June 17, 1991. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 84 -87.

60. On September 25, 1991, Severino Cassemiro Alves's request was denied on the grounds that it was allegedly based on mere conjecture supposedly attributed to the judge in the case. However, the judge denied the statements attributed to him regarding the jury's bias.⁶⁷

61. From the information found in the file, it transpires that no activities were recorded in proceedings regarding this case.

62. On July 13, 1991, the President of the Court of Justice in Paraíba took on the case with a view to examining the reasons why it was at a standstill, allegedly due to delays by a judge in the Alagoa Grande District.⁶⁸

63. On July 17, 1995, the President of the Paraíba Court of Justice stated that: "after reviewing the case files, I ascertained that, clearly, the de facto Judge, Dr. Gutemberg Cardoso Pereira, has not pursued the proceedings identified in the epigraph for one year and four months, on the weak pretext that there is an excessive amount of forensic work in the District."⁶⁹ He added that: "an addition to the accusation against just two defendants, filed on March 5, 1994m gas still not been received by the Judge"⁷⁰.

64. On August 1, 1995, Judge Gutemberg Cardoso referred to the delay in the case, stating that 1994 had been an electoral year and that "during the electoral period that is privileged by law, ordinary justice practically grinds to a halt, so that it is barely possible to process cases concerning persons deprived of their liberty, alimony cases, and preliminary requests."⁷¹ He added that, once the election year had ended, "this magistrate gave preference to the cases of those most in need."⁷² He added that there had also been a technical difficulty in the sense that it was not clear whether an accusation could be amplified and include new accused persons when a judgment had already been handed down in the proceedings.⁷³

65. On August 2, 1995, the aforementioned court opted to initiate new judicial proceedings, bearing in mind that the judgment in respect of the two accused in the first suit had been handed down more than 10 years earlier.⁷⁴

66. On August 8, 1995, the Alagoa Grande District Judge resolved in an Official Letter that "it is completely unacceptable that the arrest warrants issued in 1985 against the accused Amaro and Amauri José do Rego have not been renewed since then, when they should be renewed every year. Let the arrest warrants be renewed now and henceforth every year, with a copy to the competent authorities." After that, he ordered "that the Public Prosecutor's office be notified [*abra vista al MP*] 9(...) of these proceedings almost ready for a new trial since October 28, 1991, without any decision being handed down."⁷⁵

67. Following is a description of the supplementary investigations and the new judicial process.

⁶⁷Appendix 62. Denial of the request for exclusion from proceedings, September 25, 1991. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 119 -121.

⁶⁸ Appendix 63. Official Letter from the President of the Paraíba Court of Justice, July 13, 1995. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 124.

⁶⁹ Appendix 64. Letter from the President of the Paraíba Court of Justice, July 17, 1995. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 126.

⁷⁰ Appendix 64. Letter from the President of the Paraíba Court of Justice, July 17, 1995. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 126.

⁷¹ Appendix 65. Official letter from Judge Gutemberg Cardoso Pereira, August 1, 1995. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 131 -135.

⁷² Appendix 65. Official letter from Judge Gutemberg Cardoso Pereira, August 1, 1995. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 131 -135.

⁷³ Appendix 65. Official letter from Judge Gutemberg Cardoso Pereira, August 1, 1995. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 131 -135.

⁷⁴ Appendix 66. Court order, August 2, 1995. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 137.

⁷⁵ Appendix 67. Decision by the Judge of the Alagoa Grande district, August 8, 1995. Volume 1-Part 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 349.

68. In August 1995, a request was filed from removal of the judge in charge of the case.⁷⁶ However, according to the petitioners, that request was dismissed by the Superior Court of Justice.⁷⁷ In 1995, in the course of the proceedings, a series of requests for information were filed to ascertain the whereabouts of Amaro José do Rego and Amauri José do Rego, to no avail.⁷⁸

69. On September 3, 1998, Antônio Carlos Coutinho Régis was again tried before a jury and once again acquitted, unanimously.⁷⁹

70. On December 30, 1999, Judge Gutemberg referred to the situation of the case file after he had been removed from the case stating that everything remained as before "no court, nobody convicted, nobody acquitted."⁸⁰

71. Later on, in 2003, the arrest warrants against Amauri José do Rego⁸¹ and Amaro José do Rego⁸² were successively renewed.

72. It transpires from the case file that there was no procedural activity between 2007 and November 2009.

73. On December 10, 2009, it was declared that the statute of limitations had run in the trial against Amauri José do Rego and Amaro José do Rego⁸³ Consequently, the case was shelved.⁸⁴

⁷⁶ Appendix 68. Considerations by Judge Gutemberg Cardoso Pereira, December 30, 1999. Appendix 14 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

⁷⁷ Initial petition lodged by the petitioners with the IACHR on October 7, 2000. p. 10.

⁷⁸ Appendix 69. Official Letter from the Secretariat for Public Security of the state of Ceará on August 28, 1995. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 282; Appendix 70 Official Letter from the Secretariat for Public Security of the state of Maranhão on August 22, 1995. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 289; Appendix 71 Official Letter from the Secretariat for Public Security of the state of Pernambuco on August 31, 1995. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 285.

⁷⁹ Appendix 72. Certified Minutes of the trial, September, 1, 1998. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 139 -141.

⁸⁰ Appendix 80. Communication from Judge Gutemberg Cardozo, December 30, 1999. Volume 7 Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 62 -63.

⁸¹ Appendix 73. Certifications dated September 4, 2003. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 196-199 Appendix 74. Arrest warrant, May 3, 2005. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 206-207 Appendix 75. Arrest warrant, August 24, 2006. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 216; Appendix 76 Arrest warrant, April 20, 2007. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 221; Appendix 77 Arrest warrant, May 23, 2007. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 224 -225.

⁸² Appendix 78. Arrest warrant, April 14, 1999. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 169; Appendix 79 Arrest warrant, June 01, 2001. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 191; Appendix 73 Certifications dated September 4, 2003. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 196-199 Appendix 74. Arrest warrant, May 3, 2005. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 206-207 Appendix 75. Arrest warrant, Thursday, August 24, 2006. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 216; Appendix 73 Certifications dated September 4, 2003. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 196-199 Appendix 74. Arrest warrant, May 03, 2005. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 206-207 Appendix 75. Arrest warrant, August 24, 2006. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 216; Appendix 76 Arrest warrant, April 20, 2007. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 221; Appendix 77 Arrest warrant, May 23, 2007. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 224 -225.

⁸³ Appendix 81. Judgment of December 10, 2009. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 230 -231.

⁸⁴ Appendix 82. End of court process certificate, January 9, 2010. Police Investigation 023/83- Volume 6- Part II Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 233.

3. Additional investigation based on the testimony of Maria do Socorro Neves

74. On August 1, 1986, the Civilian Police in Alagoa Grande heard testimony from Maria Do Socorro Neves de Araújo, the wife of Severino de Genésio, one of those allegedly involved in the commission of the crime against the alleged victim.⁸⁵ She declared that the murder had been planned by the Várzea Group. She also stated that her husband had accompanied Edmar Paes de Araújo, a landowner, and a soldier named Betâneo Carneiro dos Santos to Margarida Maria Alves' home in a red Opala car on the night before her murder.⁸⁶ She also said that when her husband began talking about the murder he was threatened by Edmar Paes de Araújo, who told him to shut up or he could "have him burned" (*podía mandarlo a quemar*). She said her husband had been found dead next to his car on January 13, 1986.⁸⁷

75. She said in that testimony that Sergeant Aldenis Cunha had visited her and told her that the murder of her husband had been a "burning of records" (*quema de arquivos*) and that Betâneo Carneiro had been responsible for his murder.⁸⁸ According to information in the public domain, in July 1986, Sergeant Aldenis Cunha Lima was murdered.⁸⁹ Edmar Paes de Araújo died in 1986⁹⁰.

