

OEA/Ser.L/V/II.157
Doc. 11
13 April 2016
Original: Spanish

REPORT No. 7/16

CASE 12.213

REPORT ON MERITS (PUBLICATION)

ARISTEU GUIDA DA SILVA AND FAMILY
BRAZIL

Approved by the Commission at its session No. 2061 held on April 13, 2016
157 Regular Period of Sessions.

Cite as: IACHR, Report No. 7/16, Case 12.213. Merits (Publication). Aristeu Guida da Silva and family. Brazil. April 13, 2016.



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I. SUMMARY

1. On September 23, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition filed by Ricardo Trotti, representing the Inter American Press Association (hereinafter “the petitioner”), alleging the responsibility of the Federative Republic of Brazil (hereinafter “the State” or “the Brazilian State”) for violations of the human rights of journalist Aristeu Guida da Silva and his relatives.

2. According to the petitioner, Mr. Guida da Silva was murdered in May 1995 for reasons related to the practice of journalism. The petitioner alleged that the State failed to take measures to protect the alleged victim’s life, and that the State’s failure to diligently investigate, prosecute, and punish the perpetrators of this crime has allowed the murderers to go unpunished, and has hindered the work of other journalists in the region where the events occurred. It asserted that this constitutes a violation of the rights to life, to a fair trial, to freedom of thought and expression, and to judicial protection, enshrined in Articles 4, 8, 13, and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in relation to the general obligation to respect rights provided for in Article 1.1 thereof. Accordingly, the petitioner asked the IACHR to recommend several reparations measures to the State.

3. The State alleged that the murder of Mr. Guida da Silva was committed by private individuals, and therefore the State cannot be held internationally responsible for that crime. It also indicated that the national courts have acted with due diligence in the investigation and criminal prosecution of the alleged perpetrators, and thus asserts that the human rights violations alleged by the petitioner cannot be established in the instant case.

4. On October 22, 2003, the IACHR adopted Report No. 73/03, in which it declared the petition admissible in relation to Articles 4 (Right to life), 8 (Right to a fair trial), 13 (Freedom of thought and expression), and 25 (Judicial protection) of the American Convention, in relation to Article 1.1 thereof.

5. Upon examining the merits of the case, the Commission concluded that the State is responsible for the violation of the rights enshrined in Articles 4 and 13 of the American Convention, in relation to Article 1.1 thereof, with respect to Mr. Guida da Silva and Articles 5, 8 and 25 of the Convention, in relation to Article 1.1 thereof, with respect to his relatives.

II. PROCESSING SUBSEQUENT TO THE ADMISSIBILITY REPORT

6. On December 4, 2003, the Commission gave notice to the parties of the Admissibility Report; granted them a period of two months to submit additional observations on the merits of the petition, and made itself available to the parties to facilitate a friendly settlement process.

7. On February 6, 2004, the Commission received the petitioner’s submission of January 30, 2004, providing additional observations on the merits of the petition and underscoring their interest in the friendly settlement process. On February 20, 2004, the Commission transmitted the pertinent parts of the petitioners’ submission to the State with a request for any observations to be submitted within one month. The State did not submit any observations on the petitioner’s communication.

¹ Commissioner Paulo Vannuchi, a Brazilian national, did not participate in the deliberations or the decision regarding the present petition, in conformity with Article 17.2.a of the Commission’s Rules of Procedure.

8. On September 10, 2004, the Commission asked the parties to submit, within one month, several documents that related to the analysis of the merits of the case. Neither party responded to the Commission's request within the specified time period.

9. On January 31, 2006, the Commission reiterated its request that the State submit its observations to the petitioner's January 30, 2004 submission, and submit its final observations on the merits of the petition within two months.

10. On May 22, 2006, the Commission received the State's communication dated May 15, 2006, in which it agreed to enter into a friendly settlement process in the case. The submission was forwarded to the petitioner on June 2, 2006, and the petitioner was given two months to present their observations on the matter.

11. On July 11, 2006, the IACHR received another submission from the State reiterating its interest in the friendly settlement process. That communication was forwarded to the petitioner on July 26, 2006.

12. On August 3 and 17, 2006, the Commission received a submission from the petitioner dated July 28, 2006, suggesting possible reparations measures to initiate the negotiations for a friendly settlement. On August 25, 2006, the Commission forwarded to the State the pertinent parts of that submission, asking for it to send its observations within one month. The State did not answer the Commission's request within the specified time period.

13. On April 23, 2007, the Commission requested that the parties submit updated information on the case, and asked them to confirm their intent to initiate a friendly settlement process. On May 24, 2007, the petitioner reiterated its interest in the dialogue process and requested information on the next steps to take. At the same time, the State requested a 45-day extension to submit the requested information. On June 5, 2007, the Commission explained to the petitioner that, in view of the parties' reluctance to begin the friendly settlement process, they would have to establish channels of communication between them in order to reach an agreement in the case. On that same date, the IACHR granted the 45-day extension requested by the State.

14. On July 2, 2007, the petitioner asked the Commission to provide them with contact information from the State in order to initiate the dialogue process. On July 10, 2007, the State requested an additional extension of 15 days in order to present the information requested by the Commission. On July 12, 2007, the Commission granted the State's request for an extension, and informed the petitioner that it would send them the contact information for the representatives of the State once it obtained a response from it.

15. On July 25 and August 6, 2007, the State submitted updated information about the case, together with several documents from the police investigation and the court proceedings related to the murder of journalist Guida da Silva, in response to the Commission's 2004 request. In the first submission, the State requested that the Commission declare the petition unfounded. The Commission forwarded the first submission to the petitioner on August 10, 2007.

16. In a communication submitted on August 21, 2007, the petitioner expressed their concern over the State's apparent change in position, as it had previously indicated its interest in the friendly settlement process. The Commission forwarded this submission to the State on October 9, 2007, granting it one month to comment on the document. On that same date, the Executive Secretariat of the IACHR sent the petitioner the attachments to the State's July 25, 2007 submission; it confirmed receipt of the State's submission of August 6, 2007, and informed the parties that the content of that document had been brought before the Commission for its consideration.

17. On November 9, 2007, the State presented additional observations on the merits of the case and requested another extension in order to "examine the relevance" of submitting to a friendly settlement

process. The Commission forwarded this submission to the petitioner on December 14, 2007, and asked them to submit their observations with respect to the information presented by the State within one month. In addition, it granted the State a period of 30 days to make a determination regarding the friendly settlement process. The petitioner presented its observations to the State's submission on January 23, 2007.

18. On January 16 and March 3, 2008, the State requested extensions to confirm its position with respect to the dialogue process. On January 18 and March 5, 2008, the Commission granted the requested 30-day and 15-day extensions, respectively. The IACHR observes that the State did not respond to that request or confirm its interest in participating in a friendly settlement process.

19. On April 23, 2009, the State submitted updated information about the case, together with documents from the court cases relating to the death of journalist Guida da Silva and reiterated its position with respect to the merits of the case. The following day, the Commission forwarded the pertinent parts of the submission and its attachments to the petitioner, requesting that it present any observations within one month. The petitioner did not present any observations on that submission within the specified time period.

20. On July 15, 2010, the petitioner asked the Commission for updated information on the processing of the petition. On July 20, 2010, the Commission confirmed receipt of that submission and reported that the petition was in the process of being examined on the merits.

21. On August 5, 2013, the Commission asked the State to submit copies of various documents concerning the judicial proceedings in this matter within one month. On September 16, 2013, the State requested a 15-day extension, which was granted by the IACHR on October 15, 2013.

22. On October 22, 2013, the State submitted updated information on the case and sent the IACHR copies of various documents pertaining to the judicial proceedings in this matter. On this occasion, the State reiterated its arguments regarding the merits of the case. On November 11, 2013, the State submitted additional information on the case.

23. On December 4 and December 17, 2013, the IACHR sent the petitioner the pertinent parts of the additional information submitted by the State, granting it one month to submit observations. On December 20, 2013, the petitioner requested an extension of that deadline. On May 5, 2014, the petitioner submitted its observations and reiterated its arguments with respect to the merits. On June 4, 2014, the IACHR forwarded the petitioner's submission to the State.

III. POSITION OF THE PARTIES

A. Position of the petitioner

24. The petitioner alleged that journalist Aristeu Guida da Silva was murdered for reasons related to the practice of his profession, in particular because of the news and critiques he published about corruption and other unlawful acts of members of government and other individuals in the municipality of São Fidélis, in the State of Rio de Janeiro.

25. The petitioner indicated that the journalist had reportedly been subjected to numerous threats, and that he had been physically attacked by persons who felt they had been negatively affected by the news items published, including a council member from the Municipality of São Fidélis. In addition, days prior to his death, Guida da Silva had been publicly repudiated by council members and other municipal authorities because of an article in which he exposed alleged acts of corruption in the Municipal Council.

26. The petitioner indicated that on May 12, 1995, at approximately 8:00 p.m., journalist Guida da Silva was talking to a friend on Faria Serra Street, in the city of São Fidélis, and was carrying a briefcase containing all of the photographs, articles, and other information he was planning to include in an article that was to be published in the next edition of the *Gazeta de São Fidélis*. In that article, the journalist indicated that a council member, his attorney, and other individuals were involved in a complex vehicle theft ring. The

article also mentioned all of the leaders of the “Cerol” death squad. The petitioner stated that, at that moment, a masked man approached journalist Guida da Silva from behind, and shot him in the back. It indicated that two masked men then arrived on a motorbike, one of whom shot the journalist again. The petitioner states that one of the three assailants took Guida da Silva’s briefcase and fled.

27. According to the petitioner, the State failed to protect the journalist’s life in spite of the fact that he had been receiving death threats. They also alleged that the State failed to act with due diligence to investigate the murder, prosecute, and punish the perpetrators. It specified several alleged shortcomings during the respective investigation and criminal proceedings: (i) the investigation started in earnest one month after the murder of the alleged victim; ii) the police chief initially in charge of the investigation had personal ties to the defendants, so the proceeding was transferred to another division of the Civil Police; (iii) the witnesses were threatened and harassed, which caused the alleged victim’s family to be forced to remain on the sidelines during the case, among other consequences; (iv) one of the defendants was a fugitive from justice, having escaped from the Military Police Battalion, and another one of the defendants remained a fugitive for twelve years during the case; (v) the investigative proceedings and the criminal case were characterized by undue delay, which contributed to the impunity of the perpetrators.

28. The petitioner asserted that the problems in the investigation are to blame for the fact that no one has been convicted of the murder of journalist Guida da Silva. They underscored that the impunity in the case has had a chilling effect on the city’s journalists, who have avoided reporting the unlawful acts of local police and politicians.

29. Based on the facts alleged, the petitioner argued that the State violated the rights to life (Article 4) and to freedom of thought and expression (Article 13) recognized in the American Convention, in relation to Article 1.1 thereof, with respect to journalist Guida da Silva; as well as the rights to a fair trial and judicial protection (Articles 8 and 25, respectively), in relation to Article 1.1, with respect to the alleged victim’s relatives.

B. Position of the State

30. For its part, the State maintained that Aristeu Guida da Silva’s murder was not committed by State agents, but rather by private individuals. It asserted that it had taken all of the necessary measures to investigate the facts, prosecute, and punish the perpetrators and that, therefore, it could not be held internationally responsible for the violations alleged by the petitioner.

31. On this point, it indicated that a criminal case was prosecuted against four individuals for their alleged responsibility for Guida da Silva’s murder. It added that one of the defendants died during the course of the proceedings, and that another was a fugitive from justice in spite of the efforts the authorities were making to find him. It added that a third defendant was initially a fugitive as well, but that he had been located. It indicated that, in order to prevent the search for those two defendants from hindering the prosecution of the fourth defendant, the judge ordered the severance of the criminal cases, and began a specific proceeding to examine the responsibility of the sole defendant whose whereabouts was known at that time. It explained that the fourth defendant was convicted in the first instance, but that the decision was reversed in a new trial before a jury court.

32. The State reported that it made every necessary effort to locate the fugitive defendants. It observed that one of the fugitive defendants was located in 2010 and was subsequently tried and acquitted. It also explained that, notwithstanding the fact that the legal system in Brazil did not initially allow for defendants to be tried *in absentia* for crimes for which there is no bond, there was a change in the national law that made it possible for the second fugitive defendant to be tried, and he was also acquitted.

33. The State indicated that the criminal case against these three defendants was conducted in observance of the parties’ right to a fair trial and in accordance with the principle of adversarial proceedings. It indicated that the acquittals in these cases were handed down in compliance with the laws currently in

force, and that the Inter-American Commission is therefore prevented from reviewing that decision and acting as a fourth instance in this matter.

34. In general terms, the State explained that the national laws provide for a special criminal proceeding in cases of intentional crimes against the person—which are under the jurisdiction of the jury court—that entails a more extensive process and additional procedural stages in comparison to a regular criminal case. It stated that the complexity of this special proceeding, in addition to the characteristics of this specific case, which involved four defendants, was “sufficient to demonstrate the [existing] obstacles to a prompt and agile pace in the proceedings.” The State additionally argued that it has the obligation to guarantee the rights of the accused to a fair trial, which would justify any delay in the conclusion of the proceedings.

35. For all of the above reasons, the State argues that it is not responsible for the violations of Articles 4 (Right to life), 13 (Freedom of thought and expression), 8 (A fair trial), and 25 (Judicial protection), in relation to Article 1.1 (Obligation to respect rights) of the American Convention.

36. Without prejudice to the above, the State expressed its interest in studying specific measures to prevent and combat threats to the practice of journalism, and requested the technical assistance of the petitioner on ways to implement mechanisms or programs to protect journalists. The State asserted that the National Program for the Protection of Human Rights Defenders, established in 2004, includes journalists and media workers as potential beneficiaries. It additionally provided information on the Working Group on the Human Rights of Media Workers in Brazil, whose objectives include the establishment of a complaints monitoring system, the improvement of public policies geared toward this monitoring, and improved guidelines for the safety of media professionals in situations of risk surrounding the practice of their profession. Finally, the State reported on existing legislative bills that seek to give federal authorities jurisdiction over the investigation of crimes committed against journalists when the competent local bodies are neglectful or inefficient.

IV. FACTS PROVEN

37. In application of Article 43.1 of its Rules of Procedure, the Commission will take account of the arguments and evidence provided by the parties and the information obtained during the IACHR’s *in loco* visit to Brazil in 1995, as well as information that is public knowledge.² The latter may include laws, decrees, and other regulatory acts in force in Brazil at the time of the events at issue herein, and the summaries of court proceedings published by the Court of Justice [*Tribunal de Justiça*] of Rio de Janeiro in relation to the facts of this case.

38. The Commission notes that the State has maintained that it is not responsible for the violations alleged by the petitioner. Nevertheless, it has not disputed the facts stated in the initial petition that relate to the circumstances of the journalist’s death and the criminal proceedings initiated to clarify the crime. In accordance with Article 38 of its Rules of Procedure,³ the IACHR will presume to be true those facts alleged that were not disputed by the State, as long as other evidence does not lead to a different conclusion.

39. The Commission notes that, as the Inter-American Court has held since its very first judgment, the standards of proof are less formal in an international legal proceeding than in a domestic one.

² Rules of Procedure of the IACHR, Article 43.1. “The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.”

³ Rules of Procedure of the IACHR, Article 38. “The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the period set by the Commission under the provisions of Article 37 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.” This provision corresponds to Article 39 of the Rules of Procedure approved in 1980 and in force on the date of the submission of the petition, and to Article 39 of the Rules of Procedure approved in 2000 and in force at the time of the admissibility decision.

The Court has indicated that, given the special seriousness of attributing human rights violations to a State Party to the Convention, the human rights protection bodies must apply a standard of proof which considers the seriousness of the charge and which, notwithstanding what has already been said, is capable of establishing the truth of the allegations in a convincing manner.⁴ Along these lines, the Court has established that “the practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts.”⁵ In addition, according to the Court, “in contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.”⁶

40. The Commission reiterates that the purpose of this report is to examine the alleged international responsibility of the State for the violation of rights enshrined in the American Convention. In this regard, the Inter-American Court has explained repeatedly that “the objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of the States responsible.”⁷

A. Journalistic work of the alleged victim, threats received, and the motive for his murder

41. Journalist Aristeu Guida da Silva was the owner and executive director of the biweekly newspaper *Gazeta de São Fidélis*, distributed in the city of São Fidélis, in the State of Rio de Janeiro.⁸ In the articles he published in the *Gazeta de São Fidélis*, Guida da Silva harshly criticized the corruption in the local government and in the Municipal Council of São Fidélis.⁹

42. As evidenced by the case file, Guida da Silva was 35 years old when he was murdered. The journalist was married to Jossandra Lima da Silva and had three children who were 1, 3, and 10 years old¹⁰.

⁴ 1/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 128 et seq.; IACHR. Report No. 37/10. March 17, 2010. Case 12.308. Manoel Leal de Oliveira (Brazil), para. 56.

⁵ 1/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 130; *Case of Godínez Cruz v. Honduras*. Judgment of January 20, 1989. Series C No. 5. Paras. 133-36; *Case of Fairén Garbí and Solís Corrales v. Honduras*. Judgment of March 15, 1989. Series C No. 6. Paras. 130-33; *Case of Gangaram Panday v. Suriname*. Judgment of January 21, 1994. Series C No. 16, para. 49.

⁶ 1/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 135; *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 98; *Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 154.

⁷ 1/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 134; *Case of Suárez Rosero v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35, para. 37; *Case of Boyce et al. v. Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169. Fn. 37; *Case of Yvon Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, para. 37.

⁸ *Gazeta de São Fidélis*. April 5-20, 1995 edition. *Câmara gasta mal dinheiro do Povo*. Attachment to the petitioner's communication of May 19, 2000; Statement of Paulo Cesar Pinheiro Bittencourt to police in the Crimes against the Person Division [*Delegacia Divisão Defesa da Vida*], March 18, 1997. Case No. 2.801/97, pp. 191-192. Attachment to the State's communication of November 11, 2013.

⁹ *Gazeta de São Fidélis*. April 5-20, 1995 edition. *Câmara gasta mal dinheiro do Povo*. Attachment to the petitioner's communication of May 19, 2000; Police Report, Homicide Division – Special Investigations Unit [*Delegacia de Homicídios – Special Investigations Unit*]. Investigation No. 33/97, pp. 195-202; Statement of Ângela de Fátima Guida da Silva to the Police Homicide Division [*Delegacia de Homicídios*] on April 15, 1997. Case No. 2.801/97, pp. 289-294; Statement of Álvaro Neves da Silva to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 295-300; Testimony of Edilson Gomes before the District Court of São Fidélis [*District Court of São Fidélis*] on May 20, 1997. Case No. 2.801/97, pp. 440-443; Testimony of Paulo Cesar Pinheiro Bittencourt before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 448-452. Attachment to the State's communication of November 11, 2013.

¹⁰ Statement of Jossandra Lima da Silva before the Jury Court of the District of São Fidélis on July 4, 2013. Case No. 2.801/97, p. 1765. Attachment to the State's communication of November 11, 2013.

Guida da Silva also had two brothers (Agnaldo and Reinaldo Guida da Silva), a sister (Angela de Fatima), and a niece (Ana Paula Guida da Silva). His father was Álvaro Neves da Silva¹¹

43. In its April 5-20, 1995 edition, the newspaper *Gazeta de São Fidélis* published an article entitled “Municipal Council wastes the people’s money.” In the article, the journalist compared the administration of David Loureiro, the then-Chairman of the Municipal Council of São Fidélis, to that of his predecessor, Ricardo Barreto, and claimed that the current administration was guilty of misappropriating public funds.¹² That edition also contained a photograph of then-Council Member Juarez Carlos Rodrigues Silva at the offices of the Municipal Council, with his legs up on a desk during the regular workday. The photo’s caption suggested the council member’s lack of respect for the public institution.¹³

44. In reaction to those reports, the Municipal Council of São Fidélis passed a motion on April 27, 1995 to repudiate “the newspaper *Gazeta de São Fidélis*, for being unfair and unethical, as it has demonstrated in its publications.” The motion was introduced by Council Member Nelson Henrique de Souza and passed by thirteen (13) votes in favor and one (1) against it. The motion stated that the newspaper was acting “in a manner that is disloyal, self-serving, irresponsible, and above all, mercenary,” especially in the April 5-20, 1995 edition, when it tried to “smear” the images of “honorable men” of the political class. The motion thus concludes, “in our opinion, the time for this Legislative House, together with the honorable men of the Community, to put an end to what is going on in this ‘PASQUIM’ newspaper is long overdue.” Finally, the members of the Municipal Council asked that copies of the motion be sent to the local court, police station, and prosecutor’s office, as well as to the mayor of the city and other state and municipal authorities.¹⁴

45. According to witnesses, on the occasion of the approval of the motion to repudiate, journalist Guida da Silva was invited to a session “in his honor” at the Municipal Council of São Fidélis. However, witnesses observed that the journalist was publicly insulted and threatened by members of the Municipal Council at that session.¹⁵

46. On May 4, 1995, the then-Chairman of the Municipal Council of São Fidélis wrote a letter addressed to the District Court of São Fidélis [*Juzgado de la Comarca de São Fidélis*] and to the Public Prosecutor of the municipality, condemning “the abuses committed by the newspaper *Gazeta de São Fidélis*.” He also sent a copy of that letter to the São Fidélis police station.¹⁶ The letter was signed by various council

¹¹ Statement of Angela de Fátima Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 46; Statement of Ana Paula Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 47; Statement of Reinaldo Guida da Silva to police in the Crimes against the Person Division on July 18, 1995. Case No. 2.801/97, p. 52; Statement of Álvaro Neves da Silva to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 295-302; Statement of Agnaldo Guida da Silva to the Police Homicide Division on April 16, 1997. Case No. 2.801/97, pp. 311-312. Attachment to the State’s communication of November 11, 2013.