76. In light of that testimony, on October 31, 1991, new investigations were conducted at the behest of the Public Prosecutors' Office, in the form of proceedings supplementing Police Investigation 023/83 of October 31, 1991.⁹¹

77. On September 9, 1991, testimony was received from Luiz Silva, a worker pertaining to the Central Única de los Trabajadores trade union, who stated that at the time of the crime there had been a meeting between Aguinaldo Veloso Borges, Zito Buarque (his son-in-law), Edmar Paes de Araújo (known as Mazinho), Branco Pereira, and Antonio de Almeida Régis, to plan the murder of Margarida Maria Alves. He said that Mazinho and Zito Buarque had coordinated the crime (*los articuladores del crimen*) and that sometime after the murder Severino de Genésio was receiving money from Mazinho and Zito Buarque, and that when they stopped giving him money he had begun drinking and threatened to tell about the crime, until he was murdered by the soldier Betâneo, on orders from Mazinho⁹² Other people's testimony corroborated this account.⁹³

78. There is also a statement by Genilson Jorge Santos, a municipal officer who was working in the same station as the soldier Betâneo Carneiro dos Santos at the time of the facts of the case,⁹⁴ who said that the soldier Betâneo Carneiro dos Santos and Sergeant Aldenis Cunha Lima had been involved in the murder of the rural workers' leader Margarida Maria Alves.⁹⁵

79. On October 31, 1991, Investigation 023/83 concluded that those who had ordered the murder of the alleged victim had been Aguinaldo Veloso Borges and his son-in-law José Buarque de Gusmão Neto, the

⁸⁵ Appendix 83. Testimony by Maria do Socorro Neves de Araújo, August 1, 1986. Appendix 10 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

⁸⁶ Appendix 83. Testimony by Maria do Socorro Neves de Araújo, August 1, 1986. Appendix 10 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

⁸⁷ Appendix 83. Testimony by Maria do Socorro Neves de Araújo, August 1, 1986. Appendix 10 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

⁸⁸ Appendix 83. Testimony by Maria do Socorro Neves de Araújo, August 1, 1986. Appendix 10 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

⁸⁹ Appendix 84. "Pistoleiro morto é acusado de matar Margarida" – Article published in the newspaper "Diário da Borborema", on July 29, 1987. Appendix 13 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

⁹⁰ Appendix 88. Death certificate, December 10, 1986. Volume 1- Part 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 188.

⁹¹ Appendix 20. Investigations supplementing Police Investigation 023/83, October 31, 1991 Appendix 12 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

⁹² Appendix 85. Testimony from several people in connection with the Police Investigation, October 31, 1991. Volume 1- Part 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 48 -51.

⁹³ Appendix 35. Testimony of Djailton Hugo dos Santos, on October 17, 1983. Police Investigation 023/83- Volume 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 219 -220.

⁹⁴ Appendix 20. Investigations supplementing Police Investigation 023/83, October 31, 1991 Appendix 12 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

⁹⁵ Appendix 20. Investigations supplementing Police Investigation 023/83, October 31, 1991 Appendix 12 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

owners of the Usina Tanques refinery. Only the latter was tried, because Aguinaldo Veloso Borges died in 1990.⁹⁶

80. On December 12, 1991, the Civilian Police Commander issued a Final Report on the investigation concluding that "Margarida Maria Alves was executed by soldier and hired gunman Betâneo Carneiro dos Santos, assisted by tradesman Severino Carneiro de Araujo, one or two hired gunmen, on orders from Aguinaldo Veloso Borges and his son-in-law José Buarque de Gusmão Neto."⁹⁷

4. Trial 003.1995.0001432 (1995)

81. On August 1, 1995, the Public Prosecutors' Office indicted soldier Betâneo Carneiro dos Santos, as the perpetrator, and José Buarque de Gusmão, as the instigator, of the murder of Margarida Maria Alves.⁹⁸ Pre-trial detention of both was ordered on August 8, 1995⁹⁹ and on March 15, 1996 it was decided to put them on trial.¹⁰⁰

82. According to the case file, the Criminal Division of the Court of Justice in Paraíba decided unanimously to transfer the trial of José Buarque to the First Court for Trial by Jury (Primer Tribunal de Jurados) of the District in the Capital, given that Judge Ricardo Vital de Almeida, the District's substitute judge, had stated that "the accused and his allies were working on a list of 80 names for possible members of the jury. All of which would affect the independence and impartiality of the Jury."¹⁰¹

83. On April 23, 1996, the Higher Court of Justice decided to rule that the case against soldier Betâneo Carneiro dos Santos had prescribed.¹⁰²

84. According to the case file, defendant Jose Buarque de Gusmao Neto challenged the decision to put him on trial and on September 24, 1998, the Criminal Division of the Court of Justice of the state of Paraíba rejected the challenge, arguing that there were no grounds for granting the appeal.¹⁰³

85. The 21 members of the Jury were chosen by lot on November 1, 2000.¹⁰⁴

86. On August 2, 2000, a judge declared that the criminal suit against Joao Carlos de Melo, who was being investigated by police for involvement in the death of Margarida Maria Alves, had prescribed, given that the accused was more than 70 years of age and that Article 109 of the Criminal Code established that for the crime in question the suit prescribed in 20 years, reduced by half if at the time of the judgment the accused was over 70, and in this case the crime had been committed almost 17 years earlier.¹⁰⁵

⁹⁶ Appendix 87. Interlocutory Decision allowing the accusation of December 4, 1991. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 122.

⁹⁷ Appendix 89. Final Report of the Civilian Police Commander, December 12, 1991. Police Investigation 023/83- Volume 5. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 145.

⁹⁸ Appendix 90. Indictment submitted by the Public Prosecutors' Office to the District of Alagoa Grande, August 1, 1995. Volume 4 Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 40 -44.

⁹⁹ Appendix 91. Pre-trial detention order, August 8, 1995. Volume 1- Part 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 297 -306.

¹⁰⁰ Appendix 92. Indictment, February 15, 1996. Volume 3-Part III. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 177 -183.

¹⁰¹ Appendix 93. Judgment to Exclude from Proceedings (*Sentencia de Desaforamiento*) of February 28, 2003. Volume 4 Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 69 and 70.

¹⁰² Appendix 94. Official Letter No. 161/2000, March 15, 2000. Appendix 15 to the initial petition lodged by the petitioners with the IACHR on October 7, 2000.

¹⁰³ Appendix 95. Judgment of the Criminal Division of the Paraíba Court of Justice, September 24, 1998. Volume 6-Part II. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 22.

¹⁰⁴ Appendix 96. Minutes of the Selection by Lot, November 1, 2000. Volume 7 Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 258.

¹⁰⁵ Appendix 97. Statute of limitations judgment in favor of Joao Carlos de Melo, August 2, 2000. Volume 9- Part 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 26 -28.

87. On June 18, 2001, the only remaining defendant, José Buarque de Gusmão, was acquitted in his trial by jury by five votes to two, with the Court giving credence to the defense's denial that he had instigated the murder.¹⁰⁶

88. On June 22, 2001, the Public Prosecutors' Office appealed the decision, arguing that it was contrary to the evidence in the files and pointing out that in one testimony the accused had confessed to his participation in the crime and that he had been responsible for hiring and paying the instigators. The Public Prosecutors' Office added that "there is no other version in the case files, other than that the subject of its appeal participated, at least as an instigator, in the death of Margarida Maria Alves and needs to be punished for that participation"¹⁰⁷.

89. On December 20, 2001, the Criminal Division of the Paraíba Court of Justice admitted the appeal by the Public Prosecutors' Office and ordered a re-trial since it regarded the decision as contrary to the evidence in the case file.¹⁰⁸

90. On April 9, 2002, the defendant filed a habeas corpus action requesting suspension of the criminal suit and of the new trial that had been scheduled until a decision was made on his appeal.

91. On November 12, 2002, the Higher Court of Justice ordered the restoration of the decision of the trial-by-jury court of June 2001 that had acquitted the accused.¹⁰⁹ The Court states that there were two versions of what had happened, one of which posited the nonexistence of elements substantiating the accused's participation in the crime, which would mean that the decision by the trial-by-jury Court had elected the more likely versions and that there was no arbitrariness to be called into question.¹¹⁰

92. Subsequently, the Federal Public Prosecutors' Office filed an extraordinary appeal against that decision, which was declared inadmissible on March 13, 2003.¹¹¹ On September 2, 2003, the files on the case were archived definitively.¹¹²

5. Report of the Human Rights Defense Council

93. On August 22, 2001, the Human Rights Defense Council of the Ministry of Justice of Brazil presented a report on its monitoring of the proceedings against the alleged instigators of the death of the alleged victim.¹¹³

94. In that report, the Council stated that "the murder perpetrated in classic hired assassin style ("pistolaje") was naturally attributed to the struggle for land and "coronelismo" then common under the landed estates system in the North East." It mentioned that "the retrograde elements typical of "corolenismo" in rural areas certainly impaired the ascertainment of the facts and contributed to the insufferable delays in completing criminal proceedings and trials."¹¹⁴

¹⁰⁶ Appendix 98. Judgment handed down by the (juried) Court of the District of Alagoa Grande, on June 18, 2001 Volume 9- Part 1. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 586.

¹⁰⁷ Appendix 99. Appeal. June 22, 2001. Volume 10 Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 4.

¹⁰⁸ Appendix 100. Decision of the Paraíba Court of Justice, December 20, 2001. Volume 10 Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, pp. 152 -204.

¹⁰⁹ Appendix 101. Habeas Corpus action nº 21.503 – PB (2002/0039224-0), November 12, 2002. Appendix to the Additional Observations presented by the petitioners to the IACHR on November 17, 2006.

¹¹⁰ Appendix 102. Vote by the reporting justice (*Ministro Relator*) Gilson Dipp, November 12, 2002. Appendix to the Additional Observations presented by the petitioners to the IACHR on November 17, 2006.

¹¹¹ Appendix 103. Decision by Judge Edson Vidigal. Vice President of the Higher Court of Justice, March 13, 2003. Appendix to the Additional Observations presented by the petitioners to the IACHR on November 17, 2006.

¹¹² Appendix 104. Certification of the shelving of the case, September 2, 2003. Volume 11-Part II. Appendix 3a to the Additional Observations presented by the State to the IACHR on October 23, 2013, p. 164.

¹¹³ Appendix 105. Report of the Human Rights Defense Council, August 22, 2001. Appendix 2 to the document containing the State's observations of October 11, 2013.

¹¹⁴ Appendix 105. Report of the Human Rights Defense Council, August 22, 2001. Appendix 2 to the document containing the State's observations of October 11, 2013.

95. That report also states that "it was only 17 years after the crime that a trial began of the doctor and livestock owner José Buarque de Gusmao Neto ("Zito Buarque"), the man accused of being the instigator of the murder (the other alleged instigator, landowner Aguinaldo Veloso Borges and father-in-law of Zito, died). Finally, the Report acknowledged "the weakness of the evidence gathered in the criminal proceedings, possibly due to prior deficiencies (omissions) in conducting the police inquiries and preliminary investigations" and stated that "the popular version on the crime, focused on the personality of the deceased landowner Aguinaldo Veloso Borges (the accused's father-in-law) to whom other hired murders had been attributed, was not reflected in the preliminary investigations and not enough circumstantial evidence was gathered to render the accusation in the trial admissible."¹¹⁵

IV. ANALYSIS OF LAW

96. The Commission points out that a set of facts in the instant case, such as the death of Margarida Maria Alves on August 12, 1983, and some of the investigations occurred before Brazil acceded to the American Convention on September 25, 1992. That being so, in order to determine the responsibility of the State, the Commission will take into account both the American Declaration and the American Convention.

A. Right to a fair trial (Article XVIII¹¹⁶ of the American Declaration, and right to judicial guarantees and judicial protection (Articles 8.1¹¹⁷ and 25.1¹¹⁸ of the American Convention))

1. General considerations

97. The IACHR has stated that the right to justice contained in Article XVIII of the American Declaration is similar in its scope to the right to judicial protection contained in Article 25 of the American Convention and includes the right of any person to appear before a court when any of her or his rights have been violated, to obtain an investigation conducted by a competent, impartial and independent, as well as the right to obtain reparation for harm done.¹¹⁹

98. According to the Inter-American Court, the right to a fair trial (judicial guarantees) implies that anyone who has suffered a violation of their human rights "has a right to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution."¹²⁰ For its part, the right to judicial protection "obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered."¹²¹ Thus, the duty to investigate applicable to the instant case derives from both Article XVIII of the American Declaration and Articles 8 and 25 of the American Convention.

¹¹⁵ Appendix 105. Report of the Human Rights Defense Council, August 22, 2001. Appendix 2 to the document containing the State's observations of October 11, 2013.

¹¹⁶ Article XVIII of the American Declaration of the Rights and Duties of Man establishes that: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights."

¹¹⁷ Article 8.1 of the American Convention provides: 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

¹¹⁸ Article 25.1 of the American Convention provides: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

¹¹⁹ IACHR Report No. 71/15. Case 12.879. Merits. Vladimir Herzog et al. Brazil. October 28, 2015, par. 192; IACHR, Report No. 40/04, Case No. 12.053, Mayan Indigenous Community (Belize), Annual Report of the IACHR, 2004, par. 174; IACHR, Report No. 54/01, Case 12.051, Maria Da Penha Fernandes (Brazil), April 16, 2001, par. 37.

¹²⁰ I/A Court H.R., Barrios Altos Case v. Peru. Merits. Judgment of March 14, 2001. Series C No. 75, par. 48.

¹²¹ I/A Court H.R., Loayza Tamayo Case v. Peru. Reparations and Costs. Judgment of November 27, 1998. Series C No. 42, par. 169; Fairén Garbí and Solís Corrales Case v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 2, par. 90.

99. Said duty to investigate is one of means, not results, that must be assumed by the State as its own legal duty and be undertaken in a serious manner and not as a mere formality preordained to be ineffective,¹²² or simply as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.¹²³

100. The IACHR recalls that the obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the instigators and those who aid and abet such acts.¹²⁴ That is based on the right to truth of family members of the victim, which entails obtaining clarification of the facts constituting violations from competent organ of the State, as well as the punishment of all those responsible,¹²⁵ with the help of all State institutions.¹²⁶

101. The obligation to investigate and punish must be met with due diligence, which means that "each State act that composes the investigation proceeding, and the entire investigation in itself, should be oriented at a specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events,"¹²⁷ especially when State agents are or may be involved.¹²⁸ In that regard, the State must show that it carried out an immediate, exhaustive and impartial investigation,¹²⁹ and it must be aimed at exploring all the possible lines of inquiry.¹³⁰ The State may be liable for a failure to order, practice or evaluate evidence that may have been essential for a proper clarification of the facts.¹³¹

102. The Commission has considered that, as part of the requisite due diligence in investigating violations of the rights of human rights defenders, the investigating authority should take into account the work of the defender attacked in order to identify which interests could have been harmed in the pursuit of that work in order, thus, to establish lines of inquiry and theories for the crime. The Commission has pointed out that the most effective way to protect human rights defenders in the hemisphere is by effectively investigating the acts of violence against them, and punishing the persons responsible.¹³²

103. In its jurisprudence relating to impunity, the Court has established the importance of establishing logical threads to be pursued in investigations based on the proofs and evidence collected.¹³³ In cases relating to arbitrary deprivation of life, the Court has indicated that it is essential to analyze the power

¹²² I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, par. 177; *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 131.

¹²³ I/A Court HR. *Velásquez Rodríguez Case v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 1, par. 177; *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections. Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, par.183.

¹²⁴ IACHR, Report on the Situation of Human Rights Defenders in the Americas OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, par. 109. I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations, and Costs. Judgment of July 8, 2004. Series C No. 110, par. 146; *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations, and Costs. Judgment of November 25, 2003. Series C No. 101, par. 275; and *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, par. 186; *Case of the Constitutional Court v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 55, par. 123.

¹²⁵ I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations, and Costs. Judgment of November 22, 2005. Series C No. 136, par. 78; *Case of Almonacid-Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 154, par. 150; and *Case of the Rochela Massacre v. Colombia*. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C. No. 163 par. 147.

¹²⁶ IACHR Report No. 49/15, Case 12.585, Merits, Ángel Pacheco León and Family, Honduras, July 28, 2015, par. 80.

¹²⁷ IACHR, Report 85/13, Case 12.251, Admissibility and Merits, Vereda la Esperanza, Colombia, November 4, 2013, par. 242. I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, Series C No. 196, par. 101.

¹²⁸ I/A Court HR. *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations, and Costs. Judgment of November 25, 2003. Series C No. 101, par. 156; and *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2013. Series C No. 270, par. 371.

¹²⁹ IACHR, Report on Merits No. 55/97, Juan Carlos Abella et al. (Argentina), November 18, 1997, par. 412.

¹³⁰ IACHR, Report No. 25/09, Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, par. 109. See, too, IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007, par. 41.

¹³¹ I/A Court HR. The "Street Children" Case (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, par. 230. See, too, IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007, par. 41.