¹² *Gazeta de São Fidélis*. April 5-20, 1995 edition. *Câmara gasta mal dinheiro do Povo*. Attachment to the petitioner’s communication of May 19, 2000.

¹³ Testimony of Edilson Gomes before the District 141st Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 440-443; Statement of Juarez Carlos Rodrigues Silva at the Police Station of São Fidélis [*141ª Delegacia de Polícia de São Fidélis*] on May 18, 1995. Case No. 2.801/97, p. 28; Statement of Jossandra Lima da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, pp. 49-50. Attachment to the State’s communication of November 11, 2013.

¹⁴ Municipal Council of São Fidélis. Motion to Censure. Motion No. 04/95. April 27, 1995. Case No. 2.801/97, pp. 26-27; Statement of David Loureiro Coelho at the 141st Police Station of São Fidélis on May 18, 1995. Case No. 2.801/97, p. 24. Attachment to the State’s communication of November 11, 2013.

¹⁵ Statement of Paulo Cesar Pinheiro Bittencourt to police in the Crimes against the Person Division, March 18, 1997. Case No. 2.801/97, pp. 191-193; Statement of Edilson Gomes to police in the Crimes against the Person Division on March 26, 1997. Case No. 2.801/97, pp. 239-243; Testimony of Edilson Gomes before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 440-443; Civil Police Headquarters. Civil Police - Internal Affairs Office. Official Letter No. 5200/1404/97. June 27, 1997. Case No. 2.801/97, p. 576. Attachment to the State’s communication of November 11, 2013.

¹⁶ Official Letter No. 051/95 sent by the Chairman of the Municipal Council to the Chief of Police of the 141st Police Station of São Fidélis on May 4, 1995, and the attachment thereto – a copy of the letter (“*abaixo-assinado*”) sent to the District Court of São Fidélis and to the Office of the Public Prosecutor [*Ministerio Público*] on the same date. Case No. 2.801/97, pp. 13-18. Attachment to the State’s communication of November 11, 2013.

members, including the person who would later be accused of being the mastermind of Guida da Silva's murder, a state representative, and advisors to legislative representatives, representatives of associations, and others. The signatories stated that it was time to put an end to "the abuses committed by the aforementioned media outlet," and indicated that:

"The concern arises from the fact [that] the actions of the aforementioned newspaper tarnish the image of honorable men of society, including those in the political class and other well-known figures. [...] The guidelines that should lead [the newspaper's] actions have been cast aside, allowing for conflicts with ethics, honor, decency, morals, and even with the natural instinct of self-preservation. Human nature will only tolerate so much outside interference, and when those limits are surpassed—no matter how level-headed people may be—they can be driven to irrational and foolish acts, with harmful consequences on themselves and their families."¹⁷

47. According to the testimony given by various witnesses during the criminal proceedings in this case, prior to his death Guida da Silva was working on a report about crimes allegedly committed by Council Member Rodrigues Silva and an influential local lawyer who had previously held the position of Municipal Council attorney. The report allegedly exposed their involvement in a criminal automobile theft network. Various witnesses confirmed that the alleged victim intended to publish this article, and some of them also specified that he had planned to provide evidence that the council member and the former Municipal Council attorney of São Fidélis were linked to the dreaded "Cerol" death squad¹⁸ (in English "cured thread").¹⁹ According to the case file, Guida da Silva had plans to leave São Fidélis and travel to the city of Niterói the day following his murder in order to finish working on the latest edition of *A Gazeta de São Fidélis*.²⁰

48. Various witnesses stated that the victim had told them prior to his murder that he was receiving death threats, and some stated that Guida da Silva had specifically told them that he was afraid of being killed by the then-Chairman of the Municipal Council, by Council Member Rodrigues Silva, and by the former Municipal Council attorney.²¹ For example, one witness asserted that during the months leading up to

¹⁷ Official Letter No. 051/95 sent by the Chairman of the Municipal Council to the Chief of Police of the 141st Police Station of São Fidélis on May 4, 1995, and the attachment thereto – a copy of the letter ("*abaixo-assinado*") sent to the District Court of São Fidélis and to the Office of the Public Prosecutor on the same date. Case No. 2.801/97, pp. 13-18. Attachment to the State's communication of November 11, 2013.

¹⁸ Article "O Cartel de São Fidélis." Paulo Cesar Pinheiro Bittencourt. Case No. 2.801/97, p. 55; Statement of Judge Ascânio Cezar Cabussú Neto to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 250-251; Testimony of Ana Paula Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 435-436; Testimony of Edilson Gomes before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 440-443; Testimony of Paulo Cesar Pinheiro Bittencourt before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 448-452; Testimony of Delcio Mello Mouta before the District Court of São Fidélis on June 6, 1997. Case No. 2.801/97, pp. 486-489; Statement of Edilson Gomes to police in the Crimes against the Person Division on March 26, 1997. Case No. 2.801/97, pp. 239-243; State Public Safety Department [*Secretaria Estadual de Segurança Pública*]. Civil Police Headquarters. Homicide Division. Re: Investigation 033/95. Information provided April 10, 1997. Case No. 2.801/97, pp. 256-260. Attachment to the State's communication of November 11, 2013.

¹⁹ "Cerol" or "cured thread" is a type of thread that is covered by liquid glue and an abrasive like crystal, glass or metallic powder, which results in an extremely sharp thread that could be used as a lethal weapon.

²⁰ Statement of Josmar Geraldo Assumpção at the 141st Police Station of São Fidélis on January 12, 1996. Case No. 2.801/97, pp. 105-106; Testimony of Delcio Mello Mouta before the District Court of São Fidélis on June 6, 1997. Case No. 2.801/97, pp. 486-489; Testimony of Ana Paula Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 435-436. Attachment to the State's communication of November 11, 2013.

²¹ Statement of Angela de Fátima Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 46; Statement of Paulo Cesar Pinheiro Bittencourt to police in the Crimes against the Person Division, March 18, 1997. Case No. 2.801/97, pp. 191-193; Statement of Álvaro Neves da Silva to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 295-302; Statement of Reinaldo Guida da Silva to the Police Homicide Division on April 16, 1997. Case No. 2.801/97, pp. 301-302; Statement of Agnaldo Guida da Silva to the Police Homicide Division on April 16, 1997. Case No. 2.801/97, pp. 311-312; Testimony of Angela de Fátima Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 444-447; Testimony of Paulo Cesar Pinheiro Bittencourt before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 448-452; Report of the Homicide Division Detective Inspector in Investigation No. 033/97, March 17, 1997. Case No. 2.801/97, pp. 195-202. Attachment to the State's communication of November 11, 2013.

his murder, Guida da Silva would sometimes ask the witness to accompany him to the Municipal Council so that he could travel more safely while he worked on his reports.²² The individuals who stated that they had knowledge of the journalist's fear of being murdered also included the then-judge of the São Fidélis Court.²³

49. Relatives of the alleged victim also stated on various occasions that Guida da Silva had received anonymous telephone calls prior to his death warning him that someone wanted to kill him.²⁴ They similarly indicated that, three days before he was killed, they saw two men parked near the journalist's house on a red motorbike.²⁵ One witness stated that on that occasion one of the men, later identified as a member of the military police, had tried to hide his face upon seeing her.²⁶

50. Witnesses also said that shortly before the alleged victim's death the former Municipal Council attorney, accompanied by a military police officer and another individual, reportedly threatened to "break" the alleged victim and, on another occasion, had reportedly told him that "he didn't have a chest of steel."²⁷

51. On April 12, 1995, one month before his murder, Guida da Silva reported to an officer at the São Fidélis Civil Police Station that he had received a death threat from four individuals in a grey car, who had told him, "You're going down today." According to police records, the investigation into this incident was shelved because police were unable to locate the vehicle carrying the persons who had threatened the alleged victim.²⁸

52. In addition, a report from the Homicide Police notes that, two weeks prior to his murder, Guida da Silva had indeed been threatened by Council Member Rodrigues Silva. According to the report, the

²² Statement of Delcio Mello Mouta to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 48; Testimony of Delcio Mello Mouta before the District Court of São Fidélis on June 6, 1997. Case No. 2.801/97, pp. 486-489. Attachment to the State's communication of November 11, 2013.

²³ Statement of Judge Ascânio Cezar Cabussú Neto to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 250-251. Attachment to the State's communication of November 11, 2013.

²⁴ Statement of Angela de Fátima Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 46; Statement of Ana Paula Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 47; Statement of Jossandra Lima da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 49; Statement of Reinaldo Guida da Silva to police in the Crimes against the Person Division on July 18, 1995. Case No. 2.801/97, p. 52; Statement of Álvaro Neves da Silva to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 295-30 [sic]; Statement of Reinaldo Guida da Silva to the Police Homicide Division on April 16, 1997. Case No. 2.801/97, pp. 301-302; Statement of Agnaldo Guida da Silva to the Police Homicide Division on April 16, 1997. Case No. 2.801/97, pp. 311-312; Testimony of Ana Paula Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 435-436. Attachment to the State's communication of November 11, 2013.

²⁵ Statement of Angela de Fátima Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 46; Statement of Ana Paula Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 47. Attachment to the State's communication of November 11, 2013.

²⁶ Statement of Ana Paula Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 47; Testimony of Ana Paula Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 435-436. Attachment to the State's communication of November 11, 2013.

²⁷ Report of the Homicide Division Detective Inspector in Investigation No. 033/97, March 17, 1997. Case No. 2.801/97, pp. 195-202; Statement of Edilson Gomes to police in the Crimes against the Person Division on March 26, 1997. Case No. 2.801/97, pp. 239-243; Statement of Álvaro Neves da Silva to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 295-300; Statement of Paulo Cesar Pinheiro Bittencourt to police in the Crimes against the Person Division, March 18, 1997. Case No. 2.801/97, pp. 191-193; Statement of Jossandra Lima da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 49; Testimony of Jossandra Lima da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 437-439; Testimony of Edilson Gomes before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 440-443; Testimony of Angela de Fatima Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 444-447; Testimony of Paulo Cesar Pinheiro Bittencourt before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 448-452. Attachment to the State's communication of November 11, 2013.

²⁸ Military Police of the State of Rio de Janeiro. Eighth Military Police Battalion. Certificate. Case No. 2.801/97, p. 699. Attachment to the State's communication of November 11, 2013.

councilman violently assaulted the journalist days after; the assault had been reported to the local police station.²⁹

B. Circumstances of the murder

53. On May 12, 1995, at approximately 8:10 p.m., journalist Guida da Silva was on Faria Serra Street in the city of São Fidélis, talking to Council Member Josmar Geral Assumpção in an area where cars and pedestrians were circulating.³⁰ The journalist was carrying a briefcase containing photographs, articles, and other information he was planning to include in the article about crimes allegedly committed by Council Member Rodrigues Silva and the former Municipal Council attorney.³¹

54. At that moment, a masked man approached journalist Guida da Silva and shot him in the back. Two masked men then arrived on a red motorbike, one of whom shot the journalist again.³² One of the three assailants took Guida da Silva's briefcase and fled.

55. A witness reported having seen two men, one of whom was a military police officer, on a red motorbike in the vicinity of the scene of the crime shortly before it occurred. The same witness stated that, moments after the murder, the two suspects washed their hands with liquor in a spot near the crime scene.³³ In addition, another witness reported having seen one of the individuals light a candle at Guida da Silva's feet, which is reportedly the sign of an execution carried out by the "Cerol" group.³⁴

56. In spite of the fact that the alleged victim's belongings were turned over to the authorities, the material supposedly meant to be used in the report about the council member and the former Municipal Council attorney was never found.³⁵

C. The police investigation

57. On May 12, 1995, the 141st Civil Police Station of the State de Rio de Janeiro, located in the city of São Fidélis (hereinafter the "141st CPC") opened an investigation into the events, which was registered

²⁹ State Public Safety Department. Civil Police Headquarters. Homicide Division. Re: Investigation 033/95. Information provided April 10, 1997. Case No. 2.801/97, pp. 256-260; Testimony of Edilson Gomes before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 440-443; Statement of Edilson Gomes to police in the Crimes against the Person Division on March 26, 1997. Case No. 2.801/97, pp. 239-243. Attachment to the State's communication of November 11, 2013.

³⁰ Complaint of the Office of the Public Prosecutor filed before the District Court of São Fidélis on April 28, 1997. Case No. 2.801/97, pp. 2-2C; Statement of Josmar Geraldo Assumpção at the 141st Police Station of São Fidélis on May 15, 1995. Case No. 2.801/97, p. 12. Attachment to the State's communication of November 11, 2013.

³¹ State Public Safety Department. Civil Police Headquarters. Homicide Division. Re: Investigation 033/95. Information provided April 10, 1997. Case No. 2.801/97, pp. 256-260; Testimony of Edilson Gomes before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 440-443; Testimony of Paulo Cesar Pinheiro Bittencourt before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 448-452. Attachment to the State's communication of November 11, 2013.

³² State Public Safety Department. Civil Police Headquarters. Homicide Division. Re: Investigation 033/95. Information provided April 10, 1997. Case No. 2.801/97, pp. 256-260; Autopsy report. Report 949/95. May 13, 1995. Case No. 2.801/97, pp. 29-31; Statement of Angela de Fátima Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 46. Attachment to the State's communication of November 11, 2013.

³³ Statement of Delcio Mello Mouta to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 48; Testimony of Delcio Mello Mouta before the District Court of São Fidélis on June 6, 1997. Case No. 2.801/97, pp. 486-489. Attachment to the State's communication of November 11, 2013.

³⁴ Testimony of Jossandra Lima da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 437-439; Testimony of Edilson Gomes before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 440-443. Attachment to the State's communication of November 11, 2013.

³⁵ State Public Safety Department. Civil Police Headquarters. Homicide Division. Re: Investigation 033/95. Information provided April 10, 1997. Case No. 2.801/97, pp. 256-260; Testimony of Edilson Gomes before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 440-443; Testimony of Paulo Cesar Pinheiro Bittencourt before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 448-452; Statement of Jossandra Lima da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 49. Attachment to the State's communication of November 11, 2013.

as “Police Investigation No. 44/95.”³⁶ Under the responsibility of the 141st CPC, police authorities took several steps between May 12 and June 16, 1995. They took statements from city council members, including Council Member Rodrigues Silva,³⁷ and from a military police officer allegedly involved in the incident.³⁸ They also incorporated the motion to repudiate passed by the Municipal Council of São Fidélis,³⁹ as well as the final edition of the newspaper *Gazeta de São Fidélis*⁴⁰ and the autopsy report, into the case file.⁴¹

58. On June 3, 1995, journalist and co-founder of the *Gazeta de São Fidélis*, Edilson Gomes, sent a letter to the Public Safety Secretary of Rio de Janeiro condemning the inadequate handling of the investigations by the 141st CPC, and asked for the investigations to be transferred to the Crimes against the Person Division of the Department of Specialized Police [*División de Defensa de la Vida del Departamento de Policía Especializada*] (hereinafter, the “DDV/DPE”) located in the city of Rio de Janeiro.⁴²

59. On June 5, 1995, the Civil Police Chief of the State of Rio de Janeiro ordered that the investigations be handled by the DDV/DPE.⁴³ The case was transferred, and “Police Investigation No. 35/95” was opened on June 16, 1995.⁴⁴ Under the direction of the DDV/DPE, various proceedings were conducted in São Fidélis on July 13 and 18, and August 24, such as the taking of statements from various witnesses,⁴⁵ including the relatives of the alleged victim,⁴⁶ and interviews with witnesses who did not wish to be identified.⁴⁷

³⁶ State Civil Police Department [*Secretaria de Estado da Polícia Civil*]. Police Investigation 44/95. Record of Proceedings. Case No. 2.801/97, p. 4. Attachment to the State’s communication of November 11, 2013.

³⁷ Statement of Josmar Geraldo Assumpção at the 141st Police Station of São Fidélis on May 15, 1995. Case No. 2.801/97, p. 12; Statement of David Loureiro Coelho at the 141st Police Station of São Fidélis on May 18, 1995. Case No. 2.801/97, p. 24; Statement of Rivardo de Oliveira Barreto at the 141st Police Station of São Fidélis on May 18, 1995. Case No. 2.801/97, p. 25; Statement of Juarez Carlos Rodrigues Silva at the 141st Police Station of São Fidélis on May 18, 1995. Case No. 2.801/97, p. 28. Attachment to the State’s communication of November 11, 2013.

³⁸ Statement of Antonio Carlos de Alvarenga at the 141st Police Station of São Fidélis on May 15, 1995. Case No. 2.801/97, p. 33.

³⁹ Municipal Council of São Fidélis. Motion to Censure. Motion No. 04/95. April 27, 1995. Case No. 2.801/97, pp. 26-27; Official Letter No. 051/95 sent by the Chairman of the Municipal Council to the Chief of Police of the 141st Police Station of São Fidélis, on May 4, 1995, and the attachment thereto – a copy of the letter (“*abaixo-assinado*”) sent to the District Court of São Fidélis and to the Office of the Public Prosecutor on the same date. Case No. 2.801/97, pp. 13-18. Attachment to the State’s communication of November 11, 2013.

⁴⁰ *Gazeta de São Fidélis*. April 5-20, 1995 edition. *Câmara gasta mal dinheiro do Povo*. Case No. 2.801/97, pp. 19-21. Attachment to the State’s communication of November 11, 2013.

⁴¹ Autopsy report. Report 949/95. May 13, 1995. Case No. 2.801/97, pp. 29-31. Attachment to the State’s communication of November 11, 2013.

⁴² Letter from Edilson Gomes to the Secretary of Public Safety of the State of Rio de Janeiro, dated June 3, 1995. Case No. 2.801/97, p. 194. Attachment to the State’s communication of November 11, 2013.

⁴³ State Public Safety Department. Civil Police Headquarters. Report of June 5, 1995. Case No. 2.801/97, pp. 41-42. Attachment to the State’s communication of November 11, 2013.

⁴⁴ State Civil Police Department. Police Investigation 33/95. Record of Proceedings. June 26, 1995. Case No. 2.801/97, p. 2D. Attachment to the State’s communication of November 11, 2013.

⁴⁵ Statement of Jorge de Souza Jabor to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 45; Statement of Luzia Gomes da Rocha to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 51; Statement of Luciano Azevedo Rodrigues to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, pp. 53-54; Statement of Fidelis Singmaringa de Oliveira to police in the Crimes against the Person Division on August 24, 1995. Case No. 2.801/97, p. 57; Statement of Delcio Mello Mouta to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 48. Attachment to the State’s communication of November 11, 2013.

⁴⁶ Statement of Angela de Fátima Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 46; Statement of Ana Paula Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 47; Statement of Ana Paula Guida da Silva to police in the Crimes against the Person Division on August 24, 1995. Case No. 2.801/97, p. 56; Statement of Jossandra Lima da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, pp. 49-50; Statement of Reinaldo Guida da Silva to police in the Crimes against the Person Division on July 18, 1995. Case No. 2.801/97, p. 52. Attachment to the State’s communication of November 11, 2013.

⁴⁷ State Public Safety Department. Specialized Police Coordination Office [*Coordenadoria de Polícia Especializada*]. Division of Crimes against the Person – DDV. Report. September 26, 1995. Case No. 2.801/97, pp. 58-60. Attachment to the State’s communication of November 11, 2013.