¹³² IACHR, Report No. 56/12, Case 12.775. Merits. Florentín Gudiel Ramos and Makrina Gudiel Álvarez, March 21, 2012.

¹³³ I/A Court H.R., Case of González Medina and Family v. Dominican Republic. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 27, 2012. Series C No. 240, par. 115.

structures that allow such cases, plan them and execute them, whether as instigators or perpetrators, as well as the persons or groups that are interested in or benefit from the crime, because that can lead to hypotheses and lines of inquiry. Thus it is not just a question of examining the crime in isolation, but rather of inserting it in a context that may provide the necessary elements to understand its operational structure.¹³⁴

104. At the same time, in relation to obstacles to investigations, the IACHR has stated that acts of obstruction of justice, hindrances, or failure to cooperate with the authorities that have hampered or are hampering clarification of the case constitute a violation of the right to a fair trial (judicial guarantees).¹³⁵

105. Finally the IACHR points out that the right of access to justice is not limited to pursuing domestic proceedings but must also secure, within a reasonable time, the right of the alleged victims or their next of kin to have everything necessary done to learn the truth about what happened and for those responsible to be punished. Inter-American case law has repeatedly considered four factors for determining whether there is compliance with a "reasonable period of time": 1) the complexity of the matter; 2) the conduct of the authorities; 3) the procedural activity of the interested party; and 4) the general effects on the legal situation of the person involved in the proceeding.¹³⁶

106. The IACHR has stated that a delay in an investigation cannot be justified by the complexity of the matter when (i) possible perpetrators have been identified; (ii) it has been verified that there were witnesses to the event, and (iii) there are possible lines of investigation. For the complexity argument to be valid, it is not enough for State to merely invoke the complexity of a matter in general terms. Specific information has to be provided in each case illustrating that a delay is due to complexity.¹³⁷

2. Analysis of the instant case

107. First, in accordance with the standards cited above, and given that the case deals with the murder of a human rights defender, the authorities need to ascertain whether the crime was related to her activity, so as to be able to establish lines of inquiry and hypotheses. In the instant case, it transpired from the start of the investigations, the context, the prior threats and the testimony of several people that the murder of the alleged victim could have been in reprisal for her work in defense of rural workers.

108. The Commission observes that, in general terms, there is no indication in the file that the authorities in charge of the investigation looked for information regarding Margarida Maria Alves' activities, including the labor lawsuits she had brought that affected the interests of landowners in the area. Thus, no inquiries were made as to which interests Ms. Alves may have affected with her activities in defense of rural workers, which might have triggered lines of inquiry to pursue as to possible instigators, given the context and the defender's activities.

109. Apart from that general omission, the Commission notes that the possible participation of members of the Várzea Group, including Aginaldo Veloso Borges, was not investigated either diligently or in depth. The case file shows, despite some circumstantial evidence, no signs of any thorough investigation into the existence of this group, its membership, its activities, and its *modi operandi*, which would have meant that at least part of the investigation had been directed toward unraveling power structures possibly linked to the murder of Margarida María Alves.

110. The Commission stresses that these kinds of inquiries were needed, not just because Ms. Alves was a human rights defender, but also because the possible involvement of State agents at various levels had emerged, from a Federal Deputy – Aginaldo Veloso Borges –, to a soldier – Betâneo Carneiro – and a sergeant – Aldenis Cunha Lima.

¹³⁴ I/A Court of H.R. Case of Uzcátegui et al v. Venezuela. Merits and Reparations. Judgment of September 3, 2012. Series C No. 249, par. 225.

¹³⁵ IACHR Report No. 53/13, Case 12.777, Merits, Claudina Velásquez Paiz et al, Guatemala, November 4, 2013, par. 122.

¹³⁶ I/A Court H.R., Case of Luna López v. Honduras. Merits, Reparations, and Costs. Judgment of October 10, 2013. Series C No. 269, par. 188.

¹³⁷ IACHR Report No. 49/15, Case 12.585, Merits, Ángel Pacheco León and Family, Honduras, July 28, 2015, par. 113.

111. As for Aguinaldo Veloso Borges, whose name had cropped up from the start, it was not until 1991 that an investigation concluded that he had been involved in the facts of the case, i.e., seven year later when the alleged perpetrator had already died. On this matter, the IACHR notes that the Human Rights Defense Council of the Brazilian Ministry of Justice, which kept track of the proceedings, pointed out that the popular version surrounding the murder, which focused on Aguinaldo Veloso Borges, was not reflected in the preliminary investigations. As for the soldier and sergeant, the Commission observes that the former benefited from the statute of limitations before his possible responsibility had been diligently investigated, while the latter was murdered, whereby there are factors suggesting that his murder was due to his talking about what had happened to Margarida Maria Alves.

112. In short, the Commission considers that the State failed to conduct diligent investigations into the possible instigators of the murder, including the activities conducted by Ms. Alves and the possible interests affected, the power structures associated with the Várzea Group, and the possible participation of State agents.

113. Second, and as regards the perpetrators, the police investigation concluded in 1983 that they were: Amauri José do Rego, Amaro José do Rego, and Antonio de Almeida Regis. Since the first two of these fled, the investigation against them was suspended and in 2009 they benefited from statute of limitations. Here, the IACHR points out that while the State issued arrest warrants against them and asked for information regarding them, in 1995 the judge in the Alagoa Grande district notes that their arrest warrants had not been renewed for more than 10 years (since 1985), which he considered totally inadmissible, as they were supposed to be renewed every year. There is no indication in the information available that between 1983 and 2009 when the case prescribed the State undertook, with all due diligence, all the serious or concrete measures it was supposed to undertake to establish the whereabouts of the alleged perpetrators.

114. The Commission considers that the purpose of the statute of limitations is to guarantee legal certainty and impose temporal restrictions on the punitive power of the State. However, if a State fails to take diligent steps to establish the whereabouts of a fugitive from justice in cases involving human rights violations that must be pursued *ex officio* and then declares in that fugitive's favor that the case against him has prescribed, then invoking that statute becomes a factor favoring impunity that is attributable to the State. The Commission also underscores the fact that in several countries the statute of limitations is interrupted when an accused flees justice, to that extent that said flight makes criminal prosecution impossible.¹³⁸

115. Third, the additional investigations based on the 1986 testimony of Maria Do Socorro Neves, who identified other possible suspects in the crime began five years after her statement, when two of the suspects had already died. Likewise, it was not until 1995 -- nine years after the aforementioned statement -- that soldier Betâneo Carneiro Dos Santos and José Buarque de Gusmao, the son-in-law of the Federal Deputy and landowner mentioned earlier, were criminally indicted by the Public Prosecutors' Office. In the case of the soldier Dos Santos, his case was declared "prescribed" in 1996, without any sign of him having been investigated with due diligence (apart from the nine-year delay).

116. José Buarque de Gusmao, for his part, was acquitted after a trial by jury in 2001. The Commission underscores the grave doubts that arise from the file about the impartiality of the juries in the trials of both José Buarque de Gusmao and Antonio Carlos Coutinho Regis for two reasons: 1) there is circumstantial evidence of pressure being exerted on the jury; and ii) both the Public Prosecutor's office and the lower court considered that the verdicts acquitting the accused were contrary to the evidence in the file. The IACHR also takes into account the fact that consistent and concrete circumstantial evidence regarding involvement in the murder is not analyzed with proper substantiation.

117. Thus, following the acquittal of Antonio Carlos Coutinho Regis on July 5, 1988, the Public Prosecutors' Office appealed the decision because it was contrary to the evidence and the same decision was annulled by the Court of Justice in Paraíba for the same reason. The husband of the alleged victim asked for the

¹³⁸ See, for example, Article 47 of the Code of Criminal Procedure of the Dominican Republic, Article 34 of the Code of Criminal Procedure of Costa Rica, and Article 33 of the Code of Criminal Procedure of Guatemala.

case to be referred to another court for the new trial, given that, following a discussion with the judge in the case, he had become aware that "there is a certain consensus among members of the jury that because the accused had played a less important part in the crime, he should be acquitted again." The accused was acquitted again on September 3, 1988, following a ruling without substantiation.