60. On September 26, 1995, the DDV/DPE asked for the investigations to be transferred to the Regional Division of the Civil Police in the city of Campos, given its greater “proximity to the Municipality of São Fidélis,” and because of the DDV/DPE’s excessive caseload.⁴⁸

61. On October 29, 1995, the investigations were transferred to the 5th Regional Division of the Civil Police in Campos (hereinafter, the “5th DRPC”).⁴⁹ On October 30, 1995, the Director of the 5th DRPC declared that the Regional Division could not take charge of the case without a direct order from the Civil Police Chief, and added that the 5th DRPC—unlike the DDV/DPE—did not have a unit that specialized in crimes against the person. Accordingly, the director asked for the case file to be sent back to the Office of the Public Prosecutor of São Fidélis in order for it to be transferred to the DDV/DPE.⁵⁰ On October 31, 1995, the case file was sent back to the Office of the Public Prosecutor of São Fidélis,⁵¹ but it was not forwarded to the DDV/DPE. Without any apparent explanation, the investigations remained under the authority of the 141st CPC of São Fidélis from October 31, 1995 to February 21, 1997. Several individuals provided statements during that period.⁵² The only expert examination performed was the ballistics examination of the bullets used in the murder.⁵³ The records also show that the results of the inspection of the murder scene were added to the case file on November 21, 1995.⁵⁴

62. On December 13, 1995, while the investigations were under the direction of the 141st CPC, the Office of the Public Prosecutor made several requests seeking to obtain: statements from various individuals—including the former Municipal Council attorney of São Fidélis, José Estefan, who had not been called to give a statement; the documentation and identification of the motorbike belonging to a military police officer suspected of the crime; and information on the registration of weapons under the names of the persons involved.⁵⁵ On April 29, 1996, the Office of the Public Prosecutor renewed this request, and also asked for a ballistics examination to compare the bullets used in the crime to the weapons seized from two

⁴⁸ State Public Safety Department. Specialized Police Coordination Office. Division of Crimes against the Person – DDV. Report. September 26, 1995. Case No. 2.801/97, pp. 58-60. Attachment to the State’s communication of November 11, 2013.

⁴⁹ Public Prosecutor [*Promotor de Justiça*] of São Fidélis. Letter of October 18, 1995. Case No. 2.801/97, p. 62. Attachment to the State’s communication of November 11, 2013.

⁵⁰ State Public Safety Department. Director of the 5th DRPC. Order dated October 30, 1995. Case No. 2.801/97, pp. 66-64. Attachment to the State’s communication of November 11, 2013.

⁵¹ State Public Safety Department. Letter dated October 31, 1995. Case No. 2.801/97, p. 66v. Attachment to the State’s communication of November 11, 2013.

⁵² Statement of Isael dos Anjos Rosa at the 141st Police Station of São Fidelis on January 9, 1996. Case No. 2.801/97, pp. 92-93; Statement of Antônio Carlos de Alvarenga at the 141st Police Station of São Fidelis on January 9, 1996. Case No. 2.801/97, p. 94; Statement of Carlos Marques de Pinho at the 141st Police Station of São Fidelis on January 10, 1996. Case No. 2.801/97, pp. 95-96; Statement of Jadilson Perrout Lima at the 141st Police Station of São Fidelis on January 10, 1996. Case No. 2.801/97, pp. 97-98; Statement of El-Doarte Lima da Silva at the 141st Police Station of São Fidelis on January 10, 1996. Case No. 2.801/97, p. 99; Statement of José Geraldo Gonçalves Pereira at the 141st Police Station of São Fidelis on January 10, 1996. Case No. 2.801/97, p. 100; Statement of Fidelis Sigmaringa de Oliveira at the 141st Police Station of São Fidelis on January 10, 1996. Case No. 2.801/97, p. 101; Statement of Delcio Mello Mouta at the 141st Police Station of São Fidelis on January 10, 1996. Case No. 2.801/97, pp. 102-103; Statement of Josmar Geraldo Assumpção at the 141st Police Station of São Fidelis on January 12, 1996. Case No. 2.801/97, pp. 105-106; Statement of Juarez Carlos Rodrigues Silva at the 141st Police Station of São Fidelis on January 12, 1996. Case No. 2.801/97, p. 109. Attachment to the State’s communication of November 11, 2013.

⁵³ Department of Technical Forensic Police [*Departamento de Polícia Técnico Científica*]. Carlos Éboli Forensic Institute. Report on the Examination of Bullet(s) Discharged from a Firearm. November 21, 1995. Case No. 2.801/97, p. 84. Attachment to the State’s communication of November 11, 2013.

⁵⁴ Department of Technical Forensic Police. Carlos Éboli Forensic Institute. Report on homicide scene. May 12, 1995. Added on November 21, 1995. Case No. 2.801/97, pp. 67-72. Attachment to the State’s communication of November 11, 2013.

⁵⁵ Office of the Public Prosecutor of São Fidélis. Letter of December 13, 1995. Case No. 2.801/97, p. 73. Attachment to the State’s communication of November 11, 2013.

suspects, one of whom was a military police officer.⁵⁶ That request was reiterated once again on September 23, 1996.⁵⁷

63. On November 21, 1996, the Public Prosecutor of São Fidélis sent an official letter to the Prosecutor General requesting the appointment of a police authority to monitor the investigations. In that letter, the Public Prosecutor explained that the investigation was under the responsibility of the 141st CPC, in spite of the fact that there was no order to that effect. The Public Prosecutor further asserted that “The investigation of the crime in question is not being handled satisfactorily, as the requests of the Office of the Public Prosecutor have been ignored and nothing more has been done.” She added that, “The interests surrounding this crime are numerous and sizeable, given that council members are suspected of having given the order, and military police officers and members of the region’s death squad are believed to be the direct perpetrators.” The Public Prosecutor noted that one witness had reported serious acts concerning the conduct of the police commissioner of the 141st CPC, and concluded for all of the above reasons that “the investigations cannot proceed in the region.” Finally, she requested that several steps be taken, including those previously requested measures that were still pending, and that statements be obtained from various individuals. At that time, the Public Prosecutor also requested the inclusion in the case file of a cassette tape that had been turned over to the police by the alleged victim’s wife when she gave her statements to the DDV/DPE. The cassette tape contained an audio recording of the Municipal Council session at which journalist Guida da Silva had been insulted and threatened (*supra* para. 45).⁵⁸

64. On February 21, 1997, the Civil Police Chief ordered the transfer of the investigations to the Superintendent of Crimes against the Person and ordered that the necessary measures be taken to fully comply with the requests of the Office of the Public Prosecutor.⁵⁹

65. On March 4, 1997, the police authority from the specialized Homicide Police (formerly the DDV/DPE) returned to the investigation and requested that several steps be taken. At that time, the police commissioner stated: “Examining the entire proceeding, I can unfortunately confirm that it was handled poorly, which did a disservice to the discovery of the real truth.”⁶⁰

66. During the period between March 4 and April 16, 1997, the Homicide Police conducted various proceedings, which included taking statements from several people,⁶¹ requesting criminal

⁵⁶ Office of the Public Prosecutor of São Fidélis. Letter of April 29, 1996. Case No. 2.801/97, p. 164v. Attachment to the State’s communication of November 11, 2013.

⁵⁷ Office of the Public Prosecutor of São Fidélis. Letter of September 23, 1996. Case No. 2.801/97, p. 165. Attachment to the State’s communication of November 11, 2013.

⁵⁸ Office of the Public Prosecutor for the State of Rio de Janeiro. Office of the Public Prosecutor of São Fidélis. Official Letter No. 45/96 – AC of November 21, 1996. Case No. 2.801/97, pp. 167-170. Attachment to the State’s communication of November 11, 2013.

⁵⁹ Civil Police Chief. Letter of February 21, 1997. Case No. 2.801/97, p. 173. Attachment to the State’s communication of November 11, 2013.

⁶⁰ Homicide Division. Letter of March 4, 1997. Case No. 2.801/97, pp. 176-179. Attachment to the State’s communication of November 11, 2013.

⁶¹ Statement of Anderson Grei Dias de Jesus to the Police Homicide Division on March 10, 1997. Case No. 2.801/97, p. 180; Statement of Paulo Cesar Pinheiro Bittencourt to police in the Crimes against the Person Division, March 18, 1997. Case No. 2.801/97, pp. 191-193; Statement of Edilson Gomes to police in the Crimes against the Person Division on March 26, 1997. Case No. 2.801/97, pp. 239-243; Statement of Judge Ascânio Cezar Cabussú Neto to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 250-251; Statement of Ângela de Fátima Guida da Silva to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 289-294; Statement of Álvaro Neves da Silva to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 295-30 [sic]; Statement of Reinaldo Guida da Silva to the Police Homicide Division on April 16, 1997. Case No. 2.801/97, pp. 301-302; Statement of Waldemir dos Santos Braga to the Police Homicide Division on April 16, 1997. Case No. 2.801/97, pp. 304-305; Statement of Oseas Conceição Souza to the Police Homicide Division on April 16, 1997. Case No. 2.801/97, pp. 306-307; Statement of Aginaldo Guida da Silva to the Police Homicide Division on April 16, 1997. Case No. 2.801/97, pp. 311-312. Also attached were the statements of Luciano Azevedo Rodrigues to the Office of the Public Prosecutor of Campos dos Goytacazes. Statement of Luciano Azevedo Rodrigues to the Office of the Public Prosecutor of Campos dos Goytacazes on January 20, 1997. Case No. 2.801/97, pp. 287-288. Attachment to the State’s communication of November 11, 2013.

background information on the alleged suspects,⁶² requesting information from the military police on the existence of a disciplinary proceeding against the military police officer involved,⁶³ and requesting information on the “Cerol” death squad.⁶⁴ In addition, information was received on the registration of weapons in the name of the murder suspects⁶⁵ and on other cases that involved their change of jurisdiction.⁶⁶

67. On March 17, 1997, the head of the special investigations unit filed a report on the measures taken in the investigations to date, developing his preliminary conclusions on the facts of the case. In addition, he indicated that “in view of the strong circumstantial evidence against the defendants,” their pretrial detention would be an advisable measure for the continuation of the investigations, “since the threats against the witnesses are clear.” At that time, the police authority ordered the completion of the previously requested formalities, as well as the investigation a witness’s report of possible acts of concealment of the crime by a police commissioner from the 141st CPC (*supra* para. 62).⁶⁷ There is no information in the case file on the carrying out of those investigations.

68. On April 10, 1997, the detective in charge of the investigations filed a new report on the case. The report concluded that Council Member Rodrigues Silva and former Municipal Council attorney José Estefan had likely given the order to military police officers and two other members of the “Cerol” death squad to murder Guida da Silva. The report stated that the murder was apparently ordered to keep the journalist from publishing information about the alleged participation of those individuals in the death squad and in other crimes, including drug trafficking and automobile theft. The report additionally identified military police officers Carlos Marques de Pinho and Antonio Carlos de Alvarenga, as well as Vladimir Raniere Pereira Sobrosa and Isael dos Anjos Rosa, as the members of the “Cerol” group responsible for the journalist’s murder.⁶⁸

69. On April 14, 1997, it was reported that the cassette tape that had been turned over to the DDV/DPE by the alleged victim’s wife was missing.⁶⁹ On April 16, 1997, the Homicide Police reported that “all of the pending formalities have already been completed,” and it submitted the case file to the Office of the Public Prosecutor.⁷⁰

⁶² State Public Safety Department. Civil Police Headquarters. Message: 1246/DDV/1997 of March 12, 1997. Case No. 2.801/97, pp. 181 & 183. Attachment to the State’s communication of November 11, 2013.

⁶³ State Public Safety Department. Civil Police Headquarters/Homicide Division. Official Letter: 1249/DDV/1997 of March 12, 1997. Case No. 2.801/97, p. 184. Attachment to the State’s communication of November 11, 2013.

⁶⁴ State Public Safety Department. Civil Police Headquarters/Homicide Division. Official Letter: 1250/DDV/1997 of March 12, 1997. Case No. 2.801/97, p. 185. Attachment to the State’s communication of November 11, 2013. In response, the Public Safety Intelligence Center [*Public Safety Intelligence Center*] reported that it had no information on the Cerol death squad. Public Safety Intelligence Center. Message 28/97-0002/D24 of March 20, 1997. Case No. 2.801/97, p. 231. Attachment to the State’s communication of November 11, 2013.

⁶⁵ State Public Safety Department. Civil Police Headquarters. Message: 1247/DDV/1997 of March 12, 1997. Case No. 2.801/97, p. 182; State Civil Service. Report No. 482/97 of March 18, 1997. Case No. 2.801/97, p. 254. Attachment to the State’s communication of November 11, 2013.

⁶⁶ SESP – CPCE – Homicide Division. Official Letter No. 1395/1901/97 of April 11, 1997. Case No. 2.801/97, pp. 262-270. Attachment to the State’s communication of November 11, 2013.

⁶⁷ Report of the Homicide Division Detective Inspector in Investigation No. 033/97, March 17, 1997. Case No. 2.801/97, pp. 195-202. Attachment to the State’s communication of November 11, 2013.

⁶⁸ State Public Safety Department. Civil Police Headquarters. Homicide Division. Re: Investigation 033/95. Information provided April 10, 1997. Case No. 2.801/97, pp. 256-260. Attachment to the State’s communication of November 11, 2013.

⁶⁹ State Civil Service. Report. April 14, 1997. Case No. 2.801/97, p. 283. Attachment to the State’s communication of November 11, 2013.

⁷⁰ Civil Police Headquarters/Homicide Division. Letter of April 16, 1997. Case No. 2.801/97, p. 313. Attachment to the State’s communication of November 11, 2013.

D. The criminal proceedings

70. On April 28, 1997, the Office of the Public Prosecutor filed a criminal complaint before the Court of São Fidélis, requesting the conviction by a jury court⁷¹ of the following individuals for the murder of journalist Guida da Silva: Council Member Juarez Carlos Rodrigues Silva, as the mastermind of the murder, and Isael dos Anjos Rosa, Vladimir Ranieri Pereira Sobrosa and Carlos Marques de Pinho (military police officer) as the direct perpetrators. The complaint alleged that the murder had been ordered in retaliation for the Guida da Silva's reports and to prevent him from publishing new reports about crimes allegedly committed by the council member.⁷² It also requested pretrial detention and the lifting of banking secrecy with respect to the defendants. The prosecution indicated in its motion that the alleged direct perpetrators of the crime were already being held in pretrial detention in other criminal cases pertaining to crimes committed by the "Cerol" death squad.⁷³

71. The Office of the Public Prosecutor decided not to bring charges against former Municipal Council attorney José Estefan and military police officer Antônio Carlos de Alvarenga, citing the need for further investigation. Accordingly, the Office of the Public Prosecutor requested a copy of the investigation file from the Civil Police Chief in order to assign a team from the Homicide Police to continue with the investigations.⁷⁴ There is no information in the case file on the existence of those investigations or their outcome. The State did not present any information with respect to the matter.

72. On April 30, 1997, the District Court Judge of São Fidélis ordered the pretrial detention of Council Member Rodrigues Silva, and of Pereira Sobrosa, Dos Anjos Rosa, and De Pinho. Among other considerations, the judge weighed the testimony of witnesses indicating that the council member had threatened witnesses and relatives of the victim. The judge also ordered the transfer of all of the defendants already in custody, as well as Council Member Rodrigues Silva, to prison facilities in the state capital.⁷⁵ On that same date, the São Fidélis judge received the complaint and formally initiated the criminal proceedings.⁷⁶

73. A hearing in which the defendants were interrogated was held on May 7, 1997.⁷⁷ On that same date, Rodrigues Silva asked the Court of São Fidélis to revoke his pretrial detention or, in the alternative, to transfer him to the jail at the São Fidélis Police Station.⁷⁸

74. On May 20, 1997, there was a hearing in which prosecution witnesses testified. At the request of the witnesses, the defendants were removed from the courtroom during their testimony.⁷⁹ At that

⁷¹ Under Brazilian law, crimes against the person committed with malice aforethought are tried in a jury court (*Cfr.* Code of Criminal Procedure, Article 74, § 1).

⁷² Complaint of the Office of the Public Prosecutor filed before the District Court of São Fidélis on April 28, 1997. Case No. 2.801/97, pp. 2-2C. Attachment to the State's communication of November 11, 2013.

⁷³ Complaint of the Office of the Public Prosecutor filed before the District Court of São Fidélis on April 28, 1997. Case No. 2.801/97, pp. 2-2C. Attachment to the State's communication of November 11, 2013.

⁷⁴ Office of the Public Prosecutor of the State of Rio de Janeiro. April 28, 1997. Case No. 2.801/97, pp. 315-319. Attachment to the State's communication of November 11, 2013.

⁷⁵ District Court of São Fidélis. Decision of April 30, 1997. Case No. 2.801/97, pp. 336-340. Attachment to the State's communication of November 11, 2013.

⁷⁶ District Court of São Fidélis. Decision of April 30, 1997. Case No. 2.801/97, pp. 2. Attachment to the State's communication of November 11, 2013.

⁷⁷ District Court of São Fidélis. Record of May 7, 1997. Case No. 2.801/97, pp. 364-375. Attachment to the State's communication of November 11, 2013.

⁷⁸ Motion of Juarez Carlos Rodrigues Silva before the Court of São Fidélis. May 7, 1997. Case No. 2.801/97, pp. 407-409. Attachment to the State's communication of November 11, 2013.

⁷⁹ On this occasion, the following witnesses testified: Luciano Azevedo Rodrigues, Ana Paula Guida da Silva Rodrigues, Jossandra Lima da Silva, Edilson Gomes, Angela de Fatima Guida da Silva, and Paulo Cesar Pinheiro Bittencourt. District Court of São Fidélis. Record of May 20, 1997. Case No. 2.801/97, pp. 428-452. Attachment to the State's communication of November 11, 2013.

time, Guida da Silva's father, Álvaro Neves da Silva, filed a request to act as an assistant to the prosecution.⁸⁰ In addition, the São Fidélis judge requested information on the origin of the motion to repudiate and the location of the cassette tape that had reportedly been turned over to the DDV/DPE by the wife of the alleged victim on July 13, 1995.⁸¹ On May 23, 1997, the Municipal Council of São Fidélis submitted information on the motion to repudiate.⁸²

75. On May 27, 1997, the Office of the Public Prosecutor asked the Court to deny Council Member Rodrigues Silva's request for the suspension of pretrial detention. It argued that the defendant was one of the main leaders of "a dangerous death squad that operates in the region."⁸³ The prosecution's request was accompanied by two statements concerning threats received by witnesses.⁸⁴

76. On May 28, 1997, the Homicide Police reported that it was impossible to locate the cassette and that there was no record of its receipt.⁸⁵ On June 9, 1997, the judge of São Fidélis asked the Controller General of the Civil Police to contact the police commissioner previously in charge of the investigations, who had reportedly received the tape.⁸⁶ On June 27, 1997, the police commissioner sent a letter to the judge, informing her that he had received the cassette tape, which reportedly contained "a statement made in a threatening tone by one of the murder suspects before the full session of the Council." The police commissioner further reported that the cassette tape had been taken to the DDV/DPE. However, he reported that it could not be located by the police authorities in charge of the Homicide Police Department.⁸⁷

77. On June 18, 1997, the Court of Justice of Rio de Janeiro granted *habeas corpus* relief to Council Member Rodrigues Silva. In its decision, the Court indicated that "the defendant is employed by a government body, has a fixed address in the district where the offense occurred, and is a council member, having been elected to the Municipal Council and to the position of Vice Chairman of the house," and that "the reasons for the preventive measure are not clearly determined."⁸⁸

78. On August 19, 1997, defendant De Pinho escaped from the jail at the 8th Military Police Battalion in Campos dos Goytacazes.⁸⁹ On August 26, 1997, the Office of the Public Prosecutor asked that the Court of São Fidélis request information on the measures taken to establish the circumstances of the escape.⁹⁰

⁸⁰ Motion of Álvaro Neves da Silva before the Court of São Fidélis. May 20, 1997. Case No. 2.801/97, p. 455. Attachment to the State's communication of November 11, 2013.

⁸¹ District Court of São Fidélis. Record of May 20, 1997. Case No. 2.801/97, pp. 428-452. Attachment to the State's communication of November 11, 2013.

⁸² Municipal Council of São Fidélis. Official Letter No. 76/97-GP. May 23, 1997. Case No. 2.801/97, p. 468. Attachment to the State's communication of November 11, 2013.