118. As regards Jose Buarque de Gusmao, the IACHR notes that he was acquitted on June 18, 2001, and that, as in the previous case, the Public Prosecutors' Office appealed the decision as being contrary to the evidence, a view also shared by the Criminal Division of the Paraíba Court of Justice. Despite that, the decision was declared final by the Higher Court of Justice. The Commission also highlights that fact that in this case a judge reported as public knowledge that the accused and his allies were working on a list of 80 names of possible jury members, a consideration that was taken into account as grounds for transferring the trial to the First (Juried) Court of the District in the Capital. The Commission also points to the fact that no grounds are given in the acquittal verdict. The State did not offer any explanation for these circumstances and from the e case file it also transpires that they were never investigated. Accordingly, the strong doubts regarding pressure put on the jury and consequent lack of impartiality were never dissipated.

119. Fourth, the IACHR recalls that the Human Rights Defense Council in Brazil's Ministry of Justice acknowledged the existence of failures to observe due diligence in connection with domestic proceedings. That Council mentioned that the alleged instigator of the crime, José Buarque de Guzman Neto, was put on trial 17 years after the facts of the case, and it also referred to the "weakness of the evidence gathered in the criminal proceedings, possibly due to prior deficiencies (omissions) in conducting the police inquiries and preliminary investigations" and acknowledged the existence of "retrograde elements" that had led to delays in the process and in completing the criminal procedures and trials.

120. Fifth, and with respect to "reasonable periods of time," more than 34 years have elapsed since the murder on August 12, 1983, without the State having thrown light on the case, identifying those responsible, and imposing the corresponding punishments. As noted in the foregoing section, this situation came about as a result of the lack of due diligence in the investigations and proceedings, caused by multiple factors. The Commission regards this lapse of time as in itself unwarranted and nothing in the case file suggests that the excessive time taken is explained by complexities of the case relating to actions by the authorities or family members.

121. The Commission further stresses, in respect of the fourth factor concerning legal sequels of a murder of a human rights defender and the subsequent impunity surrounding it, that they affect not only family members but also have an intimidating effect on all human rights defenders who, out of fear of reprisals or similar attacks, could abstain from doing their job of promoting and protecting human rights, with consequences for society as a whole. This adverse impact is exacerbated by the fact that, as indicated in the context section, the impunity surrounding the murder of Margarida Maria Alves is not an isolated event. Rather it forms part of an alarming environment of impunity during the 1980s and 1990s in which the State is seen to tolerate these kinds of acts.

122. The Commission observes that all the elements described above prove that the State's actions during the investigative process were not designed to establish the truth and punish those responsible for instigating or perpetrating the facts. On the contrary, they directly contributed to impunity. The IACHR reiterates that during the deeply flawed internal proceedings analyzed above, four individuals benefited from application of the statute of limitations, two died before being tried, and two were acquitted.

123. In light of the above considerations, the Commission concludes that the State did not investigate the murder of Margarida Maria Alves with due diligence and is therefore responsible for violation of the rights established in Article XVIII of the American Declaration and Articles 8.1 and 25.1 of the American Convention, in conjunction with Article 1.1 of the latter instrument, to the detriment of her family members identified in this report.

B. Right to life (Article I of the American Declaration of the Rights and Duties of Man¹³⁹)

1. General considerations

124. Both the Commission and the Inter-American Court have held that the right to life plays a fundamental role in the American Convention, as it is the condition *sine qua non* for the exercise of all other rights. Observance of the right to life not only requires that no person be deprived of his life arbitrarily (negative obligation), but also that the States take all appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction.¹⁴⁰ The State's responsibility extends, inter alia, to violation of the right to life resulting from actions or omissions by State agents.¹⁴¹

125. Inter-American jurisprudence has indicated that the duty to investigate must be redoubled when there is circumstantial evidence of state agent participation.¹⁴² On this, the European Court of Human Rights has stated that:

the obligation of the State to protect the right to life requires, by implication, that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. These investigations must be conducted [...] without considering whether the perpetrators are agents of the State agents or third parties. Nevertheless, when the involvement of State agents or bodies is alleged, specific requirements regarding the effectiveness of the investigation may apply. [...] The essential purpose of such investigation is to secure effective enforcement of the domestic laws which protect the right to life, and to ensure, in cases involving State agents or bodies, their accountability for deaths occurring under their responsibility.¹⁴³

126. The Commission reiterates that with circumstantial evidence of this kind, implying direct attribution of international responsibility to the State, the authorities responsible for investigating must make every effort to throw light on possible responsibilities or connections of State authorities for or to a violation of the right to life.¹⁴⁴ Thus it is incumbent upon the State to conduct a rigorous, serious, and diligent investigation to determine the veracity or refute the evidence of State agent participation.

127. With respect to this duty, the Court has pointed out that in cases of violent deaths in which there is circumstantial evidence of State agent participation, the State has taken every step needed to establish the corresponding individual responsibilities.¹⁴⁵ The Court has considered that in cases in which that does not happen, it is:

reasonable to assess as evidence the indications contained in the case file (...) that point to the involvement of state agents in these events, particularly those handled by the very state agencies that were in charge of the investigation which have not been disproven by the State. of the Convention. Reaching any other conclusion would entail allowing the State to resort to its own negligence or inefficacy for the criminal investigation to release itself from

¹³⁹ Article I of the American Declaration of the Rights and Duties of Man provides: "Every human being has the right to life, liberty and the security of his person."

¹⁴⁰ IACHR, Report No. 83/13, Case 12.595, 12.596 and 12.621, Merits, Ana Teresa Yarce et al (Comuna 13), Colombia, November 4 2013, par. 250.

¹⁴¹ IACHR, Report No.24/98, Case 11.287, Joao Canuto de Oliveira, Brazil, April 7, 1998, par.48

¹⁴² I/A Court H.R., Case of Castillo González et al. v. Venezuela. Merits. Judgment of November 27, 2012. Series C No. 256, par. 127.

¹⁴³ ECHR. *Khaindrava and Dzamashvili v. Georgia*, Judgment of September 8, 2010, para. 58; *McCann and Others v. the United Kingdom*. Judgment of September 27, 1995, paras. 49 and 161; and *Mastromatteo v. Italy*. Judgment of October 24, 2002, para. 89.

¹⁴⁴ IACHR, Report No. 120/10, Case 12.605, Merits, Joe Luis Castillo González, Venezuela, October 22, 2010, par. 109.

¹⁴⁵ I/A Court H.R., Case of Kawas-Fernández v. Honduras. Merits, Reparations, and Costs. Judgment of Friday, April 03, 2009, Series C No. 196, par. 97.

responsibility for the violation of Article 4(1) of the Convention.¹⁴⁶

128. Likewise, the Court has reiterated that failure to investigate alleged violations committed against someone when there are suggestions of involvement of state agents “prevents the State from presenting a satisfactory and convincing explanation of the [facts] alleged, and disproves the arguments concerning its responsibility, with adequate probative elements.”¹⁴⁷ In this way, the Court has considered such failure to clarify the facts as a factor to be born in mind in accrediting alleged violations and the attendant international responsibility.¹⁴⁸

129. At the same time, the Commission reiterates that the State’s obligation to act with due diligence in cases of human rights violations may be extended to the actions of non-state actors.¹⁴⁹ The Court has established that a State cannot be responsible for “all the human rights violations committed between individuals within its jurisdiction.” Both the Commission and the Court have analyzed the circumstances under which the State is obliged to adopt measures to prevent and protect, adding that they depend on knowledge of a situation of real and imminent risk for a particular individual or group of individuals and on reasonable possibilities of preventing or avoiding that risk.¹⁵⁰

2. Analysis of the instant case

130. The Commission observes that in the instant case there are a number of “probative elements” pointing to the participation of State agents in the murder of the alleged victim.

131. First, the Commission refers to mentions made in previous sections regarding the lack of due diligence and the acts and omissions that resulted in furthering impunity in connection with investigations at the domestic level.

132. Second, the Commission underscores the general context of violence against trade unionists and labor rights defenders at the time of the murder and that several international organizations have pointed to the acquiescence and in some cases participation of local authorities in the murders of such people.

133. Third, as indicated in the foregoing section, the 2013 Report of the Human Rights Secretariat in the Office of the President of the Republic, entitled “Camponeses mortos e desaparecidos: excluídos da justiça de transição” documented 75 murders of trade union activists between 1961 and 1988, including the alleged victim, and stated that such geographically widespread crimes could only be explained by the participation or omission of State institutions. Likewise, that report indicated that Margarida Maria Alves had denounced the “owners of the refinery of the so-called “Grupo da Várzea.” As pointed out earlier on, that group comprised landowners, state and federal deputies, and state law enforcement agents. The Commission stresses that, according to some testimony, both the alleged victim and inhabitants of Alagoa Grande, attributed the threats she received prior to her death as coming from the “Grupo da Várzea”.

134. Fourth, in the course of domestic proceedings, several testimonies indicated that the murder of the alleged victim had been ordered by the “Grupo da Várzea,” and/or that State agents had participated in her murder.

135. Several testimonies implicated State agents. In particular:

¹⁴⁶ I/A Court H.R., Case of *Kawas-Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, Series C No. 196, par. 97.

¹⁴⁷ I/A Court H.R. Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, par. 353.

¹⁴⁸ I/A Court H.R. Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, par. 354.

¹⁴⁹ I/A Court H.R., Case of the “Mapiripán Massacre” v. Colombia. Merits, Reparations, and Costs. Judgment of September 15, 2005. Series C No. 134, par. 111.

¹⁵⁰ I/A Court HR. Case of *González et al. (“Cotton Field”) v. México*. Judgment of November 16, 2009.

- The Archbishop Marcelo Pinto declared that those who ordered the murder of the alleged victim were Aguinaldo Veloso (a Federal deputy) and other members of the "Grupo da Várzea."

- Maria do Socorro Neves, wife of the Severino de Genésio supposedly involved in the crime and later murdered, declared that the murder of Margarida Maria Alves had been planned by the Grupo de Várzea and that those participating in her murder included Aguinaldo Veloso, a soldier working at the Pueblo de Remígio station in Paraíba called Betâneo Carneiro dos Santos and others. She said that her husband had been murdered by the soldier Betâneo Carneiro dos Santos for having told Sergeant Aldenis Cunha what he knew about the murder of Margarida Maria Alves. Soldier Aldenis Cunha was also later murdered.

- Genilson Jorge dos Santos, a municipal official at the same office where soldier Betâneo Carneiro dos Santos worked at the time of the facts of the case declared that soldier Betâneo Carneiro dos Santos and Sergeant Aldenis Cunha Lima were involved in the crime.

136. The Commission considers that all these factors taken as a whole permit the conclusion that there was State participation in the murder of Margarida Maria Alves. The Commission recalls in addition that the State failed to undertake an investigation with due diligence and, as mentioned earlier, the judicial authorities did not analyze or seriously determine the direct participation, acquiescence, or collaboration of State agents in the commission of the crime.

137. At the same time, the Commission points out that numerous factors show that the State was aware of the risks facing the alleged victim prior to her death. The Commission points to the grave context of human rights violations against labor rights defenders in North Eastern Brazil, which included murders, as described in the proven facts section, and points out that the alleged victim suffered a series of attacks and threats prior to her death, which she reported to State authorities. In particular, it is a fact that she publicly denounced the landowners who had threatened her. Likewise, according to the petitioners, one year before her death, the alleged victim denounced to the Police State in Alagoa Grande that she and her son had been assaulted by the owner of the Riberio refinery. The State did not deny to the Commission that it was aware of these facts, specifically the information relating to her denunciations of the threats.

138. The Commission considers that the above, taken as a whole, leads to the conclusion that the Brazilian State had or should have had knowledge of a situation of real and imminent risk for Margarida Maria Alves and that it took no steps to protect her from the risks she faced and prevent it from materializing.¹⁵¹ In particular, there is no evidence of the State having adopted any measure to investigate the source of the threats in order to protect the victim and prevent those threats from materializing.

139. For the above reasons, the Commission considers that the Brazilian State is internationally responsible for failing to fulfill its duty of preventing violations of the right to life and to respect the life of Margarida Maria Alves. Therefore, the IACHR concludes that the State violated Article I of the American Declaration to her detriment.

C. Right of association (Article XXII of the American Declaration of the Rights and Duties of Man¹⁵²)

140. The Commission recalls that the right to freedom of association includes the "right to associate freely for ideological, religious, political, economic, labor, social, cultural, athletic or any other purpose. These words establish literally that those who are protected by the Convention not only have the right and freedom to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right, which thus represents a right of each individual. They also enjoy the right

¹⁵¹ IACHR, Report No.24/98, Case 11.287, Joao Canuto de Oliveira, Brazil, April 7, 1998, par. 53.

¹⁵² Article XXII of the American Declaration of the Rights and Duties of Man provides: "Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature."

and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose."¹⁵³

141. As the Inter-American Court has indicated, in connection with the American Convention, freedom of association has an individual and a collective dimension. In the *Huilca Tecse* case regarding the extrajudicial execution of a trade union activist, the Court pointed out that "a restriction of the possibilities of association represents, directly, and to the same extent, a restriction of the right of the community (*colectividad*) to achieve the goals it sets itself." For its part, in its social dimension, freedom of association is a means that enables the members of a group or labor association (*colectividad laboral*) from reaching certain goals as a whole and benefiting from them.¹⁵⁴

142. Likewise in the *Baena Ricardo et al* case, the Court stated that "freedom of association, in trade union matters, is of the utmost importance for defense of the legitimate interests of workers and forms part of the *corpus juris* of human rights."¹⁵⁵

143. For its part, the IACHR has stated that for the most part the most serious human rights violations such as extrajudicial executions and forced disappearances are designed to silence certain leaders or activists or remove them from the political or social arena. The violation of the right to life, for instance, may be an extreme repressive measure in reprisal for community, social, or political participation activities carried on by the victim.¹⁵⁶

144. As the IACHR has indicated, the free and full exercise of freedom of association imposes a duty upon States to create the legal and factual conditions for defenders to be able to freely perform their functions, to prevent attacks on that freedom, to protect those who exercise them, and investigate violations of that freedom. These positive obligations must also be met in the sphere of relations among private individuals, if warranted.¹⁵⁷

145. The IACHR recalls that in the instant case there is no disputing that the death of the alleged victim was in retaliation for her work in defense of the rights of rural workers. Thus, the State pointed out that, according to the Human Rights Defense Council, a State body, the murder of the alleged victim was a classic case of "hired murder" related to "the struggle for land and 'coronelismo'."

146. For its part, the Commission already established that the State failed to comply with its obligations to respect and guarantee the life of the alleged victim and failed to conduct an investigation with due diligence to assign responsibilities for the death of the alleged victim.

147. In light of the above, the IACHR considers that, in the instant case, Margarida Maria Alves's legitimate exercise of the right to freedom of association and defense of the labor rights of rural workers triggered a fatal reprisal, in which State agents participated, violating her right to freedom of association. For the above reasons, the IACHR concludes that the Brazilian State is internationally responsible for violating the right to freedom of association provided for in Article XXII of the American Declaration to the detriment of Margarida Maria Alves.

¹⁵³ European Court of Human Rights, "Doctors for Life" case v. Austria, Judgment of 21 June 1988, Series A no. 139, par. 32; and I/A Court H.R., Case of *Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, par.

¹⁵⁴ I/A Court H.R., Case of *Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, paragraphs 70-71.

¹⁵⁵ I/A Court H.R., Case of *Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001, Series C No. 72, par. 159.

¹⁵⁶ IACHR, Report No. 69/06, Case 11.171, Merits, Tomas Lares Cipriano, Guatemala, October 21, 2006. par. 117.

¹⁵⁷ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.Doc.66, December 31, 2011, par.157.

D. Right to life, liberty and personal security (Article I of the American Declaration of the Rights and Duties of Man¹⁵⁸ and Right to Humane Treatment/personal integrity (Article 5 of the American Convention¹⁵⁹)

148. The Inter-American Court has indicated that the next-of-kin of victims of certain human rights violations may, in turn, become victims. Specifically, the Court found that the right to mental and moral integrity of the next of kin of victims [may be] violated based on the ... particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts.¹⁶⁰ The absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.¹⁶¹

149. Based on the foregoing, the Commission considers that the loss of a loved one in circumstances such as that described in this case, as well as the lack of a thorough and effective investigation which in turn causes pain and anguish if the truth is not revealed, in themselves constitute harm to the mental and moral integrity of the members of Margarida Maria Alves' family.

150. The Commission notes, in particular, that at the time of the facts of the case, the son of the alleged victim, José de Arimatéia Alves, then 8 years old, was playing in front of the house in which his mother was murdered, and after the murder saw the lifeless body of his mother on the floor. In his own words, "I can still see the bloodied body of my mother, an enormous trauma I carry with me to this day." That is enough to accredit violation of his right to personal integrity, given the psychological and emotional impact on a child of witnessing the murder of his mother and the impunity still surrounding it.