⁸³ Office of the Public Prosecutor for the State of Rio de Janeiro. Motion of May 27, 1997. Case No. 2.801/97, pp. 471-473. Attachment to the State's communication of November 11, 2013.

⁸⁴ May 27, 1997 statement of Luciano de Azevedo Rodrigues and May 27, 1997 statement of Angela de Fátima Guida da Silva. Case No. 2.801/97, pp. 474-476. Attachment to the State's communication of November 11, 2013.

⁸⁵ Homicide Division. Letter of May 28, 1997. Case No. 2.801/97, p. 524. Attachment to the State's communication of November 11, 2013.

⁸⁶ District Court of São Fidélis. Official Letter No. 433/97-M of June 9, 1997. Case No. 2.801/97, p. 528. Attachment to the State's communication of November 11, 2013.

⁸⁷ Civil Police Headquarters. Civil Police - Internal Affairs Office. Official Letter No. 5200/1404/97. June 27, 1997. Case No. 2.801/97, p. 576. Attachment to the State's communication of November 11, 2013.

⁸⁸ Court of Justice of Rio de Janeiro. Second Criminal Division. Habeas Corpus No. 514/97. Ruling. Case No. 2.801/97, pp. 710-711. Attachment to the State's communication of November 11, 2013.

⁸⁹ Military Police of the State of Rio de Janeiro. Eighth Military Police Battalion. Official Letter 4763/2592-97. August 19, 1997. Case No. 2.801/97, p. 613. Attachment to the State's communication of November 11, 2013.

⁹⁰ Office of the Public Prosecutor of São Fidélis. Letter of August 26, 1997. Case No. 2.801/97, p. 615. Attachment to the State's communication of November 11, 2013.

79. On October 22, 1997,⁹¹ January 5, 1998,⁹² January 12, 1998,⁹³ and February 3, 1998,⁹⁴ the Court of São Fidélis requested financial information on the defendants from various banks in the region.

80. Seven additional hearings were held at this stage of the proceedings, in which both prosecution and defense witnesses testified. Two of the hearings had to be postponed due to the absence of defense counsel.⁹⁵ The parties submitted their closing arguments during the months of April and May, 1998.⁹⁶

81. On June 30, 1998, the Court issued a ruling ordering the four defendants to stand trial before a jury court [*sentença de pronúncia*]. In its decision, the Court underscored, *inter alia*: (i) inconsistencies in the statements of defendants De Pinho and Dos Anjos Rosa; (ii) the statement of the witness who had seen the defendants together on the day of the offense, and (iii) Council Member Rodrigues Silva's interest in the death of the journalist. The Court decided not to order the pretrial detention of Council Member Rodrigues Silva, finding that he had participated in the criminal proceedings while free,⁹⁷ and ordered the other defendants to remain in pretrial detention where they were currently being held, "considering that the reasons for their pretrial detention are still present."⁹⁸ The police commissioners at the facilities where defendants Dos Anjos Rosa and Pereira Sobrosa were being held were informed of their continued pretrial detention on July 3, 1998.⁹⁹ On August 10, 1998, Rodrigues Silva filed a motion to appeal the decision.¹⁰⁰

82. On August 20, 1998, the Commander of the 8th Military Police Battalion of Rio de Janeiro, located in the city of Campos, informed the Court of São Fidélis that defendant De Pinho had been removed

⁹¹ General District Court. District of São Fidélis. Official Letter No. 1059/97-M. October 22, 1997. Case No. 2.801/97, p. 713. Attachment to the State's communication of November 11, 2013.

⁹² General District Court. District of São Fidélis. Jud-98/00022. January 5, 1998. Case No. 2.801/97, p. 733. Attachment to the State's communication of November 11, 2013.

⁹³ General District Court. District of São Fidélis. Official Letter No. 0013/98-M. January 12, 1998. Case No. 2.801/97, p. 731. Attachment to the State's communication of November 11, 2013.

⁹⁴ General District Court. District of São Fidélis. Official Letter No. 0151/98-M. February 3, 1998. Case No. 2.801/97, p. 747. Attachment to the State's communication of November 11, 2013.

⁹⁵ District Court of São Fidélis. Record of June 6, 1997. Case No. 2.801/97, pp. 479-491. On this occasion, the following witnesses testified: Anderson Grei Dias de Jesus, Delcio Mello Mouta, Josmar Geraldo Assumpção. District Court of São Fidélis. Record of June 25, 1997. Case No. 2.801/97, pp. 544-557. On this occasion, the following witnesses testified: David Loureiro Coelho, Ademir Soares Coimbra, Gil Furtado da Silva, Celso Guimarães Vieira, Denancy de Almeida Santos; District Court of São Fidélis. Record of July 30, 1997. Case No. 2.801/97, pp. 582-583; District Court of São Fidélis. Record of August 29, 1997. Case No. 2.801/97, pp. 617-638. On this occasion, the following witnesses testified: Helio Perisario da Silva, Paulo Sérgio Ramos Barbosa, Amaury Ferreira Barbosa Filho, Elita Raposo Fratani, Jorge Luiz Caçador, Lucineu Andrade Silva, Sonia Ferreira dos Santos, Carlos Rogério Vieira da Silveira, Wilson de Almeida Rios Neto, Eduardo Manhães; District Court of São Fidélis. Record of September 9, 1997. Case No. 2.801/97, pp. 661-663; District Court of São Fidélis. Record of September 30, 1997. Case No. 2.801/97, pp. 689-697. On this occasion, the following witnesses testified: Fidélis Sigmaringa Valentim, Wilson Leal, Antonio das Graças Francisco Ragoso, Jean Carlos Barros Barreto; District Court, Third Criminal Division. District of Niterói. Statement of Geraldo Dias de Carvalho. November 5, 1997. Case No. 2.801/97, pp. 722-724. Attachment to the State's communication of November 11, 2013.

⁹⁶ Office of the Public Prosecutor for the State of Rio de Janeiro. Closing Arguments. April 13, 1998. Case No. 2.801/97, pp. 760-768; Motion of Israel dos Anjos Rosa before the Court of São Fidélis. Closing Arguments. April 29, 1998. Case No. 2.801/97, p. 770; Motion of Vladimir Ranieri Pereira Sobrosa before the Court of São Fidélis. Closing Arguments. April 30, 1998. Case No. 2.801/97, pp. 783-790; Motion of Juarez Carlos Rodrigues Silva before the Court of São Fidélis. Closing Arguments. April 30, 1998. Case No. 2.801/97, pp. 772-774; Motion of Carlos Marques de Pinho before the Court of São Fidélis. Closing Arguments. April 30, 1998. Case No. 2.801/97, pp. 776-778. Attachment to the State's communication of November 11, 2013.

⁹⁷ District Court of São Fidélis. Order to Stand Trial [*Pronúncia*]. June 30, 1998. Case No. 2.801/97, pp. 795-801. Attachment to the State's communication of November 11, 2013.

⁹⁸ District Court of São Fidélis. Order to Stand Trial. June 30, 1998. Case No. 2.801/97, pp. 795-801. Attachment to the State's communication of November 11, 2013.

⁹⁹ General District Court. District of São Fidélis. Official Letter No. 446-M/98. July 3, 1998. Case No. 2.801/97, p. 807; General District Court. District of São Fidélis. Official Letter No. 447-M/98. July 3, 1998. Case No. 2.801/97, p. 808. Attachment to the State's communication of November 11, 2013.

¹⁰⁰ Motion of Juarez Carlos Rodrigues Silva before the Court of São Fidélis. August 10, 1998. Case No. 2.801/97, pp. 833-841. Attachment to the State's communication of November 11, 2013.

from active duty in the Military Police and that, in spite of the fact that he had been in custody at that battalion, he had escaped on August 19, 1997. The Commander did not provide any information on the circumstances of the escape, nor did he indicate the outcome of any investigation into this incident.¹⁰¹

83. On August 25, 1998, the Court was informed that Rodrigues Silva had been shot to death.¹⁰² Accordingly, in an order dated October 8, 1998, the Court terminated the criminal case against this defendant.¹⁰³

84. On October 15, 1998, the Court of São Fidélis ordered the severance of the case with respect to defendant De Pinho, in view of the fact that he was a fugitive.¹⁰⁴ Accordingly, a new criminal case was opened solely to try the aforementioned defendant.¹⁰⁵

85. On November 10, 1998, Dos Anjos Rosa's attorney informed the Court of São Fidélis that his client had been acquitted in another criminal case, and was freed after the court in that case issued an order granting his release. According to the case file, the POLINTER (the inter-state police service) was consulted at the time to see whether there was any impediment to Dos Anjos Rosa's release.¹⁰⁶ On that same date, the Court of São Fidélis sent the warrant for Dos Anjos Rosa's arrest to the Police Commissioner of the POLINTER's Apprehension Division and other police agencies.¹⁰⁷

86. On November 30, 1998, Dos Anjos Rosa—who was not in custody—filed for preventive *habeas corpus* relief to block the arrest warrant from the Court of São Fidélis.¹⁰⁸ On December 14, 1998, the 141st CPC reported that it had taken measures to try to apprehend the defendant, but had not been successful.¹⁰⁹ On December 15, 1998, the judge of São Fidélis informed the Court of Justice of Rio de Janeiro that Dos Anjos Rosa had been “erroneously released by the police authorities” and that he was currently “a fugitive from this District,” in spite of the fact that the defendant had asserted in his *habeas corpus* petition that he would not leave the municipality.¹¹⁰ On February 26, 1999, the Court declared its order for defendant

¹⁰¹ Military Police of the State of Rio de Janeiro. Eighth Military Police Battalion. Official Letter No. 51/5/25721. August 20, 1998. Case No. 2.801/97, p. 862. Attachment to the State's communication of November 11, 2013.

¹⁰² Judiciary. Certificate. August 25, 1998. Case No. 2.801/97, p. 845; 1st District Registry Office. District of São Fidélis. Death Certificate. September 4, 1998. Case No. 2.801/97, p. 858. Attachment to the State's communication of November 11, 2013.

¹⁰³ General District Court. District of São Fidélis. Judgment of September 8, 1998. Case No. 2.801/97, p. 864. Attachment to the State's communication of November 11, 2013.

¹⁰⁴ General District Court. District of São Fidélis. Letter of October 15, 1998. Case No. 2.801/97, p. 877. Attachment to the State's communication of November 11, 2013.

¹⁰⁵ According to reports, these measures sought to prevent procedural delays in the case against these individuals, as the Brazilian laws in force at the time prevented defendants from being tried in their absence for the offense of aggravated murder, among others. On this point, see: Brazil. Code of Criminal Procedure. Decree Law No. 3.689 of October 3, 1941. Former Articles 414 & 451, para. 1.

¹⁰⁶ Motion of Isael dos Anjos Rosa before the Court of São Fidélis. November 10, 1998. Case No. 2.801/97, p. 890. Attachment to the State's communication of November 11, 2013.

¹⁰⁷ General District Court. District of São Fidélis. Official Letter No. 872/98. November 10, 1998. Case No. 2.801/97, pp. 892-893; General District Court. District of São Fidélis. Official Letter No. 873/98. November 10, 1998. Case No. 2.801/97, pp. 894-895; General District Court. District of São Fidélis. Official Letter No. 871/98. November 10, 1998. Case No. 2.801/97, pp. 896-897; General District Court. District of São Fidélis. Official Letter No. 874/98. November 10, 1998. Case No. 2.801/97, pp. 898-899. Attachment to the State's communication of November 11, 2013.

¹⁰⁸ Motion of Isael dos Anjos Rosa al Court of Justice of Rio de Janeiro. Habeas Corpus. November 30, 1998. Case No. 2.801/97, pp. 904-906. Attachment to the State's communication of November 11, 2013.

¹⁰⁹ 141st DP – São Fidélis. Of. 01642/141/98. December 14, 1998. Case No. 2.801/97, pp. 907-908. Attachment to the State's communication of November 11, 2013.

¹¹⁰ General District Court. District of São Fidélis. Official Letter No. 109/98-GJ. December 15, 1998. Case No. 2.801/97, pp. 909-911. Attachment to the State's communication of November 11, 2013.

Dos Anjos Rosa to stand trial final and unappealable.¹¹¹

87. On July 13, 1999, the Court of São Fidélis ordered the severance of the case with respect to defendant Pereira Sobrosa.¹¹² Accordingly, the main criminal case (No. 2801/97) continued only against defendant Dos Anjos Rosa.

i. Criminal case against defendant Isael dos Anjos Rosa (case No. 1997.051.000171-0)

88. On August 5, 1999, the Office of the Public Prosecutor filed a bill of indictment [*libelo acusatorio*] against Dos Anjos Rosa, alleging that he had been one of the direct perpetrators of the murder of journalist Guida da Silva, and that he had committed the crime in exchange for payment, without giving the victim the opportunity to defend himself, and for purposes of concealing and preventing the prosecution of other crimes, “since the victim was publishing journalistic reports on crimes committed by third parties.”¹¹³

89. On February 28, 2000, an officer of the court was able to serve notice of the indictment on Dos Anjos Rosa’s attorney. However, the officer reported that the defendant’s whereabouts were unknown.¹¹⁴ On May 18, 2000, the prosecutor assigned to the case affirmed that “the trial cannot proceed without the arrest of the defendant,” and he requested that an official letter be sent to the POLINTER to determine whether the defendant was in the prison system.¹¹⁵ In response to the request of the Office of the Public Prosecutor, the Court sent official letters on May 31 and August 15, 2000, to the POLINTER asking it to inform the Court whether Dos Anjos Rosa was in custody.¹¹⁶ There is no record in the case file of a response from the POLINTER.

90. At the end of 2002, the Second Criminal Court of São Fidélis requested information from various police agencies regarding execution of the order for Dos Anjos Rosa’s pretrial detention.¹¹⁷ In response, the agencies reported that the defendant had not been apprehended and that his whereabouts were unknown.¹¹⁸ The judge again requested information on October 9, 2003.¹¹⁹ On November 13, 2003, the Office of the Public Prosecutor asked the Court to send letters to various state bodies to request information on his location.¹²⁰ The Office of the Public Prosecutor reiterated that request on October 28, 2005.¹²¹ On January 4,

¹¹¹ State of Rio de Janeiro. Judiciary. Certificate. February 26, 1999. Case No. 2.801/97, pp. 909-917. Attachment to the State’s communication of November 11, 2013.

¹¹² District Court of São Fidélis. Decision of July 13, 1999. Case No. 2.801/97. Attachment to the State’s communication of November 11, 2013.

¹¹³ Office of the Public Prosecutor for the State of Rio de Janeiro. Bill of indictment [*Libelo crime acusatorio*]. August 5, 1999. Case No. 2.801/97, pp. 896-897. Attachment to the State’s communication of November 11, 2013.

¹¹⁴ Note of the officer of the court, February 28, 2000. Case No. 2.801/97, pp. 896-897. Attachment to the State’s communication of November 11, 2013.

¹¹⁵ Office of the Public Prosecutor of the State of Rio de Janeiro. Letter of May 18, 2000. Case No. 2.801/97, p. 915. Attachment to the State’s communication of November 11, 2013.

¹¹⁶ District Court of São Fidélis. Second Division. Official Letter No. 484/00 of May 31, 2000 & Official Letter No. 633/00 of August 15, 2000. Case No. 2.801/97, pp. 916-917. Attachment to the State’s communication of November 11, 2013.

¹¹⁷ District Court of São Fidélis. Second Division. Official Letter No. 1474/02-N, OF. 1475/02-N, OF 1476/02-N & OF 1477/02-N of October 31, 2000. Case No. 2.801/97, pp. 922-924. Attachment to the State’s communication of November 11, 2013.

¹¹⁸ 141st Police Station. Official Letter No. E09-013955-1141/2002 of November 16, 2002 & Official Letter No. E09-014994-1141/2002 of December 6, 2002; Maritime, Airport, and Border Police Division. Official Letter No. 3771/2002 – SECAD/DELEMAF/SR/DPF/RJ of October 23, 2002 & Official Letter No. 4119/2002 – SECAD/DELEMAF/SR/DPF/RJ of November 25, 2002. Case No. 2.801/97. Attachment to the State’s communication of November 11, 2013.

¹¹⁹ District Court of São Fidélis. Second Division. Official Letter 2010/2003/OF, Official Letter 2125/2003/OF, Official Letter 2118/2003/OF & Official Letter 2132/2003/OF of October 9, 2003. Case No. 2.801/97, pp. 937-940. Attachment to the State’s communication of November 11, 2013.

¹²⁰ Office of the Public Prosecutor of São Fidélis. Second Criminal Court. Letter of November 13, 2003. Case No. 2.801/97, p. 943. Attachment to the State’s communication of November 11, 2013.

2006, the Court sent another letter to the POLINTER requesting information on the execution of the arrest warrant.¹²² On the same date, the Court also sent letters to government agencies and telephone companies, requesting information on the possible whereabouts of the defendant.¹²³ On April 9, 2007, the Court once again issued letters for this same purpose.¹²⁴ On April 30, 2007, a telephone company reported an address in the defendant's name.¹²⁵ On June 27, 2007, the judge asked the competent authorities to execute the arrest warrant at the address reported.¹²⁶ On June 14, July 5, and July 13, 2007, the Court sent new letters to state bodies, police agencies, associations, and companies seeking information on the defendant's address and the execution of the arrest warrant.¹²⁷ On July 25, 2007, a telephone company once again reported an address number for the defendant.¹²⁸ On September 5, 2007, the officer of the court reported that the number of the reported address did not exist and that the inhabitants of the locality did not have any information about the defendant.¹²⁹ On December 7, 2007, the Court sent new letters to the 8th Military Police Battalion regarding the execution of the arrest warrant and to a telephone company regarding the defendant's address.¹³⁰ On September 18, 2009, the Court sent the July 5, 2007 letters once again to the 8th Military Police Battalion, the POLINTER, and a telephone company.¹³¹ On February 10, 2010, the Court again asked the state bodies for information on the matter.¹³² Those official letters were issued again on May 11, 2010 and September 10, 2010.¹³³

91. With the exception of the abovementioned April 20, 2007 and July 25, 2007 communications from a telephone company, the replies of the various state agencies and companies to the Court's letters did

[... continuation]

¹²¹ Office of the Public Prosecutor of São Fidélis. Letter of October 28, 2005. Case No. 2.801/97, p. 943. Attachment to the State's communication of November 11, 2013.

¹²² District Court of São Fidélis. Second Division. Official Letter 25/2006/OF & Official Letter 24/2006/OF of January 4, 2006. Case No. 2.801/97, pp. 1017-1018. Attachment to the State's communication of November 11, 2013.

¹²³ District Court of São Fidélis. Second Division. Official Letter 30/2006/OF, Official Letter 29/2006/OF, Official Letter 28/2006/OF, Official Letter 27/2006/OF & Official Letter 26/2006/OF de January 4, 2006. Case No. 2.801/97, pp. 1012-1016. Attachment to the State's communication of November 11, 2013.

¹²⁴ District Court of São Fidélis. Second Division. Official Letter 753/2007/OF, Official Letter 754/2007/OF, Official Letter 755/2007/OF, Official Letter 756/2007/OF, Official Letter 757/2007/OF, Official Letter 758/2007/OF, Official Letter 759/2007/OF, Official Letter 760/2007/OF, Official Letter 761/2007/OF, Official Letter 762/2007/OF & Official Letter 763/2007/OF of April 9, 2007. Case No. 2.801/97, pp. 1047-1058. Attachment to the State's communication of November 11, 2013.

¹²⁵ Claro. Letter of April 30, 2007. Case No. 2.801/97, p. 1070. Attachment to the State's communication of November 11, 2013.

¹²⁶ District Court of São Fidélis. Second Division. Order of June 27, 2007. Case No. 2.801/97, p. 1079. Attachment to the State's communication of November 11, 2013.

¹²⁷ District Court of São Fidélis. Second Division. Official Letter 1838/2007/OF & Official Letter 1839/2007/OF of June 14, 2007, Official Letter 2106/2007/OF, Official Letter 2107/2007/OF, Official Letter 2108/2007/OF, Official Letter 2109/2007/OF, Official Letter 2110/2007/OF, Official Letter 2111/2007/OF, Official Letter 2112/2007/OF, Official Letter 2113/2007/OF, Official Letter 2114/2007/OF, Official Letter 2115/2007/OF, Official Letter 2116/2007/OF & Official Letter 2117/2007/OF of July 5, 2007, Official Letter 2192/2007/OF of July 13, 2007. Case No. 2.801/97, pp. 1076-1077, 1081-1092. Attachment to the State's communication of November 11, 2013.