151. In light of the above, the Commission concludes that the State violated the right to personal integrity upheld in Article I of the America Declaration and Article 5 of the American Convention to the detriment of the family members of Margarida María Alves identified in this report.

V. CONCLUSIONS

152. The Inter-American Commission concludes that the Brazilian State was responsible for violating rights upheld in Article I (right to life, liberty and personal security), Article XVIII (right to a fair trial), and Article XXII (right of association) of the American Declaration of the Rights and Duties of Man and in Articles 5 (Right to Humane Treatment), 8.1 (Due [judicial] Guarantees), and 25.1 (Right to Judicial Protection) of the American Convention on Human Rights in conjunction with Article 1.1 of the latter instrument, to the detriment of the persons specified throughout the present report.

VI. REPORT N.133/17

153. On October 25, 2017 during its 165th period of sessions, the Commission approved Report No.133/17 on the merits of this case, which encompasses paragraphs 1 to 152 above, and made the following recommendations to the State:

1. Make comprehensive reparation to the family members of the victim in the present case through financial compensation measures and measures of satisfaction that cover the material and moral damage wrought by the violations declared in this report.

¹⁵⁸ Article I of the American Declaration of the Rights and Duties of Man provides: "Every human being has the right to life, liberty and the security of his person."

¹⁵⁹ Article 5 of the American Convention provides: "Every person has the right to have his physical, mental, and moral integrity respected."

¹⁶⁰ I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par.112.

¹⁶¹ I/A Court H.R., Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations, and Costs. Judgment of Thursday, November 27, 2008. Series C No. 192, par.102.

2. Conduct and complete a diligent and effective investigation within a reasonable period of time to throw full light on the facts; identify all possible material and intellectual responsibilities at the different levels of decision-making and execution; and exact the corresponding punishments for the human rights violations shown in this report. This includes investigating the power structures/units participating in the commission of the violations that took place. In connection with this process, it is incumbent upon the State to adopt all measures required to protect the witnesses and other participants in the process, wherever necessary. Furthermore, bearing in mind that prescription was the result of actions and omissions on the part of the State, the statute of limitations may not be cited to oppose full compliance with this recommendation.

3. Provide such physical and mental health services as are needed for the rehabilitation of the family members of Margarida Maria Alves, if they so wish and in coordination with them.

4. Provide for non-repetition measures that include strengthening the Protection Program for Human Rights Defenders, focusing on prevention of acts of violence against defenders of workers' rights in Brazil; and strengthening capacity to investigate these kinds of crime, in accordance with the standards developed in the present report.

VII. FOLLOW-UP MEASURES TO REPORT No. 133/17

154. On March 1, 2018, the Commission sent the Report to the State, with a two-month deadline to report on the measures adopted to comply with the recommendations contained therein.

155. On April 27, 2018, the State indicated that it still did not have all the available information to provide a response to the IACHR and had planned a visit to the State of Paraíba in May to gather information on the case. For this reason, it requested a one-month extension to submit further information, accepting the suspension of the deadline provided for under Article 51(1) of the American Convention and waiving its right to file preliminary objections regarding said deadline, were the matter to be sent to the Court.

156. On June 1, 2018, the Commission granted the State an extension of three months to provide it additional time to make headway in complying with the IACHR's recommendations.

157. On August 15, 2018, the State presented its report on compliance with the recommendations of the Merits Report. In said Report, the State indicated that on March 26, 2018, its Technical Committee of the Inter-American Human Rights System, whose purpose is to comply with the IACHR's decisions, held its 24th meeting. At this meeting, the Committee decided to conduct a visit to the State of Paraíba to coordinate compliance with the recommendations in this case with state and municipal bodies. It mentioned that this visit took place in June 2018.

158. The State also indicated that on May 24, 2018, there was a joint meeting of the Ministry of Human Rights and the Committee on Human Rights and Ethnic Minorities of the Chamber of Deputies, at which the case of Margarida Maria Alves was discussed. It noted that the representative chairing the Committee on Human Rights acknowledged the importance of the case and indicated that the house where Margarida Maria Alves resided had been turned into a museum in order to preserve her memory. The State likewise reported that said representative also highlighted the possibility of holding a public hearing at the State of Paraíba Legislative Assembly to address cases of human rights violations, including that of Margarida Maria Alves.

159. The State reported that on June 15, 2018, a videoconference was held with the petitioner in order to clarify the actions that the State is undertaking to comply with the recommendations of the Merits Report.

160. Specifically, regarding compliance with the recommendations, the State reported that in terms of the **first recommendation**, it held a meeting with the petitioner on July 18, 2018. At this meeting, the victim's son, José de Arimatéia, presented a proposal for the payment of forty thousand dollars for material damages and sixty thousand dollars for moral damages. The State indicated that the proposal is under legal

analysis. It likewise indicated that the Ministry of Human Rights proposed in terms of symbolic reparations conducting a public hearing at the [State of] Paraíba Legislative Assembly in memory of Margarida Maria Alves.

161. The State noted that as part of the public acknowledgement of the violations the victim suffered, on November 7, 2016, Margarida Maria Alves, was granted political amnesty pursuant to an ordinance in the Official Gazette. The State likewise noted that there is a legislative bill seeking to include Margarida Alves in the book of national heroes, which is deposited in the pantheon of freedom and democracy in Brasilia and contains the names of revered figures in the country's history. Brazil also indicated that the house where the victim lived in Alagoa Grande, Paraíba, had been turned into a museum, where personal belongings, photographs, and press articles referring to the victim's fight for the rural population were on display.

162. The State also indicated that as part of the symbolic reparations it had named 22 streets and 4 settlements throughout Brazil for Margarida Maria Alves. It also stated that the victim's case was included in the State of Paraíba Truth Commission's Final Report.

163. With respect to the **second recommendation**, the State reiterated the arguments presented in the merits stage—i.e., that the investigations and criminal actions in this case were conducted with the due guarantees and judicial protection provided for under the American Convention. The State expressly indicated that it was not feasible to initiate a new investigation or trial in a case that had already been decided on. It pointed out that the State, in the legitimate exercise of its sovereignty, interpreted and enforced domestic law in the proceedings that had already been conducted and no review of the decisions already taken was possible.

164. The State noted that the usefulness of criminal penalties is not limited to its retributive dimension and that it had already adopted measures to protect journalists, and in general, freedom of expression, which suggests that the eventual preventive effect of the criminal penalty has been satisfied.

165. Additionally, with regard to the part of the second recommendation that refers to adopting all [possible] measures to protect witnesses and other actors in the proceedings, the State noted that there is a protection program for victims and witnesses under threat whose aim is to offer special protection to victims and witnesses of crimes who are at risk as the result of their collaboration in criminal proceedings. Brazil indicated that with this program the aforementioned part of the IACHR's recommendation had been complied with.

166. As for the **third recommendation**, the State noted that the Joao Pessoa Municipal Health Secretary had committed to providing health services to Mr. José de Arimatéia, who had indicated that he required services for some health issues. Brazil highlighted that on August 14, 2018, Mr. José de Arimatéia had been seen by a doctor who requested several tests be conducted.

167. With respect to the **fourth recommendation** related to non-repetition measures, the State indicated that it has had a National Policy for the Protection of Human Rights Defenders since 2007 and a Protection Program for Human Rights Defenders since 2004 in order to protect individuals whose rights are threatened as a result of promoting or defending human rights. It further indicated that currently there are 444 defenders included in this Program, above all defenders of indigenous causes and land rights. It highlighted that the Program for defenders is the only one implemented nationwide, which demonstrates the Brazilian State's commitment to defending human rights.

168. The State added that the national human rights ombudsman has taken measures regarding prevention of violence in rural areas, environmental crimes, threats to leaders of rural workers, and others, through, *inter alia*, meetings and on-site visits. It also noted that the National Agrarian Defender's Office participates in mediation and conciliation processes to resolve agrarian disputes.

VIII. REPORT No. 120/18 AND INFORMATION ON COMPLIANCE

169. On 14 December 2018, the Commission transmitted Final Report on Merits No. 120/18 to the State and gave it one month to report on measures taken to implement the recommendations contained therein.

170. On February 13, 2019, in the framework of its 171st session, the IACHR organized a working meeting of the parties. On January 14, 2019, the petitioners submitted their observations on the implementation of the recommendations contained in Report No. 120/18. On February 7, 2019, the State presented reports on its implementation of the recommendations.

171. With regard to the **first recommendation**, the State did not furnish any additional information to that already provided during the follow-up period for Report No. 33/17.

172. The petitioners said in this regard that, more than nine months after the preliminary report on merits, the State had still not complied with that recommendation and had failed to offer a response to the proposal submitted by José de Arimatéia. They said that they had reiterated their proposal on several occasions and by different means. They said that it could not, therefore, be concluded that there was an agreement between the parties on the reparations proposal for material and nonpecuniary damages, and they argued that in view of that, the Final Report on Merits should be amended to reflect that there was no such agreement.

173. The Commission takes note of the information provided by the State; however, it expresses its concern at the lack of concrete progress in implementing this recommendation almost two years after the preliminary report on merits was issued. The IACHR once again urges the State swiftly to take the necessary steps to provide effective compensation for the violations declared in the Commission's Report on Merits.

174. With regard to the **second recommendation**, the State did not specifically refer to the progress of the investigation into the facts of the present case, but limited itself to a chronology of procedures in the process that took place before the preliminary report was issued.

175. As regards the part of the recommendation related to measures to protect witnesses, it reiterated that it had Victim and Witness Protection Program, which aimed to provide special protection to victims and witnesses of crimes who were at risk as a result of their collaboration in criminal proceedings.

176. The petitioners reiterated their concern about the position taken by the State that the investigation in this case was conducted in accordance with the rights to a fair trial and judicial protection recognized in the American Convention and that the opening of new investigation or trial in a case already decided was not feasible. They therefore requested that the Commission closely monitor this measure.

177. The Commission recalls that, as it indicated in its preliminary report, the State's actions in the investigation of the victim's death were not aimed at determining the truth and punishing those materially and intellectually responsible for the facts, and the declaration of prescription under the statute of limitations was the result of a process that violated the State's international obligations, and therefore could not be used as grounds for non-compliance with this recommendation. Accordingly, the Commission urges the State to make progress in implementing the recommendation related to the duty to investigate, for which purpose it requests the State to send the IACHR a plan of action and a timetable for compliance with this recommendation in relation to the perpetrators and architects of the crime who are still alive.

178. With regard to the **third recommendation**, the State reiterated the information provided on previous occasions that José de Arimatéia has been treated by the Joao Pessoa public health network, which provided him with the necessary consultations and medication.

179. Regarding this recommendation, the petitioners stated that although José de Arimatéia was receiving care from specialist doctors, he sometimes had to wait three months to receive the medication prescribed to him due to delays in the drug tender process. They added that his health had worsened in recent months and he had had to be hospitalized as a result. They stressed that they expected the recommendation to be fully complied with and that the State will provide the necessary medical care and attention to ensure effective and quality treatment for the victim.

180. The Commission takes note of the information presented and urges the State to continue providing the necessary medical services to the relatives of the victim in this case. In particular, the IACHR emphasizes the importance that not only medical diagnoses be timely, but that medications be provided quickly, and therefore it requests the State to take the necessary measures to avoid undue delays in the delivery of medications.

181. Likewise, regarding the **fourth recommendation**, the State reiterated the information on its Program for Protection of Human Rights Defenders. It reported that currently 536 human rights defenders throughout the country are being supported by the Program. Specifically, with regard to the information requested in Report 120/18 on measures to strengthen the Program, it reported that since 2009 the program has supported defenders at risk in Paraíba. It said that this year the Program's budget is 14.7 million reais, an increase of 326 percent compared with 2018 and the highest budget in its history. It added that in 2018 there had been only four agreements with states to expand the protection network; and that there were currently already nine agreements in the country.

182. It also said, with regard to methodology, that the Program's activities follow the guidelines set out in Decree 6.044/2007. It said that in October 2017 a working group was set up to discuss the Program's social participation methodology to enable dialogue between State representatives and human rights defenders. The working group met throughout 2018 and the final proposal for the creation that space is reportedly undergoing final adjustments by the Ministry for Women, the Family and Human Rights. On the other hand, regarding collective protection measures, the State said that it did not consider viable the nominal and collective inclusion of every member of a group, taking into account that the threats and risks are greater for their leaders. However, it said that through the follow-up on their cases it determined that although various protection measures were not granted to a whole group, sometimes the impact was general.

183. With regard to the gender, ethnic and LGBTI perspective in the implementation of protection measures, the State said that the policy's technical team consisted of professionals from different disciplines to allow a systemic, holistic approach and that aspects such as the defender's situation, context, gender, race, ethnicity, sexual orientation, age, social context, and other factors were taken into account.

184. The petitioners said that the shortcomings highlighted by the Commission in Report 20/18 in relation to the protection mechanism for defenders persisted and that the State should provide concrete information on measures adopted to strengthen the Program.

185. On this aspect, the Commission takes note of the information provided by the State and considers that the budget increase, as well as the negotiation of agreements between different states to ensure greater coverage for the policy on protection of human rights defenders and the steps to install a dialogue mechanism in which human rights defenders can participate, constitute positive advances.

186. The IACHR noted in its preliminary observations on its on-site visit to Brazil from November 5 to 12, 2018 that "it is essential for the Program to achieve effective implementation in rural areas and in areas that are far from urban centers, which is precisely where most of the reported acts of violence happen. Further, during a meeting with the Pará state Public Prosecutor's Office, participants stressed an urgent need to better coordinate the protection program with the various law enforcement agencies responsible for implementing protection measures."¹⁶²

187. The IACHR urges the federal state to continue adopting all necessary measures to strengthen the Program for Protection of Human Rights Defenders. In particular, it is essential to increase its coverage, starting with those regions where there is the greatest need due to the differentiated risk faced by human rights defenders.

IX. FINAL CONCLUSIONS AND RECOMMENDATIONS

¹⁶² Preliminary Observations of IACHR's In Loco Visit to Brazil

188. Based on the foregoing, the Commission concludes that the Brazilian State is responsible for violation of the rights recognized in Articles I (right to life, liberty and personal security), XVIII (right to a fair trial), and XXII (Right of association) of the American Declaration of the Rights and Duties of Man; and Articles 5 (right to humane treatment), 8(1) (right to a fair trial), and 25(1) (right to judicial protection) of the American Convention in relation to Article 1(1) of the same instrument to the detriment of the persons mentioned throughout this report.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES TO THE STATE OF BRAZIL THE FOLLOWING RECOMMENDATIONS WITH A VIEW TO THEIR FULL AND EFFECTIVE IMPLEMENTATION:

1. Make comprehensive reparation to the family members of the victim in the present case through financial compensation measures and measures of satisfaction that cover the material and moral damage wrought by the violations declared in this report.

2. Conduct and complete a diligent and effective investigation within a reasonable period of time to throw full light on the facts; identify all possible material and intellectual responsibilities at the different levels of decision-making and execution; and exact the corresponding punishments for the human rights violations shown in this report. This includes investigating the power structures/units participating in the commission of the violations that took place. In connection with this process, it is incumbent upon the State to adopt all measures required to protect the witnesses and other participants in the process, wherever necessary. Furthermore, bearing in mind that prescription was the result of actions and omissions on the part of the State, the statute of limitations may not be cited to oppose full compliance with this recommendation.

3. Provide such physical and mental health services as are needed for the rehabilitation of the family members of Margarida María Alves, if they so wish and in coordination with them.

4. Provide for non-repetition measures that include strengthening the Protection Program for Human Rights Defenders, focusing on prevention of acts of violence against defenders of workers' rights in Brazil; and strengthening capacity to investigate these kinds of crime, in accordance with the standards developed in the present report.

X. NOTIFICATION

189. In light of the above and in accordance with Article 51(3) of the American Convention and 47(3) of its Rules of Procedure, the IACHR decides to make this report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the State of Brazil respect to the above recommendations until it determines there has been full compliance.

Approved by the Inter-American Commission on Human Rights on the 26 day of the month of April, 2020. (Signed): Joel Hernández García, President; Antonia Urrejola Noguera, Second Vice President; Margarette May Macaulay, Esmeralda Arosemena de Troitiño, Julissa Mantilla Falcón, Edgar Stuardo Ralón Orellana, Members of the Commission.