¹²⁸ Claro. Letter of July 25, 2007. Case No. 2.801/97, p. 1107. Attachment to the State's communication of November 11, 2013.

¹²⁹ Officer of the Court. Letter of September 5, 2007. Case No. 2.801/97, p. 1121. Attachment to the State's communication of November 11, 2013.

¹³⁰ District Court of São Fidélis. Second Division. Official Letter 3374/2007/OF & Official Letter 3375/2007/OF of December 7, 2007. Case No. 2.801/97, pp. 1123-1124. Attachment to the State's communication of November 11, 2013.

¹³¹ District Court of São Fidélis. Second Division. Official Letter 1868/2009/OF, Official Letter 1869/2009/OF, Official Letter 1870/2009/OF of September 18, 2009. Case No. 2.801/97, pp. 1136-1138. Attachment to the State's communication of November 11, 2013.

¹³² District Court of São Fidélis. Second Division. Official Letter 305/2010/OF, Official Letter 306/2010/OF, Official Letter 307/2010/OF, Official Letter 308/2010/OF, Official Letter 310/2010/OF of February 10, 2010. Case No. 2.801/97, pp. 1144-1148. Attachment to the State's communication of November 11, 2013.

¹³³ District Court of São Fidélis. Second Division. Official Letter 943/2010/OF, Official Letter 944/2010/OF, Official Letter 945/2010/OF of May 11, 2010, Official Letter 2133/2010/OF & Official Letter 2134/2010/OF of September 10, 2010. Case No. 2.801/97, pp. 1155-1157, 1159 & 1160. Attachment to the State's communication of November 11, 2013.

not contain substantial information that could lead to the location of the defendant. For their part, the police agencies generally reported that the arrest warrant was pending and had not been executed, but they did not indicate what specific measures had been taken with respect to the matter.¹³⁴

92. On January 26, 2011, the Second Court of Três Rios informed the Second Court of São Fidélis that Dos Anjos Rosa had been arrested on December 22, 2010. According to the information provided, the defendant had been arrested by a police officer in the municipality of Três Rios while driving a stolen vehicle.¹³⁵

93. On March 23, 2011, the trial before the jury court resumed, with the Office of the Public Prosecutor's submission of its witness list.¹³⁶

94. On December 15, 2011, the Office of the Public Prosecutor requested a change of venue for Dos Anjos Rosa's trial, asking that the case be heard outside the city of São Fidélis. Among the reasons it provided, the Office of the Public Prosecutor stated that the crime had been committed with "political undertones," and that Dos Anjos Rosa had been identified by the witnesses as a member of the "Cerol" death squad, which had a strong presence in the northeastern region of the State of Rio de Janeiro. The prosecution similarly cited the testimony of many witnesses during the course of the proceedings who feared for their lives. The Office of the Public Prosecutor concluded: "This case deals with a crime that involves influential regional politicians and a death squad with intense activity in the northeastern region of the State of Rio de Janeiro," which "would certainly jeopardize the impartiality of the jurors, who would be extremely fearful in deciding the case." The Office of the Public Prosecutor additionally mentioned that the trial of defendant Pereira Sobrosa had been transferred to the District of de Niterói¹³⁷ (*infra*, para. 104). The motion for a change of venue was supported by the Court of São Fidélis.¹³⁸

¹³⁴ Maritime, Airport, and Border Police Division. Official Letter No. 7212/2005 – NUCAD/DELEMIG/SR/DPF/RJ of November 11, 2005, Official Letter No. 3371/2007 – NUCAD/DELEMIG/DREX/SR/DPF/RJ of May 21, 2007, Official Letter No. 5487/2007 – NUCAD/DELEMIG/DREX/SR/DPF/RJ of July 13, 2007, Official Letter No. 2399/2010 – NUCAD/DELEMIG/DREX/SR/DPF/RJ of March 24, 2010. Case No. 2.801/97, pp. 1010, 1071, 1116, 1154; 141st Police Station. Official Letter 001910/2007 of May 18, 2007, Official Letter 926/2010 of March 22, 2010. Case No. 2.801/97, pp. 1074, 1150; Military Police of the State of Rio de Janeiro. Official Letter No. 200/2592/2007 of May 3, 2007, Official Letter No. 035/AIB/2592/08 of January 25, 2008, Official Letter No. 460/AIB/2592/09 of October 6, 2009, Official Letter No. 0304/AIB/2592 – 2010 of May 26, 2010. Case No. 2.801/97, pp. 1075, 1127, 1139, 1158; POLINTER. Of.SIOP No. 26438/1905/2007. August 8, 2007. Case No. 2.801/97, p. 1098; Bureau of Prisons [Secretaria de Administração Penitenciária]. Official Letter No. 1095/2010/CEDI of March 23, 2010 & Official Letter No. 3643/2010/CEDI. Case No. 2.801/97, pp. 1153, 1161; National Institute for Social Security [Instituto Nacional do Seguro Social]. Official Letter No. 004/2006. January 16, 2005, Official Letter No. 118/2007 of April 17, 2007, Official Letter No. 247/2007 of July 13, 2007. Case No. 2.801/97, pp. 1020-1022, 1065-1067, 1095-1096; Federal Revenue Service [Secretaria da Receita Federal]. Official Letter No. 108/2006 of January 24, 2006, Official Letter No. 943/2007 of April 30, 2007, Official Letter 2177/2007 of August 2, 2007. Case No. 2.801/97, p. 1023, 1061, 1110; Regional Electoral Court of Rio de Janeiro [Tribunal Regional Eleitoral do Rio de Janeiro]. Official Letter No. 06-00.842 – RE/COEIN of January 13, 2006, Official Letter No. 07-07.540/CRE/END of April 18, 2007, Official Letter No. 07-13.845/CRE/END of July 20, 2007. Case No. 2.801/97, pp. 1025-1026, 1062-1063, 1108-1109; Ampla. Letter No. 22320036 of February 3, 2006, Letter No. JZ 3518/07 of April 24, 2007, Letter No. Jz 6960/07 of August 2, 2007. Case No. 2.801/97, pp. 1028, 1064, 1111; Telemar. CT/MZ/108500/1059-06 of March 27, 2006, CT/MZ/108500/27294-07 of July 4, 2007, CT/MZ/108500/19956-07 of July 31, 2007, CT/MZ/108500/64048-07 of December 27, 2007, CT/MZ/108500/34820-07 of October 31, 2007. Case No. 2.801/97, pp. 1031, 1093, 1122, 1126, 1128; Commercial, Industrial and Agricultural Association of São Fidélis [Associação Comercial, Industrial e Agrícola de São Fidélis]. Official Letter No. 230/2007 of April 16, 2007, Official Letter No. 289/2007 of August 7, 2007. Case No. 2.801/97, pp. 1059, 1097; VIVO. CT – 4333/2007 of May 7, 2007, CT 7676/2007 of July 26, 2007. Case No. 2.801/97, pp. 1068-1069, 1105-1106; TIM. Letter of July 26, 2007. Case No. 2.801/97, pp. 1103-1104; TNL PCS. CT/MZ/108500/60311-09 of October 2, 2009.

¹³⁵ Second Division, District of Três Rios. Official Letter No. 108/2011/OF of January 26, 2011. Case No. 2.801/97, p. 1162; 108th Police Station. Incident Report. December 22, 2010. Case No. 2.801/97, pp. 1173-1174. Attachment to the State's communication of November 11, 2013.

¹³⁶ Office of the Public Prosecutor of São Fidélis. Motion of March 23, 2011. Case No. 2.801/97, p. 1168. Attachment to the State's communication of November 11, 2013.

¹³⁷ Office of the Public Prosecutor for the State of Rio de Janeiro. Motion of December 15, 2011. Case No. 2.801/97, pp. 1238-1245. Attachment to the State's communication of November 11, 2013.

¹³⁸ District Court of São Fidélis. Second Division. Official Letter/GAB No. 30/2012. August 1, 2012. Case No. 2.801/97, pp. 1385-1387. Attachment to the State's communication of November 11, 2013.

95. On October 30, 2012, the Court of Justice of Rio de Janeiro denied the Office of the Public Prosecutor's motion for a change of venue, ruling in defendant Dos Anjos Rosa's favor and ordering that the case be tried in a jury court in São Fidélis. The Court indicated that, in spite of the fact that the crime had major repercussions because it involved "political issues, press freedom, and the actions of a death squad," the events had occurred in the 1990s and the defendant had lived in the city of Três Rios since 1997. In the Court's opinion, it would be impossible to assert that the defendant still held any influence over the public in São Fidélis. It indicated that the Office of the Public Prosecutor had not identified witnesses who would specifically be intimidated to testify at that time. Finally, it noted that a few months earlier, defendant De Pinho had been tried and acquitted in São Fidélis in a case that involved the same witnesses (*infra* para. 101), without there being any known facts to demonstrate that the jury court had failed to act impartially.¹³⁹

96. On June 3, 2013, the officer of the court confirmed that Guida da Silva's sister, one of the prosecution witnesses, had died in 2010.¹⁴⁰ On June 6, 2013, the proceedings were suspended due to the absence of all of the prosecution witnesses. The judge determined that the witnesses had not properly been summoned to appear. However, he underscored that the trial, scheduled for July 4, 2013, would not be subject to any further continuances.¹⁴¹

97. On June 12, 2013, prosecution witness Edilson Gomes reported that he had not appeared at the trial because he had received a telephone threat. The witness was ultimately unable to testify in spite of the steps taken (*infra* para. 113).¹⁴² On June 13, 2013, the Office of the Public Prosecutor confirmed that another prosecution witness, who had been called to testify at the trial of Dos Anjos Rosa, had died in 2002.¹⁴³

98. Dos Anjos Rosa's trial was held on July 4, 2013, and he was acquitted by the jury court by a majority of votes. The Court found that there was no evidence of his involvement in the crime.¹⁴⁴ The Office of the Public Prosecutor stated that it would not appeal the decision.¹⁴⁵ The defendant was interrogated during the proceedings.¹⁴⁶ Additionally, two defense witnesses testified. The only prosecution witness who testified was the victim's ex-wife, who asked to testify outside the defendant's presence.¹⁴⁷

¹³⁹ Court of Justice of the State of Rio de Janeiro. Second Criminal Division. Motion to Request Change of Venue. October 30, 2012. Case No. 2.801/97, pp. 1452-1462. Attachment to the State's communication of November 11, 2013.

¹⁴⁰ *Diretoria do Fórum de São Fidélis. Certidão Negativa*. June 3, 2013. Case No. 2.801/97, p. 1624. Attachment to the State's communication of November 11, 2013.

¹⁴¹ District of São Fidélis. Jury Court. Trial record from the periodic session of the Jury Court. June 6, 2013. Case No. 2.801/97, pp. 1668-1670. Attachment to the State's communication of November 11, 2013.

¹⁴² District Court of São Fidélis. Second Division. Certificate. June 12, 2013. Case No. 2.801/97, p. 1692. Attachment to the State's communication of November 11, 2013.

¹⁴³ Office of the Public Prosecutor for the State of Rio de Janeiro. Motion of June 18, 2013. Case No. 2.801/97, pp. 1693-1698. Attachment to the State's communication of November 11, 2013.

¹⁴⁴ Jury Court of the District of São Fidélis. Record of vote. July 4, 2013. Case No. 2.801/97, pp. 1770-1772; Jury Court of the District of São Fidélis. Judgment. July 4, 2013. Case No. 2.801/97, pp. 1773-1774. Attachment to the State's communication of November 11, 2013.

¹⁴⁵ District of São Fidélis. Jury Court. Trial record from the periodic session of the Jury Court. July 4, 2013. Case No. 2.801/97, pp. 1766-1769. Attachment to the State's communication of November 11, 2013.

¹⁴⁶ District of São Fidélis. Jury Court. Examination. July 4, 2013. Case No. 2.801/97, pp. 1755-1758. Attachment to the State's communication of November 11, 2013.

¹⁴⁷ Testimony of Amaury Barbosa Filho before the Jury Court on July 4, 2013. Case No. 2.801/97, pp. 1759-1761; Testimony of Anderson Grei Dias de Jesus before the Jury Court on July 4, 2013. Case No. 2.801/97, pp. 1762-1764; Testimony of Jossandra Lima da Silva before the Jury Court on July 4, 2013. Case No. 2.801/97, pp. 1765-1766.

ii. Criminal case against defendant Carlos Marques de Pinho (case No. 1997.051.000241-6)

99. On October 15, 1998, a criminal case was opened solely to try military police officer Carlos Marques de Pinho, who was a fugitive from justice.¹⁴⁸ According to the information available, on September 18, 2002, the Court of São Fidélis requested information from different police agencies regarding the execution of the warrant for the defendant's arrest.¹⁴⁹ That request was reiterated on May 21, 2003 and on October 27, 2003.¹⁵⁰ In addition, on November 28, 2003, the Court sent letters to various government agencies to ascertain the defendant's address.¹⁵¹ On March 4, 2004, the Office of the Public Prosecutor requested that a search for the defendant be carried out at the addresses provided by the Regional Electoral Court and the Federal Revenue Service.¹⁵² There is no information in the case record to indicate whether that procedure was ever conducted.

100. On August 9, 2005 and November 28, 2007 the Court once again requested information from the police agencies¹⁵³ and from government bodies and private companies,¹⁵⁴ respectively. On March 5, 2008, the Office of the Public Prosecutor requested the execution of the arrest warrant at a specific address.¹⁵⁵ On September 12, 2008, it was reported that the defendant did not live at the address provided.¹⁵⁶ On February 16, 2009, the Court once again requested the defendant's address from government agencies and private companies.¹⁵⁷ On May 14, 2009, the Court requested the execution of the arrest warrant at an address provided by the Federal Revenue Service—the same address that had been provided by that agency in 2003.¹⁵⁸ On July 21, 2009, the officer of the court reported that the defendant had moved from the specified

¹⁴⁸ General District Court. District of São Fidélis. Letter of October 15, 1998. Case No. 2.801/97, p. 877. Attachment to the State's communication of November 11, 2013.

¹⁴⁹ District Court of São Fidélis. Second Division. Official Letters 1079/02-N, 1078/02-N, & 1078/02-N of September 18, 2002. Case No. 1997.051.000241-6, pp. 920-922. Attachment to the State's communication of November 11, 2013.

¹⁵⁰ District Court of São Fidélis. Second Division. Official Letter No. 988/2003/OF, Official Letter No. 989/2003/OF & Official Letter No. 990/2003/OF May 21, 2003. Case No. 1997.051.000241-6, pp. 924-926; Official Letter No. 2328/2003/OF, Official Letter No. 2333/2003/OF, Official Letter No. 2338/2003/OF, Official Letter No. 2343/2003/OF of October 27, 2003. Case No. 1997.051.000241-6, pp. 936-940. Attachment to the State's communication of November 11, 2013.

¹⁵¹ District Court of São Fidélis. Second Division. Official Letter No. 2708/2003/OF, Official Letter No. 2714/2003/OF, Official Letter No. 2720/2003/OF & Official Letter No. 2665/2003/OF of November 28, 2003. Case No. 1997.051.000241-6, pp. 956-960. Attachment to the State's communication of November 11, 2013.

¹⁵² Office of the Public Prosecutor for the State of Rio de Janeiro. Motion of March 9, 2004. Case No. 1997.051.000241-6, p. 970. Attachment to the State's communication of November 11, 2013.

¹⁵³ District Court of São Fidélis. Second Division. Official Letter No. 1108/2005/OF, Official Letter No. 1109/2005/OF, Official Letter No. 1110/2005/OF, Official Letter No. 1111/2005/OF & Official Letter No. 1106/2005/OF of August 9, 2005. Case No. 1997.051.000241-6, pp. 941-945. Attachment to the State's communication of November 11, 2013.

¹⁵⁴ District Court of São Fidélis. Second Division. Official Letter No. 1108/2005/OF, Official Letter No. 1109/2005/OF, Official Letter No. 1110/2005/OF, Official Letter No. 1111/2005/OF & Official Letter No. 1106/2005/OF of November 28, 2007. Case No. 1997.051.000241-6, pp. 1072-1077. Attachment to the State's communication of November 11, 2013.

¹⁵⁵ Office of the Public Prosecutor for the State of Rio de Janeiro. Motion of March 5, 2008. Case No. 1997.051.000241-6, p. 1088. Attachment to the State's communication of November 11, 2013.

¹⁵⁶ Officer of the Court. Certificate. September 12, 2008. Case No. 1997.051.000241-6, p. 1108. Attachment to the State's communication of November 11, 2013.

¹⁵⁷ District Court of São Fidélis. Second Division. Official Letter No. 217/2009/OF, Official Letter No. 218/2009/OF, Official Letter No. 219/2009/OF, Official Letter No. 220/2009/OF & Official Letter No. 221/2009/OF of February 16, 2009. Case No. 1997.051.000241-6, pp. 1111-1115. Attachment to the State's communication of November 11, 2013.

¹⁵⁸ District Court of São Fidélis. Second Division. Letter Rogatory. Case No. 1997.051.000241-6, p. 1127; Rio de Janeiro Office of the Federal Revenue Service. Case No. 1997.051.000241-6, p. 969.

address more than a year earlier.¹⁵⁹ On March 10, 2010, the Court again requested the defendant's address from private companies and government bodies.¹⁶⁰

101. On August 19, 2010, the Court of São Fidélis served notice on the defendant by public notice following a change in the criminal procedure law that authorizes the trial *in absentia* of fugitive defendants.¹⁶¹ On August 7, 2012, De Pinho was tried *in absentia* by a jury court. He was acquitted by a majority vote. The Court found that there was no evidence of the defendant's participation in the crime.¹⁶² Upon receiving notice of the decision, the Office of the Public Prosecutor stated that it would not appeal.¹⁶³

iii. Criminal case against defendant Vladimir Ranieri Pereira Sobrosa (case No. 1997.051.000172-2)

102. On July 13, 1999, the Court of São Fidélis ordered the severance of the case with respect to defendant Pereira Sobrosa.¹⁶⁴

103. On November 30, 1999, the judge of the Second Court of São Fidélis sent a note to the Chief Justice of the Court of Justice of Rio de Janeiro, requesting that the case be heard in another jurisdiction. The judge asserted that a trial in the city of São Fidélis would be held "in a climate of clear pressure on the members of the jury," since the defendant was accused of being a member of the "Cerol" death squad, which was "well-known and feared" in the city. The judge added that from the time he began working in the Court of São Fidélis he had heard that the defendants in the case of Guida da Silva's murder would not be convicted "because of the fear" felt by jurors. In addition, the judge stressed that the crime had been committed because the journalist had reportedly exposed the unlawful acts and corruption of local authorities, and that it had far-reaching repercussions in the city. Finally, he added that Judge Cabuçu Neto, who was serving on the bench at the time of the events in question, had been transferred out of the city because he had received death threats.¹⁶⁵

104. On October 31, 2000, the Court of Justice of Rio de Janeiro ordered a change of venue in the case. In its decision, the Court cited the activity of the death squad in the region, the link between the journalist's murder and influential local politicians, and the threats against Judge Cabuçu Neto.¹⁶⁶

105. On April 5, 2002, the defendant stood trial before the jury court and, at the conclusion of oral argument, the trial jury fully agreed with the arguments of the Office of the Public Prosecutor set forth in the

¹⁵⁹ Officer of the Court. Certificate. July 12, 2009. Case No. 1997.051.000241-6, p. 1134. Attachment to the State's communication of November 11, 2013.

¹⁶⁰ District Court of São Fidélis. Second Division. Official Letter No. 508/2010/OF, Official Letter No. 509/2010/OF, Official Letter No. 510/2010/OF & Official Letter No. 511/2010/OF of March 10, 2010. Case No. 1997.051.000241-6, pp. 1140-1144. Attachment to the State's communication of November 11, 2013.

¹⁶¹ District Court of São Fidélis. Second Division. Order. Case No. 1997.051.000241-6, pp. 1151. Attachment to the State's communication of November 11, 2013. See also: Article 420, II, para. 1 of 1 of the Code of Criminal Procedure, as amended by Law 11.689 of 2008.

¹⁶² Jury Court of the District of São Fidélis. Record of vote. August 7, 2012. Case No. 1997.051.000241-6, pp. 1490-1492; Jury Court of the District of São Fidélis. Judgment. August 7, 2012. Case No. 1997.051.000241-6, pp. 1493-1496. Attachment to the State's communication of November 11, 2013.

¹⁶³ District of São Fidélis. Jury Court. Trial record from the periodic session of the Jury Court. August 7, 2012. Case No. 2.801/97, pp. 1537-1541. Attachment to the State's communication of November 11, 2013.

¹⁶⁴ District Court Judge of São Fidélis. Decision of July 13, 1999. Case No. 2.801/97. Attachment to the State's communication of November 11, 2013.

¹⁶⁵ District Court of São Fidélis. Second Division. Official Letter No. 51/99-GSO-GJ. November 30, 1999. Case No. 2.801/97, pp. 1294-1296. Attachment to the State's communication of November 11, 2013.

¹⁶⁶ Court of Justice of the State of Rio de Janeiro. Change of Venue Order No. 01/200. October 31, 2000. Case No. 2.801/97, pp. 1297-1299. Attachment to the State's communication of November 11, 2013.

bill of indictment. Accordingly, the presiding judge found the criminal action to be well-founded, and sentenced the defendant to 28 years in prison.¹⁶⁷

106. The defendant appealed the decision,¹⁶⁸ requesting a new trial before the jury court (“*Protesto por novo Júri*”)¹⁶⁹. The Court of Justice of the State of Rio de Janeiro granted the appeal. Accordingly, on March 20, 2007, a new hearing was held before the jury court, at which five witnesses testified. Once again, the trial jury found the defendant guilty of the murder of journalist Guida da Silva. That same day, the presiding judge sentenced the defendant to 21 years in prison, and ordered that he remain in custody pending the decision of any appeals.¹⁷⁰

107. The defendant filed a writ of *habeas corpus* before the Court of Justice of Rio de Janeiro and an appeal requesting that the lower court’s decision be vacated. On May 3, 2007, the Court of Justice denied the defendant’s request for release. On October 9, 2007, the Court granted the motion for appeal, vacating the proceedings and ordering a new session of the jury court.¹⁷¹

108. On July 10, 2008, the new trial began before the jury court. This time, only two witnesses testified and the rest were excused.¹⁷² The Office of the Public Prosecutor failed to prove its case, “due to insufficient evidence.”¹⁷³ The jury acquitted the defendant under the hypothesis of “insufficient evidence for a guilty verdict”¹⁷⁴ and, accordingly, the presiding judge ruled that the request for the imposition of a penalty against defendant Pereira Sobrosa was unfounded. In view of the fact that the judgment was not subject to appeal, the judge declared it final on the same day.¹⁷⁵

iv. Threats and harassment of witnesses and judges during the investigations and the criminal proceedings

109. During the investigation of the facts, several witnesses expressed their fear of testifying because of the dangerousness of the suspects under investigation, who were known in the city as members of the “Cerol” death squad.¹⁷⁶ Various witnesses said that other people in the city were also afraid to provide

¹⁶⁷ Third Criminal Division – Jury Court. District of Niterói. Judgment. April 5, 2002. Document submitted by the petitioner in response to the IACHR’s communication of September 10, 2004.

¹⁶⁸ Official Letter No. 096/2004 issued to the petitioner organization by the Criminal Court of the District of Niterói, State of Rio de Janeiro, on October 14, 2004. Document submitted by the petitioner in response to the IACHR’s communication of September 10, 2004.

¹⁶⁹ According to Brazilian procedural law applicable at the time of the events, the “*Protesto por novo júri*” is a writ that could be filed by the defendant in all cases judged by a jury in which the sanction imposed by the presiding judge in a guilty verdict was greater or equal to 20 years imprisonment for a single. See: Criminal Procedural Code of Brazil. Article 607 (before the reform by Law 11.689 of 2008).

¹⁷⁰ Third Criminal Division – Jury Court. District of Niterói. Trial record of the Jury Court. March 20, 2007. Attachment 4 to the State’s communication of July 25, 2007. Third Criminal Division – Jury Court. District of Niterói. Judgment. March 20, 2007. Attachment 5 to the State’s communication of July 25, 2007.

¹⁷¹ Case consultation – number – 2nd instance. Case No. 2007.050.03834. Attachment I to the State’s communication of November 9, 2007.

¹⁷² Third Criminal Division – Jury Court. District of Niterói. Trial record of the Jury Court. July 10, 2008. Attachment I to the State’s communication of April 23, 2009.

¹⁷³ Third Criminal Division – Jury Court. District of Niterói. Trial record of the Jury Court. July 10, 2008. Attachment I to the State’s communication of April 23, 2009.

¹⁷⁴ According to article 386, VI, of the Criminal Procedure Code of Brazil at the time of the events: “The judge shall acquit the defendant, mentioning the cause in the ruling, as long as they recognize: [...] VI: insufficient evidence for a guilty verdict”.

¹⁷⁵ Third Criminal Division – Jury Court. District of Niterói. Judgment. July 10, 2008. Attachment I to the State’s communication of April 23, 2009.

¹⁷⁶ Statement of Judge Ascânio Cezar Cabussú Neto to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 250-251; Testimony of Ana Paula Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 435-436; Testimony of Angela de Fatima Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 444-447; Testimony of Delcio Mello Mouta before the District Court of São Fidélis on June 6, 1997. Case No. 2.801/97, pp. 486-489; Statement of

[continues ...]

statements concerning the identity of those involved,¹⁷⁷ and this was observed by police authorities who took part in the investigations,¹⁷⁸ as well as by the Office of the Public Prosecutor.¹⁷⁹ Other witnesses indicated that no one gave statements about crimes that occurred in the city because of the influence exerted by the former Municipal Council attorney and the council member (the alleged mastermind of the crime) over the local police station, and because of police complicity with the crimes committed by the “Cerol” death squad.¹⁸⁰ For safety reasons, many witnesses gave their statements off the premises of the police station.¹⁸¹ It is clear from the witness statements that the climate of fear and threats remained present at subsequent stages of the criminal case.¹⁸²

110. Some witnesses were threatened and harassed and at least two of them reported having been offered bribes by persons who may have been involved in the crime.¹⁸³ One witness close to the Guida da Silva family stated that Council Member Rodrigues Silva had searched him out in order to obtain information on the involvement of the victim’s relatives in the investigations, offering him a sum of money in

[... continuation]

Geraldo Dias Carvalho Junior to the Police Homicide Division on June 4, 1997. Case No. 2.801/97, pp. 502-504. Attachment to the State’s communication of November 11, 2013.

¹⁷⁷ Statement of Luzia Gomes da Rocha to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 51; Statement of Reinaldo Guida da Silva to police in the Crimes against the Person Division on July 18, 1995. Case No. 2.801/97, p. 52; Statement of Agnaldo Guida da Silva to the Police Homicide Division on April 16, 1997. Case No. 2.801/97, pp. 311-312; Testimony of Angela de Fatima Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 444-447. Attachment to the State’s communication of November 11, 2013.

¹⁷⁸ State Public Safety Department. Specialized Police Coordination Office. Division of Crimes against the Person – DDV. Report. September 26, 1995. Case No. 2.801/97, pp. 58-60; Report of the Homicide Division – Special Investigations Unit. Investigation No. 33/97, pp. 195-202. Attachment to the State’s communication of November 11, 2013.

¹⁷⁹ Office of the Public Prosecutor for the State of Rio de Janeiro. Office of the Public Prosecutor of São Fidélis. Official Letter No. 45/96 – AC of November 21, 1996. Case No. 2.801/97, pp. 167-170. Attachment to the State’s communication of November 11, 2013.

¹⁸⁰ Testimony of Paulo Cesar Pinheiro Bittencourt before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 448-452; Statement of Geraldo Dias Carvalho Junior to the Police Homicide Division on June 4, 1997. Case No. 2.801/97, pp. 502-504; Statement of Ângela de Fátima Guida da Silva to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 289-294; Statement of Álvaro Neves da Silva to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 295-300; Testimony of Angela de Fatima Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 444-447. Attachment to the State’s communication of November 11, 2013.

¹⁸¹ Statement of Angela de Fátima Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 46; Statement of Ângela de Fátima Guida da Silva to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 289-294; Statement of Ana Paula Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 47; Statement of Ana Paula Guida da Silva to police in the Crimes against the Person Division on August 24, 1995. Case No. 2.801/97, p. 56; Statement of Fidelis Singmaringa de Oliveira to police in the Crimes against the Person Division on August 24, 1995. Case No. 2.801/97, p. 57; Statement of Luzia Gomes da Rocha to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 51; Statement of Jossandra Lima da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, pp. 49-50; Statement of Delcio Mello Mouta to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 48.

¹⁸² Testimony of Paulo Cesar Pinheiro Bittencourt before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 448-452; Testimony of Delcio Mello Mouta before the Court of São Fidélis (Case No. 2801/97) on June 6, 1997; Testimony of Delcio Mello Mouta before the District Court of São Fidélis on June 6, 1997. Case No. 2.801/97, pp. 486-489; Statement of Geraldo Dias Carvalho Junior to the Police Homicide Division on June 4, 1997. Case No. 2.801/97, pp. 502-504; Statement of Luciano Azevedo Rodrigues to the Office of the Public Prosecutor of Campos dos Goytacazes on January 20, 1997. Case No. 2.801/97, pp. 287-288; Testimony of Luciano Azevedo Rodrigues before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 431-434.

¹⁸³ Statement of Paulo Cesar Pinheiro Bittencourt to police in the Crimes against the Person Division, March 18, 1997. Case No. 2.801/97, pp. 191-193; Statement of Luciano Azevedo Rodrigues to the Office of the Public Prosecutor of Campos dos Goytacazes on January 20, 1997. Case No. 2.801/97, pp. 287-288; Statement of Luciano Azevedo Rodrigues to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, pp. 53-54; Testimony of Paulo Cesar Pinheiro Bittencourt before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 448-452; Testimony of Delcio Mello Mouta before the District Court of São Fidélis on June 6, 1997. Case No. 2.801/97, pp. 486-489; Statement of Ana Paula Guida da Silva to police in the Crimes against the Person Division on August 24, 1995. Case No. 2.801/97, p. 56; Testimony of Angela de Fatima Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 444-447; Statement of Geraldo Dias Carvalho Junior to the Police Homicide Division on June 4, 1997. Case No. 2.801/97, pp. 502-504; State Public Safety Department. Specialized Police Coordination Office. Division of Crimes against the Person – DDV. Report. September 26, 1995. Case No. 2.801/97, pp. 58-60; Report of the Homicide Division – Special Investigations Unit. Investigation No. 33/97, pp. 195-202. Attachment to the State’s communication of November 11, 2013.

exchange. According to this witness, Rodrigues Silva threatened him when he refused the offer.¹⁸⁴ The witness also later reported that the council member harassed him on several occasions to try to get him to change his testimony. He added that he was afraid to contact the Office of the Public Prosecutor in São Fidélis, and that he had moved away from the city after what had happened.¹⁸⁵ He subsequently reported that he continued to be watched by unknown persons at his new home, and that unknown masked men were reportedly looking for him. On that occasion, he went before the Court of São Fidélis to request protection.¹⁸⁶ There is no information in the case file to indicate whether the State took any measures to provide protection to him. Another witness stated that the former Municipal Council attorney, José Estefan, approached him to keep him from naming him in his statements, and offered his legal services and the use of his resources to provide for the witness' transportation to the city of São Fidélis.¹⁸⁷ Similarly, a witness reported that the same attorney had been seen talking to witnesses during the stage at which they were supposed to testify before the Court of São Fidélis.¹⁸⁸

111. It is evident from the statements given during the criminal case that at least one key witness withdrew his initial statements due to pressure and threats and, later, asserted that he had done so because of death threats.¹⁸⁹ The witness stated that he had been threatened with a weapon by an unknown person who ordered him to change his initial testimony. After the threat, he received a summons from the 141st CPC to provide a statement, and on that occasion he withdrew his initial statement. Later, he testified before the Court of São Fidélis that he had done so because of the threat he had received. When the witness gave his initial statement, DDV/DPE officers had made the special police available to him in case of retaliation for his statements.¹⁹⁰ Nevertheless, the IACHR does not have any documentation to indicate whether specific measures were taken to protect the witness.

112. Additionally, during the investigations and the criminal proceedings conducted in this case, both Guida da Silva's relatives and the co-owner of the newspaper *A Gazeta de São Fidélis* reported that they were being harassed and threatened. On June 3, 1995, the co-owner of the newspaper sent a letter to the Public Safety Secretary of Rio de Janeiro requesting protection for himself, his family, and the victim's relatives because of the threats they had been receiving since Guida da Silva's murder.¹⁹¹ Similarly, Guida da Silva's niece reported in August 1995 that she had been harassed by Council Member Rodrigues Silva, who had twice approached her on the street. She reported that on one of those occasions the council member had

¹⁸⁴ Statement of Luciano Azevedo Rodrigues to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, pp. 53-54; Testimony of Luciano Azevedo Rodrigues before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 431-434. Attachment to the State's communication of November 11, 2013.

¹⁸⁵ Statement of Luciano Azevedo Rodrigues to the Office of the Public Prosecutor of Campos dos Goytacazes on January 20, 1997. Case No. 2.801/97, pp. 287-288; Testimony of Luciano Azevedo Rodrigues before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 431-434. Attachment to the State's communication of November 11, 2013.

¹⁸⁶ Testimony of Luciano Azevedo Rodrigues before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 431-434; May 27, 1997 testimony of Luciano de Azevedo Rodrigues. Case No. 2.801/97, p. 474. Attachment to the State's communication of November 11, 2013.

¹⁸⁷ Statement of Paulo Cesar Pinheiro Bittencourt to police in the Crimes against the Person Division, March 18, 1997. Case No. 2.801/97, pp. 191-193; Testimony of Paulo Cesar Pinheiro Bittencourt before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 448-452. Attachment to the State's communication of November 11, 2013.

¹⁸⁸ May 27, 1997 testimony of Angela de Fátima Guida da Silva. Case No. 2.801/97, pp. 474-476. Attachment to the State's communication of November 11, 2013.

¹⁸⁹ Statement of Delcio Mello Mouta to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 48; Statement of Delcio Mello Mouta at the 141st Police Station of São Fidelis on January 10, 1996. Case No. 2.801/97, pp. 102-103; Testimony of Delcio Mello Mouta before the District Court of São Fidélis on June 6, 1997. Case No. 2.801/97, pp. 486-489. Attachment to the State's communication of November 11, 2013.

¹⁹⁰ Statement of Delcio Mello Mouta to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 48; Statement of Delcio Mello Mouta at the 141st Police Station of São Fidelis on January 10, 1996. Case No. 2.801/97, pp. 102-103; Testimony of Delcio Mello Mouta before the District Court of São Fidélis on June 6, 1997. Case No. 2.801/97, pp. 486-489. Attachment to the State's communication of November 11, 2013.

¹⁹¹ Letter from Edilson Gomes to the Secretary of Public Safety of the State of Rio de Janeiro, dated June 3, 1995. Case No. 2.801/97, p. 194. Attachment to the State's communication of November 11, 2013.

thrown a piece of fruit at her chest and laughed at her.¹⁹² Later, one of Guida da Silva's sisters stated that after the investigations were returned to the 141st CPC from the DDV/DPE in October 1995, Council Member Rodrigues Silva continued to threaten the relatives. She added that she sought help from the local authorities, but did not receive support.¹⁹³

113. On June 12, 2013, the co-owner of the newspaper *A Gazeta de São Fidélis* again reported that he had been threatened. This time, the journalist failed to appear at the trial of defendant Dos Anjos Rosa—in which he was scheduled to testify for the prosecution—because he had received a telephone threat on June 6 from a person who reportedly told him that if he went to court, “he would not get home alive.”¹⁹⁴ On June 18, 2013, the Office of the Public Prosecutor requested that protection be provided to the journalist in order for him to be able to appear in court on the trial date, or for his testimony to be heard by a judge in a different jurisdiction.¹⁹⁵ On June 19, 2013, the Court of São Fidélis indicated that it did not have the necessary resources to provide protection to the witness, but that the Office of the Public Prosecutor could do so with its own resources if it thought it was necessary. The Court also ordered that the journalist be heard before the Court of São Gonçalo. Nevertheless, it stressed that it would not suspend the trial in the event that it was not possible to hear from the witness in a timely manner.¹⁹⁶ On June 26, 2013, the 4th Criminal Court of São Gonçalo reported that there would be no available time to hear the journalist before the trial.¹⁹⁷

114. Finally, the case file indicates that on November 14, 1996, the Chief Justice of the Court of Justice of the State of Rio de Janeiro decided to transfer the judge of the Court of São Fidélis to another jurisdiction because of the threats that judge had received in judicial proceedings investigating crimes committed by the “Cerol” death squad.¹⁹⁸

E. Actions of the death squads in the State of Rio de Janeiro

115. Between November 27 and December 8, 1995, the Commission conducted an in loco visit to Brazil, including the State of Rio de Janeiro. As a result of the visit, the IACHR issued its 1997 “Report on the Situation of Human Rights in Brazil,” in which it expressed concern over—among other issues—the impunity of crimes committed by death squads in the country.

116. The Commission stated that, according to information received, in many states in Brazil [including Rio de Janeiro], “death squads” have acted with impunity, eliminating poor youth and suspected

¹⁹² Testimony of Ana Paula Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 435-436; Statement of Ana Paula Guida da Silva to police in the Crimes against the Person Division on July 13, 1995. Case No. 2.801/97, p. 47. Attachment to the State's communication of November 11, 2013.

¹⁹³ Testimony of Angela de Fatima Guida da Silva before the District Court of São Fidélis on May 20, 1997. Case No. 2.801/97, pp. 444-447; Statement of Ângela de Fátima Guida da Silva to the Police Homicide Division on April 15, 1997. Case No. 2.801/97, pp. 289-294. Attachment to the State's communication of November 11, 2013.

¹⁹⁴ District Court of São Fidélis. Second Division. Certificate. June 12, 2013. Case No. 2.801/97, pp. 1692. Attachment to the State's communication of November 11, 2013.

¹⁹⁵ Office of the Public Prosecutor for the State of Rio de Janeiro. Motion of June 18, 2013. Case No. 2.801/97, p. 1693. Attachment to the State's communication of November 11, 2013.

¹⁹⁶ District Court of São Fidélis. Second Division. Decision of June 19, 2013. Case No. 2.801/97, p. 1721. Attachment to the State's communication of November 11, 2013.

¹⁹⁷ District of São Gonçalo. Office of the Clerk of the 4th Criminal Court. Official Letter 2610/2013/OF. Case No. 2.801/97, p. 1813. Attachment to the State's communication of November 11, 2013.

¹⁹⁸ Court of Justice of the State of Rio de Janeiro. Change of Venue Order No. 01/200. October 31, 2000. Case No. 2.801/97, pp. 1297-1299. Attachment to the State's communication of November 11, 2013; Office of the Public Prosecutor for the State of Rio de Janeiro. Office of the Public Prosecutor of São Fidélis. Official Letter No. 45/96 – AC of November 21, 1996. Case No. 2.801/97, pp. 167-170. Attachment to the State's communication of November 11, 2013; District Court of São Fidélis. Second Division. Official Letter No. 51/99-GSO-GJ. November 30, 1999. Case No. 2.801/97, pp. 1294-1296.

criminals in urban areas and community and labor union leaders in rural areas.”¹⁹⁹ The Commission emphasized that:

“These squads operate with impunity, mainly due to threats, witness and prosecutor intimidation, the inadequacy of investigations to bring their members to trial, and the inefficiency of the judiciary in sentencing them. [...] It is also alleged that they sometimes operate with the consent of the local police authorities, who make little or no attempt to stop their activities, either because they are involved or because they feel that the extermination squads help to get rid of criminals, drug traffickers, and other ‘undesirables.’”²⁰⁰

117. The IACHR noted in particular that, according to a 1991 investigation, “27% (8,000 police officers) of the Rio de Janeiro police force had been invited, at one time or another, to join these groups.”²⁰¹ It also indicated that a report by the Parliamentary Investigation Commission (CPI) of the Rio de Janeiro Legislative Assembly on the Extermination of Minors had identified 15 extermination squads in that state.²⁰²

118. With respect to the composition of the death squads, the IACHR indicated that they could include active duty police officers of the State, as well as former police officers expelled from the institution for the commission of unlawful acts. In both cases, these members made a living by participating in the death squads. According to the figures of the Center for Reporting Extermination Squads, established by the government of the state of Rio de Janeiro, of the 159 persons arrested between April 1991 and June 1993 for their involvement in this type of activity, 53 were military police officers.²⁰³ The Commission also underscored that:

“It is said that local politicians (mayors, municipal councilors, state and federal congressmen) frequently support death squads and often use the vigilantes’ control over the local population to obtain votes or intimidate opponents. At the same time, it is alleged that some individuals who have been on trial for being members of these groups work openly with some local politicians. Anyone opposed to the control exercised by the vigilantes in their respective neighborhoods risks his/her life; it is also very risky to report them to the police. Thus, between 1991 and 1993, in the area of Rio de Janeiro alone, extermination squads executed 31 community leaders.”²⁰⁴

119. As discussed in this report, the facts of this case involve the actions of alleged members the “Cerol” death squad, which was active in the northern area of the State de Rio de Janeiro.

¹⁹⁹ IACHR. Report on the Situation of Human Rights in Brazil. OEA/Ser.L/V/II.97 Doc. 29 rev.1. September 29, 1997, para. 46. Available at: <http://www.cidh.org/countryrep/brazil-eng/index%20-%20brazil.htm>.

²⁰⁰ IACHR. Report on the Situation of Human Rights in Brazil. OEA/Ser.L/V/II.97 Doc. 29 rev.1. September 29, 1997, para. 47. Available at: <http://www.cidh.org/countryrep/brazil-eng/index%20-%20brazil.htm>.

²⁰¹ IACHR. Report on the Situation of Human Rights in Brazil. OEA/Ser.L/V/II.97 Doc. 29 rev.1. September 29, 1997, para. 37. Available at: <http://www.cidh.org/countryrep/brazil-eng/index%20-%20brazil.htm>.

²⁰² IACHR. Report on the Situation of Human Rights in Brazil. OEA/Ser.L/V/II.97 Doc. 29 rev.1. September 29, 1997, para. 38. Available at: <http://www.cidh.org/countryrep/brazil-eng/index%20-%20brazil.htm>.

²⁰³ IACHR. Report on the Situation of Human Rights in Brazil. OEA/Ser.L/V/II.97 Doc. 29 rev.1. September 29, 1997, para. 41. Available at: <http://www.cidh.org/countryrep/brazil-eng/index%20-%20brazil.htm>.

²⁰⁴ IACHR. Report on the Situation of Human Rights in Brazil. OEA/Ser.L/V/II.97 Doc. 29 rev.1. September 29, 1997, para. 43. Available at: <http://www.cidh.org/countryrep/brazil-eng/index%20-%20brazil.htm>.

V. ANALYSIS OF THE MERITS

A. Analysis of the violations of the right to life (Article 4) and to freedom of thought and expression (Article 13), in relation to the State's general obligation to respect rights (Article 1.1), enshrined in the American Convention.

120. Article 4 of the Convention states that:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
[...]

121. The right to life holds special significance because it is the essential premise for the realization of all other rights. Accordingly, the Inter-American Court has held repeatedly in its case law that States "have the obligation to guarantee the establishment of the conditions to ensure that violations of this inalienable right do not occur and, in particular, the obligation to prevent its agents from violating it."²⁰⁵ As discussed in greater detail below, the observance of the right to life not only assumes that no person can be arbitrarily deprived of his or her life; it also requires the States to take all appropriate measures to protect and preserve this right, in accordance with the duty to guarantee the full and free exercise of the rights of all persons under their jurisdiction.

122. Article 13 establishes that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

[...]

123. Article 13 of the American Convention not only provides for the right and the freedom of individuals to express their own thoughts. It also includes the right and the freedom to seek, receive, and disseminate ideas and information of all kinds, as well as to receive and hear about information and ideas disseminated by others. Accordingly, freedom of expression has two aspects. There is the individual aspect that entails the right of all persons to express their thoughts and circulate the information they consider relevant.

²⁰⁵ I/A Court H.R., *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 139; *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 120; *Case of the Xákmok Kásek Indigenous Community. v. Paraguay*. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214, para. 187; *Case of Barrios Family v. Venezuela*. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237, para. 48.

In addition, there is a social aspect that involves a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.²⁰⁶

124. The social aspect of freedom of expression is an institutional guarantee that is necessary for a true democracy to exist.²⁰⁷ The Inter-American System has reiterated that the public's right to have access to the greatest number of opinions and news reports on all matters of general interest is essential for individuals to be able to supervise government, participate actively in the making of decisions that affect them and, in particular, exercise their political rights.²⁰⁸

125. In the instant case, the petitioner alleged that the State violated journalist Guida da Silva's rights to life and freedom of expression by failing to protect him—even though he had been receiving death threats prior to his murder stemming from the exercise of his right to freedom of expression. The petitioner also alleged that the State failed to act with due diligence to investigate the murder, prosecute and, if appropriate, punish the murderers. For its part, the State maintained that Guida da Silva's murder was not committed by state agents, but rather by private citizens. It argued that it had taken all necessary measures to investigate the facts, prosecute, and punish the perpetrators, and that it therefore could not be held internationally responsible for the alleged violations. In addition, the State provided information on the National Program for the Protection of Human Rights Defenders, which includes journalists and media workers as potential beneficiaries, the creation of the Working Group on the Human Rights of Media Workers in Brazil, and existing legislative bills that seek to give federal authorities jurisdiction over the investigation of crimes committed against journalists.

126. In view of the above, the Inter-American Commission must determine whether the State met its obligations to respect and guarantee the rights to life and freedom of expression of journalist Aristeu Guida da Silva, under Articles 4.1 and 13 of the American Convention, in conjunction with Article 1.1 thereof. In so doing, the IACHR will examine the obligations that States have when faced with the murder of a journalist based on the exercise of his or her right to freedom of expression. The Commission will then apply those standards to the case before it.

i. Inter-American standards on the obligations of the States in cases of the murder of journalists for the exercise of their right to freedom of expression

127. As both the Commission and the Court have held repeatedly, violence committed against journalists and media workers with the aim of silencing them is a violation of the victim's right to freedom of expression, and has a profoundly negative effect on the exercise of freedom of expression by those who practice the profession of journalism and on the right of society in general to seek and receive all kinds of information and ideas freely and peacefully.²⁰⁹ As the Inter-American Court has observed, "journalism can

²⁰⁶ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30; *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, para. 64; *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para. 146; *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 108; *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 77; *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, para. 53.

²⁰⁷ IACHR. *2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (International Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 13

²⁰⁸ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 105; *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 116 *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 90.

²⁰⁹ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248, para. 194; IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo "Richard" Vélez Restrepo and Family (Colombia). October 23, 2010, para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999, para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999, para. 58.

only be [practiced] freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment.”²¹⁰

128. When such crimes go unpunished, it encourages the repetition of similar violent acts and can result in the silencing and self-censorship of journalists.²¹¹ Impunity creates a strong chilling effect on the exercise of freedom of expression and the implications for democracy—which depends upon the free, open, and dynamic exchange of ideas and information—are particularly serious.²¹²

129. The Inter-American Court has determined that “it is essential that journalists who work in the media should enjoy the necessary protection and independence to exercise their functions to the fullest, because it is they who keep society informed, an indispensable requirement to enable society to enjoy full freedom and for public discourse to become stronger.”²¹³ Similarly, the United Nations Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions had indicated that:

Journalists deserve special concern not primarily because they perform heroic acts in the face of danger—although that is often the case—but because the social role they play is so important. [...] An attack on a journalist represents an assault on the foundations of the human rights project and on informed society as a whole. Violence against a journalist is not only an attack on one particular victim, but on all members of the society.²¹⁴

130. In this regard, the murder of journalists and members of the media is the most extreme form of censorship.²¹⁵

131. According to the case law of the Court, the observance of Articles 4.1 and 13 of the American Convention, in relation to Article 1.1 thereof, not only requires that person not be arbitrarily deprived of his or her life for exercising his or her right to freedom of expression, but also requires that the States take all appropriate measures to protect and preserve those rights, in accordance with their duty to ensure the full and free exercise of the rights of all persons under their jurisdiction.²¹⁶

²¹⁰ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 248, para. 209.

²¹¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism (1995-2005). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008, para. 129.

²¹² I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70; IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 2.

²¹³ I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para. 150; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 119.

²¹⁴ United Nations General Assembly. Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns. A/HRC/20/22. 10 April 2012, para. 24.

²¹⁵ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 1; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism (1995-2005). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Submission; IACHR. Report No. 37/10. March 17, 2010. Case 12.308. Manoel Leal de Oliveira (Brazil), para. 97; United Nations General Assembly. Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns. A/HRC/20/22. 10 April 2012, para. 21.

²¹⁶ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 134, para. 74; *Case of the “Street Children” (Villagrán-Morales et al.)*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 144; *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 237.

132. The international responsibility of the State arises from the acts or omissions of any of its bodies or agencies, regardless of their authority, that violate the American Convention, including when its agents exceed the scope of their authority.²¹⁷ As the Inter-American Court has observed,

“In order to establish that a violation of the rights enshrined in the Convention has been committed, it is not required, as it is under domestic criminal law, that the perpetrators’ liability or intent be established. Nor is it required that the agents to whom such violations are attributed be identified individually, but rather it is enough to prove that there have been acts or omissions that allowed for the perpetration of such violations or that the State has failed to fulfill an obligation.”²¹⁸

133. With regard to the obligation to respect human rights, the States have the duty under the American Convention to ensure that their agents do not interfere with the rights to life and freedom of expression. In other words, the States have the obligation to refrain from committing acts that could directly violate those rights, such as committing acts of violence against its citizens.²¹⁹ The Inter-American Court has determined that “any form of exercise of the State power which violates rights recognized by the Convention is unlawful”²²⁰. The jurisprudence has recognized that, according to Article 1.1 of the Convention, it is a principle of International Law that the State answers to the acts and omissions of its agents when there are sufficient signs that these acts are directly or indirectly linked to their respective duties or positions. Consequently, State responsibility can be found when evidence exists that the international violation is related to the exercise of public office, be because of its origin, the means used to commit the violation or its aim²²¹.

134. The Convention also requires that the States take all appropriate measures to protect and preserve the right to life and freedom of expression, consistent with their duty to ensure the full and free exercise of the rights of all persons under their jurisdiction.²²² The Court has thus held that the State’s obligation to guarantee the rights enshrined in the Convention means that it must organize the State apparatus and, in general, all of the structures through which government power is exercised, in such a way that it is able to legally guarantee the free and full exercise of human rights.²²³

²¹⁷ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 134, para. 73; *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988, paras. 134 & 172; *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 68; *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 10.

²¹⁸ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 134, para. 72; I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 108; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 111.

²¹⁹ I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 108; *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 111.

²²⁰ I/A Court H.R. *Case of Ximenes-Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149. Para. 84; *Case of Baldeón-García v. Peru*. Judgment of April 6, 2006. Series C No. 147. Para. 81; *Case the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 108; *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 111 and 112.

²²¹ I/A Court H.R. *Case the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 108; *Caso Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 111 and 111. *Case of the Gómez-Paquiyaui Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110. Para. 72.

²²² I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, paras.152 & 153; *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 111; *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 110; *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 144, cited in I/A Court H.R., *Case of the 19 Merchants v. Colombia*, Judgment of July 5, 2004. Series C No. 109, para. 153.

²²³ I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No.4, para. 166; *Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 92.

135. With regard to violence against journalists and media workers based on the exercise of their right to freedom of expression, the inter-American case law has made clear that the rights to life and freedom of expression give rise to three positive obligations of the State, which will be examined in greater detail below: (i) the obligation to prevent crimes against individuals because of the exercise of their right to freedom of thought and expression; (ii) the obligation to protect those who are especially at risk because of the practice of their profession; and (iii) the obligation to investigate, prosecute and punish the perpetrators of the crimes committed.²²⁴

a. Obligation to prevent

136. The States have the obligation to take measures to prevent violence against journalists and media workers. This obligation is particularly important in countries or regions where there is a risk of these incidents taking place and in specific situations in which the authorities know or should have known that there is a real and immediate threat of such crimes being committed.²²⁵ Some prevention measures that could be taken by the State include: (i) maintain a public discourse that helps prevent violence against journalists; (ii) train public servants, especially members of security and police forces, on the role that journalists play in a democracy and the right of journalists to freely practice their profession; (iii) adopt codes of conduct or guidelines on respect for freedom of expression and special protocols to protect the press, especially in situations of social unrest; (iv) respect the right of journalists to keep their sources of information, notes, and personal and professional records confidential; (v) produce accurate statistics on violence against journalists in support of the adoption of appropriate public policies of prevention;²²⁶ and (vi) establish an adequate legal framework to punish the perpetrators of these crimes.²²⁷

137. With respect to the obligation to maintain a public discourse that helps prevent violence against journalists, the Inter-American Court has emphasized that the obligation to ensure the rights to freedom of expression and humane treatment requires public servants to abstain from making statements that expose journalists and media workers to a greater risk of violence perpetrated by private citizens.²²⁸ The

²²⁴ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 31.

²²⁵ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248, para. 194; United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. Joint Declaration on Crimes against Freedom of Expression.

²²⁶ IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II Doc. 57. December 31, 2009, para. 187; United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. Joint Declaration on Crimes against Freedom of Expression; United Nations General Assembly. Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns. A/HRC/20/22. 10 April 2012, para. 107.

²²⁷ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 34 et seq.; IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II Doc. 57. December 31, 2009, para. 44.

²²⁸ I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 141-142. A similar opinion was expressed by the IACHR, UN, OSCE, and ACHPR Special Rapporteurs on Freedom of Expression in their 2012 Joint Declaration, in which they affirmed that State officials should unequivocally condemn attacks committed in reprisal for the exercise of freedom of expression and should refrain from making statements that are likely to increase the vulnerability of those who are targeted for exercising their right to freedom of expression. United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. Joint Declaration on Crimes against Freedom of Expression.

Court has also found that public servants must have a higher threshold of tolerance for criticism and for the circulation of information that might affect them.²²⁹ Specifically, the Court has held that:

“In a democratic society it is not just legitimate but also, sometimes, a duty of the state authorities to make statements about issues of the public interest. Nevertheless, when doing so they have to verify reasonably, though not necessarily in an exhaustive manner, the truthfulness of the facts supporting their opinions, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy, the broad scope and possible effects their sayings may produce on certain sectors of the society and with a view to keeping citizens from receiving a distorted version of the facts. Furthermore, they should bear in mind that, as public officials, they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights so that they must not amount to a form of interference with or pressure impairing the rights of those who intend to contribute to public deliberation by means of expression and dissemination of [their] thought.”²³⁰

138. In the same regard, the IACHR has underscored the responsibility of government officials to maintain a public discourse that does not expose journalists to a greater risk of violence. The IACHR has thus recalled, among other things, that a simple yet highly effective protective measure consists of State authorities acknowledging the legitimacy and value of journalistic work in a clear, consistent, public, and firm manner, even when the information disseminated might be critical, inconvenient, or inopportune with respect to the government’s interests. Similarly, it is essential for the authorities to strongly condemn violence against journalists and to encourage the respective authorities to act with due diligence and swiftness in establishing the facts and punishing the perpetrators of such acts.²³¹

b. Obligation to protect

139. In accordance with the human rights standards of the Inter-American System, the States have an obligation to protect those whose fundamental rights are especially at risk. In these cases, the obligation to take specific protective measures is dependent on the awareness of a real and imminent danger to a specific individual or group of individuals, and the reasonable possibility of preventing or avoiding this harm.²³² In this respect, the obligation to protect an at-risk journalist can be met through the individual application of the necessary measures to ensure, *inter alia*, the beneficiary’s right to life, humane treatment, and freedom of expression.²³³

²²⁹ Cfr. *Case of Kimel v. Argentina*. Judgment of May 2, 2008 Series C No. 177; *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005, Series C No. 135; & *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107.

²³⁰ I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195. Series C No. 195, para. 151. See also: I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139.

²³¹ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 37; IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011, para. 713.

²³² I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006, Series C No. 140, para. 123; I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146; I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 78; I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 280. See also: IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II Doc. 57. December 31, 2009, para. 42.

²³³ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 62.

140. The Inter-American Court defined the scope of the State's positive obligation to protect especially at-risk persons when it stated that, "For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate danger to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that danger."²³⁴

141. Thus, with regard to the State's duty to protect at-risk journalists, the Court has underscored that "journalism can only be [practiced] freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment."²³⁵ Therefore, the States "have the obligation to adopt special measures of prevention and protection for journalists subject to special risk."²³⁶

142. According to the Inter-American case law, this special risk must be evaluated in light of existing conditions in the country, and can arise from factors such as the type of events journalists cover, the public interest of the information they disseminate, or the area they must access in order to do their work. It can also come from threats related to the dissemination of this information or from reporting or furthering the investigation of violations they experienced or uncovered in the practice of their profession.²³⁷ The Court has emphasized that "that it [is incumbent upon] the State authorities to get to know the situation of special risk in order to determine or assess whether the person who is the target of threats and harassment requires measures of protection or to refer the case to the competent authority to do this, and also to offer the person at risk timely information on the measures available."²³⁸

143. The States not only have the obligation to protect at-risk journalists; they must also ensure that the protective measures they take are effective and adequate. Accordingly, when measures are taken to protect a journalist from a credible threat of harm to his or her personal safety, these measures must take account of the needs specific to the beneficiary's profession, their gender, and other individual circumstances.²³⁹

c. Obligation to investigate, prosecute, and if appropriate, punish the perpetrators

144. The third and final element of the State's obligation to address violence against journalists is the investigation, prosecution, and punishment of those who commit such acts of violence.

145. As the Inter-American Court has held consistently in its case law, the obligation of the State to investigate cases of human rights violations arises from the general obligation to guarantee the rights established in Articles 1.1, 8 and 25 of the American Convention, in addition to the substantive right that must

²³⁴ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 124, citing European Court of Human Rights. *Case of Kılıç v. Turkey*. Application No. 22492/93. Judgment of 28 March 2000, para. 63.

²³⁵ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 248, para. 209.

²³⁶ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 248, para. 194.

²³⁷ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 248, para. 193-94.

²³⁸ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 248, para. 201.

²³⁹ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 72; United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. Joint Declaration on Crimes against Freedom of Expression.

be protected or ensured.²⁴⁰ Based on this obligation, the authorities must investigate any act that adversely affects the enjoyment of the rights enshrined in the Convention. In particular, the Court has held that in cases of violent death, “the performance of an *ex officio*, prompt, serious, impartial and effective investigation constitutes a fundamental element essential for the protection of the rights affected in these situations.”²⁴¹

146. The Inter-American Court has also found that the failure to meet the obligation to investigate acts of violence against a journalist amounts to a breach of the obligations to respect and guarantee the right to freedom of thought and expression,²⁴² as well as the rights to life and/or humane treatment, depending on the consequences of the act of violence.

147. Both the Commission and the Court have referred to the chilling effect that crimes against journalists have on other media professionals and on citizens who intend to report abuses of power or unlawful acts of any kind.²⁴³ This chilling effect can only be prevented “by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law.”²⁴⁴

148. The Court has indicated that impunity—understood as the overall lack of investigation, pursuit, capture, prosecution and conviction—fosters the chronic repetition of human rights violations and renders the victims and their relatives completely defenseless.²⁴⁵ For its part, the IACHR has urged States on repeated occasions to “carry out serious, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers.”²⁴⁶

149. Accordingly, the States have the duty to investigate, identify, prosecute, and punish all perpetrators of these crimes, including the masterminds, direct perpetrators, accomplices, collaborators, and those who later cover up the violations of human rights committed. They must also investigate the

²⁴⁰ 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, para. 219; I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para. 147; I/A Court H.R., *Case of Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 63.

²⁴¹ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 134, para. **

²⁴² I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 3, 2012 Series C No. 248, para. 215.

²⁴³ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248, para. 148; IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family (Colombia). October 23, 2010, para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999, para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999, para. 58. See also: IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011, para. 716.

²⁴⁴ IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family (Colombia). October 23, 2010, para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999, para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999, para. 58. See also: IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011, para. 716. See also: I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248, para. 211.

²⁴⁵ I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para. 186; I/A Court H.R., *Case of the Constitutional Court v. Peru*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, para. 123; I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, para. 211.

²⁴⁶ IACHR. 2012 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V (Conclusions and Recommendations). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013, para. 4(c). See also: IACHR. 2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VII (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 4(a); IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011, para. 4(a); IACHR. 2011 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 69. December 30, 2011, para. 4(c).

organizations involved in the execution of the crimes or the criminal organizations to which the perpetrators belong.²⁴⁷

150. It follows from the inter-American framework that, in meeting their obligation to investigate, prosecute, and punish those responsible for acts of violence against journalists for the exercise of their right to freedom of expression, the States must place special emphasis on certain obligations, including: (i) the obligation to adopt an adequate institutional framework for the effective investigation, prosecution, and punishment of violence against journalists; (ii) the obligation to exercise due diligence and exhaust lines of inquiry related to the victim's practice of journalism; (iii) the obligation to conduct investigations within a reasonable time period; and (iv) la obligation to facilitate victim participation in the investigations.²⁴⁸

151. The IACHR has indicated that an adequate institutional framework is crucial to the State's ability to investigate, prosecute, and punish crimes against journalists. To that end, the States have the obligation to ensure that institutional frameworks are not designed in such a way as to promote or lead to impunity in cases involving these types of crimes.²⁴⁹ In addition, the States must ensure that the bodies responsible for investigating, prosecuting, and punishing the perpetrators of these crimes have the necessary conditions to perform their work.²⁵⁰

152. Accordingly, the States must assign responsibility for the investigation and prosecution of these crimes to the authorities that are in the best position to handle them and that are able to act with autonomy and independence. The hierarchical and institutional independence of the authorities responsible for conducting the investigations and the judicial proceedings must be ensured, and there must also be a way to verify their independence in a practical manner in a specific case.²⁵¹ The States must ensure that the judges or prosecutors with jurisdiction over cases of violence against journalists can operate without being subject to influence by the public official or criminal organization allegedly involved in the crime, in the event that there is evidence of their participation. In cases where the investigative and prosecutorial authorities must

²⁴⁷ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 166; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism (1995-2005). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008, para. 40.

²⁴⁸ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 175 et seq.

²⁴⁹ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 175; United Nations General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012, para. 57. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-17_en.pdf

²⁵⁰ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 175.

²⁵¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism (1995-2005). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008, para. 58, citing I/A Court H.R., *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, para. 95; United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. Joint Declaration on Crimes against Freedom of Expression; European Court of Human Rights. *Case of Adali v. Turkey*. Application No. 38187/97. Judgment of 31 March 2005, para. 222. "This means not only a lack of hierarchical or institutional connection but also a practical independence (see, for example, *Ergi v. Turkey*, judgment of 28 July 1998, Reports 1998-IV, §§ 83-84, where the public prosecutor investigating the death of a girl during an alleged clash showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident)."

act within that sphere of influence, the State has the duty to provide them with sufficient capacity to resist it.²⁵²

153. Additionally, the IACHR has noted how important it is for States to clearly define the formal jurisdiction of the authorities in charge of investigating and prosecuting these crimes. This is particularly essential for identifying their ability to take over the investigation of cases when the domestic legal framework allows for investigations to be conducted by federal authorities or authorities based in a different jurisdiction than the one in which the crime was committed.²⁵³

154. The obligation to adopt an adequate institutional framework also includes the duty to take all necessary measures to protect judges, prosecutors, witnesses, and other persons involved in criminal investigations from external pressures such as threats, attacks, and other forms of intimidation.²⁵⁴ The States thus have the obligation to guarantee the safety of the authorities in charge of the investigations and to adopt the necessary mechanisms or measures to prevent the obstruction of investigations, in addition to measures designed to offer safety to witnesses, victims, relatives, and other judicial representatives facing threats and acts of intimidation or aggression meant to obstruct these processes.²⁵⁵ Similarly, the Inter-American Court has stated that, “in order to comply with the obligation to investigate within the framework of the guarantees of due process, the State must take all necessary measures to protect judicial officers, investigators, witnesses and the victims’ next of kin from harassment and threats” designed to obstruct the proceedings, prevent the establishment of the facts of the case, and prevent the identification of the perpetrators.²⁵⁶

155. Likewise, for the success of investigations into crimes against freedom of expression, investigators must receive sufficient human, financial, logistical, and scientific resources to collect, secure and evaluate evidence and carry out other tasks necessary for determining liability.²⁵⁷

²⁵² IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 176; United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. Joint Declaration on Crimes against Freedom of Expression; United Nations General Assembly. Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns. A/HRC/20/22. 10 April 2012, para. 113.

²⁵³ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 183.

²⁵⁴ IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. December 31, 2011, paras. 383 & 385; IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 186.

²⁵⁵ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 186; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism (1995-2005). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008, para. 58.

²⁵⁶ I/A Court H.R., *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11. 2007. Series C No. 163, para. 171.

²⁵⁷ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 188; IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011, paras. 733 & 821; United Nations General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012, para. 102. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-17_en.pdf; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism (1995-2005). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008, para. 58, citing I/A Court H.R., *Case of Carpio Nicolle et al. v. Guatemala*. Merits, Reparations and Costs. Judgment of November 22, 2004. Series C No. 117, para.

[continues ...]

156. As stated earlier, in complying with their duty to investigate and prosecute all perpetrators of acts of violence against journalists, the States must also act with due diligence and exhaust the lines of inquiry related to the victim's practice of journalism. In this regard, the Inter-American Court has emphasized that the obligation of due diligence entails the exhaustion of all logical lines of inquiry in the criminal investigation. In particular, "due diligence" requires that the investigations conducted by the State take account of "the complexity of the facts, the context in which they occurred, and the systematic patterns that explain why the events occurred," making certain that there are no "omissions in gathering evidence or in the development of logical lines of investigation."²⁵⁸

157. Indeed, the obligation to conduct the investigation with due diligence and to exhaust all logical lines of inquiry is especially relevant in cases of violence against journalists, given that an investigation that fails to consider aspects linked to this context, such as the journalist's professional activities, will be less likely to yield results and will probably raise questions about the willingness of the authorities to solve the crime.²⁵⁹ In this regard, the Inter-American Court has stressed the importance of exhausting the logical lines of investigation related to the professional practice of journalists who have been subject to acts of violence.²⁶⁰

158. A third obligation of the States in the pursuit of justice for acts of violence against journalists is to ensure that the investigations and criminal proceedings are held within a reasonable time period. The Inter-American Court has established that an excessive delay in the investigation of acts of violence can constitute a *per se* violation of the right to a fair trial.²⁶¹ The authorities in charge of the investigation must carry it out in a timely manner, avoiding undue delays or obstructions of the proceedings that lead to impunity and the denial of judicial protection.²⁶²

159. Finally, the States have the obligation to guarantee that the victims of human rights violations or their next-of-kin have full access and the ability to take part at all of the stages and levels of the investigation and the respective trial, in accordance with domestic law and the provisions of the American Convention.²⁶³ This must include extensive opportunities to participate and to be heard, both in the establishment of the facts and in the punishment of the perpetrators, as well as in seeking compensation.²⁶⁴ The Commission notes that promoting victim participation in criminal cases also requires that adequate protection be provided where there are threats or attacks that aim to keep victims from taking part.²⁶⁵

[... continuation]

135; United Nations General Assembly. Human Rights Council. *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*. A/HRC/21/L.6. 21 September 2012. Para. 8.

²⁵⁸ I/A Court H.R., *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163, para. 158; I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, paras. 106-110 & 167.

²⁵⁹ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 203.

²⁶⁰ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248, para. 211.

²⁶¹ I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para. 85; I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para. 160.

²⁶² I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para. 85.

²⁶³ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism (1995-2005). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008, para. 41.

²⁶⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism (1995-2005). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008, para. 41.

²⁶⁵ I/A Court H.R., *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C [continues ...]

ii. Factual analysis of the instant case

160. Based on the established facts and on the inter-American standards discussed above, the Commission will determine whether the State in the instant case complied with its duties to respect and guarantee journalist Guida da Silva's rights to life and freedom of expression, provided for in Articles 4.1. and 13, respectively, of the American Convention, in conjunction with Article 1.1 thereof. The Commission will first examine whether the State failed to meet its obligation to respect those rights. Second, the Commission will analyze the international responsibility of the State with respect to its duty to protect, and prevent the violation of, Guida da Silva's rights to life and freedom of expression. Finally, the Commission will analyze if the State has acted according to its duty to investigate, which will be examined in greater detail in subsection B.

a. Obligation to respect the rights to life and freedom of expression

161. The Commission notes that journalist Guida da Silva was well-known for criticizing government officials in the newspaper *Gazeta de São Fidélis* for acts of corruption and other unlawful activities in which members of the Municipal Council were said to have been engaged. In particular, in the April 5-20, 1995 edition, the journalist harshly criticized the administration of the then-Chairman of the Municipal Council of São Fidélis, as well as the conduct of Council Member Rodrigues Silva. The Commission additionally observes that, at the time of the events, Guida da Silva was preparing a report on various crimes allegedly committed by the council member and by an influential local lawyer who had held the position of Municipal Council attorney. Finally, the Commission notes that the journalist was also working on a piece that would expose the participation of public servants in the "Cerol" death squad in the region of São Fidélis, whose members allegedly included city council members—among them, Council Member Rodrigues Silva—and law enforcement officers.

162. It is evident from the facts established in the instant case that the journalist was the victim of assaults and repeated threats, which had reportedly been made by both government officials and unidentified individuals (*supra* para. 45, 48-52). Witnesses indicated that Guida da Silva received various anonymous phone calls at his residence warning him that he would be killed. Also, a month before being murdered, the journalist reported to an officer at the São Fidélis Civil Police Station that he had received a death threat from four unknown persons. During this time period, several witnesses observed that Guida da Silva was also threatened by the former Municipal Council attorney, who was with a military police officer at the time of the threat (*supra* para. 50). Witnesses also said that three days prior to the alleged victim's murder they saw two men parked near his house on a red motorbike, one of whom was identified as a member of the military police. Similarly, a report from the Homicide Police noted that, two weeks prior to his murder, Guida da Silva had been threatened by Council Member Rodrigues Silva, who had violently assaulted him (*supra* para. 52).

163. The facts proven in this case also indicate that on April 27, 1997, the journalist was subjected to new threats by members of the Municipal Council during a session at the legislative body on the occasion of the approval of a motion to repudiate him. Among other things, the motion stated that it was time for the Municipal Council "to put an end to what is going on in this 'PASQUIM' newspaper." The case file indicates that several members of the Municipal Council and other authorities from the municipal government and from the State de Rio de Janeiro subsequently issued a note of censure against the alleged victim, in which they indicated that:

[... continuation]

No. 163, para. 171; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism (1995-2005). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008, para. 58; 1/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248, para. 203-204; 1/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213, paras. 194-195.

“The guidelines that should lead [the newspaper’s] actions have been cast aside, allowing for conflicts with ethics, honor, decency, morals, and even with the natural instinct of self-preservation. Human nature will only tolerate so much outside interference, and when those limits are surpassed—no matter how level-headed people may be—they can be driven to irrational and foolish acts, with harmful consequences on themselves and their families.”²⁶⁶

164. The IACHR observes that, after being threatened repeatedly, Guida da Silva was murdered on May 12, 1995 with the direct participation of at least three individuals, who shot him on a public street. The evidence gathered in the national sphere and the reports of the investigating agencies point to the participation of State agents in the planning and execution of the murder. Based on the reports written by the investigating authorities and the courts, the investigators concluded that only logical theory in the criminal case was that the crime had been ordered by members of the Municipal Council of the city of São Fidélis. Nevertheless, the criminal case did not go forward because of the death of the defendant. Additionally, the evidence on record in the case reasonably leads to the conclusion that the crime was carried out by persons allegedly tied to the “Cerol” death squad, a group whose members included military police officers from the State of Rio de Janeiro.

165. As noted earlier, the investigations and the subsequent criminal case point to at least one public servant—Council Member Rodrigues Silva—as the mastermind of the murder. Accordingly, the range of evidence in the case indicates that the journalist’s murder was ordered to eliminate all criticism and scrutiny of the government authority exercised by the council member, and to prevent the revelation of unlawful acts he reportedly committed under the protection of his public powers, including his acts as one of the alleged leaders of the “Cerol” death squad. The investigations also contained evidence that military police officers, who were reportedly also members of the “Cerol” death squad, had taken part in the crime.

166. The case file further indicates that Council Member Rodrigues Silva had attempted to obstruct justice in this case by threatening and coercing witnesses in order to derail the investigation. In fact, some uncontested witnesses stated that Council Member Rodrigues Silva directly harassed and threatened at least two of them, as well as the victim’s relatives, after Guida da Silva’s murder. One witness also stated that the council member had offered him money in exchange for information about the participation of the victim’s relatives in the investigations. The witness refused, and then was subjected to threats and harassment that caused him to leave the city.

167. The established facts also point to the complicity in the crime of local police officers responsible for investigating the murder of the alleged victim. Indeed, witnesses spoke of the complicity of local police with the crimes perpetrated by the death squad and of Council Member Rodrigues Silva’s influence over the local police department, and one person reported possible acts of concealment of the murder by a police commissioner from the 141st CPC. Additionally, the Commission observes that a key witness was called in by the local police station *ex officio* to provide a new statement after being threatened by an individual who was trying to get him to retract his initial statement. At that time, the witness withdrew his prior statement.

168. The State has made no observations regarding the existence of investigations into the threats against the witnesses or the acts of complicity reported, and there is no additional information in the case file concerning the matter.

169. The Inter-American Commission notes that, to date, no one has been held responsible for the murder of the alleged victim. The IACHR further observes that in the instant case, the facts of which concern the death of an individual, the investigation should have been conducted in such a way as to ensure the proper analysis of the theories of perpetration that arose from it, in particular those suggesting the

²⁶⁶ Note (“*abaixo-assinado*”) sent to the District Court of São Fidélis and to the Office of the Public Prosecutor on May 4, 1995.

participation of State agents.²⁶⁷ In spite of the State's argument that the crime was committed by private citizens, Brazil did not submit any information to the IACHR on the progress of the investigation or the criminal cases brought by its authorities that would disprove the evidence that points to the participation of State agents—such as Council Member Rodrigues Silva, among others—in the murder of the alleged victim. And according to the conclusions of the national authorities themselves, the murder was committed with the intent to prevent the publication of news reports that would expose the criminal activity of the council member, as well as reveal his participation, and that of military police officers, in a death squad. Indeed, as previously mentioned, the Commission observes that there is nothing in the case file to indicate that any other theory was considered by the national authorities during the investigations and the criminal cases prosecuted at the domestic level.

170. More than 19 years have passed since the murder of journalist Aristeu Guida da Silva, and the investigations and criminal cases conducted at the domestic level have made it impossible thus far to determine the respective individual liabilities. Therefore, the Commission finds it reasonable to grant probative weight to the evidence in the case file concerning the participation of State agents in these acts, particularly the evidence handled by the State agencies in charge of the investigation, which has not been refuted by the State.²⁶⁸ As the Inter-American Court has maintained, to conclude otherwise would mean allowing the State to avail itself of the negligence and ineffectiveness of the criminal investigation in order to evade its responsibility for the violation of Articles 4.1 and 13 of the Convention.²⁶⁹

171. Indeed, the Commission notes that, according to the evidence in the case file, Guida da Silva was killed because of the interests of at least one public servant, in order to silence the criticism and scrutiny of the public duties he performed and the revelation of unlawful acts he had reportedly committed under the cover of his public authority, including his acts as one of the leaders of a death squad. The case file also indicates that law enforcement officers belonging to that death squad may have taken part in the murder of the journalist. The Commission also notes that after the murder, the public servant suspected of being the mastermind took steps to obstruct justice by threatening and coercing witnesses in an attempt to derail the investigation. Finally, the Commission observes that there is evidence that the police officers in charge of investigating the alleged victim's murder were complicit in the crime.

172. In view of the above, the Commission concludes that the State violated Articles 4.1 and 13 of the American Convention, in relation to Article 1.1 thereof, for failing to meet its obligation to respect journalist Aristeu Guida da Silva's rights to life and freedom of expression.

b. Obligation to protect and prevent violations of the rights to life and freedom of expression

173. The Inter-American Commission reiterates that the State has not only the obligation to ensure that all of its agents abstain from violating the rights to life and freedom of expression but also the positive obligation to guarantee those rights; that is, to prevent acts of violence, protect individuals who are at risk for exercising their right to freedom of expression, and investigate the perpetrators of crimes that are committed.

174. As noted above (*supra* para. 162), journalist Guida da Silva had been the victim of repeated threats for approximately one month prior to his murder. In the instant case, the Commission notes not only that there was a real and immediate danger to Guida da Silva's rights to life and to humane treatment but also

²⁶⁷ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 134, para. 96.

²⁶⁸ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 134, para. 97.

²⁶⁹ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 134, para. 97.

that the State was aware of these circumstances. The facts indicate that on April 12, 1995 the journalist reported to an officer at the São Fidélis Civil Police Station that he had received a death threat, and this was recorded by the officer. Nevertheless, the complaint was shelved, because it had not been possible to locate the vehicle used by the suspects. Additionally, a report from the Homicide Police shows that two weeks prior to Guida da Silva's death, he reported to the local police station that he had been threatened and assaulted by Council Member Rodrigues Silva. Finally, the Commission notes that the chief judge at the Court of São Fidélis stated that the journalist had told him he was afraid of being killed.

175. The Inter-American Commission notes that in this context, in view of the threats against journalist Guida da Silva, the Municipal Council of the city of São Fidélis approved a motion to repudiate the newspaper *Gazeta de São Fidélis* (*supra* para. 44), which was sent, together with a note of censure, to the police station, to the court, and to the Office of the Public Prosecutor of São Fidélis. In addition, at the Municipal Council session during which the motion to repudiate was introduced, the journalist had reportedly been publicly insulted and threatened by members of the Municipal Council—public servants who not only must have a higher tolerance for criticism given the duties they perform, but also must abstain from making statements that expose journalists to greater risk of acts of violence. The Commission observes that, in the instant case, given the context in which these incidents took place, it is reasonable to assert that the acts of those authorities aggravated the journalist's situation of risk in the days leading up to his death. Accordingly, the IACHR reiterates that all of the above took place in the public sphere and that State authorities and the local population were aware of it.

176. There is nothing in the facts to indicate that the State took any measures in the instant case to prevent Guida da Silva's murder or to protect him, in spite of having knowledge of the real and immediate risk to his life and his right to humane treatment. Indeed, with the exception of the attempt to locate the vehicle allegedly used by the people who made one of the death threats to Guida da Silva, there is no evidence that the State investigated the threats or took measures to assess the journalist's situation of risk and, if appropriate, to provide him with measures to protect his life and physical safety. On the contrary, in spite of the threats, the Municipal Council publicly approved a motion to repudiate his newspaper, which was introduced during a session in which council members reportedly threatened and insulted the journalist, aggravating the risk he faced. All of this took place in an environment where there were organized crime groups such as the "Cerol" death squad, whose acts were being investigated by the journalist. Indeed, as noted previously (*supra* para. 115-118) the Inter-American Commission expressed its concern during its 1995 *in loco* visit over the presence of at least 15 death squads in the State of Rio de Janeiro, which operated with impunity and enjoyed the support of local authorities, and whose members reportedly included members of law enforcement.

177. For all of the above reasons, the Inter-American Commission concludes that the State violated Articles 4.1 and 13 of the American Convention, in relation to Article 1.1 thereof, by failing to meet its obligation to guarantee journalist Aristeu Guida da Silva's rights to life and freedom of expression, by failing to take measures to prevent the violation of the victim's rights to life and freedom of expression and to protect him, in spite having knowledge of the fact that he was facing real and immediate danger for exercising his right to freedom of expression.

c. Obligation to investigate violations of the rights to life and freedom of expression

178. Finally, the Commission observes that the duty of the State to investigate, prosecute, and punish the perpetrators of human rights violations is derived from the general obligation provided in Article 1.1 of the Convention in conjunction with the substantive right violated—in this case the rights to life and freedom of expression—as well as from the rights to a fair trial (Article 8) and judicial protection (Article 25).

179. The Commission observes that, as previously noted, the facts in this case do not show that the State effectively took measures to investigate the death threats reported by the journalist to the authorities. Indeed, the facts demonstrate that, when they were informed that the journalist had received a death threat, the police authorities limited themselves to trying to locate the vehicle allegedly used by the

perpetrators, and when unable to do so, decided to shelve the investigations (*supra* para. 51). There is no evidence in the case file to indicate that the State took any additional measures to investigate the threats.

180. In addition, as discussed in greater detail in the section below on the alleged violation of the rights to a fair trial (Article 8) and judicial protection (Article 25), the State failed to act with due diligence to investigate, prosecute, and if appropriate, punish the perpetrators of journalist Guida da Silva's murder and, to date, the crime has gone unpunished. Therefore, the IACHR concludes that the State is responsible for the violation of the rights to life and freedom of expression (Articles 4 and 13), in relation to Article 1.1, with respect to journalist Aristeu Guida da Silva, for the lack of due diligence in the investigation, prosecution, and eventual punishment of those responsible for his murder.

B. Analysis of the alleged violation of the rights to a fair trial (Article 8) and judicial protection (Article 25), in relation to the general obligation to respect rights (Articles 1.1), of the American Convention

181. Article 8.1 of the American Convention establishes that:

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.

182. Article 25.1 of the Convention provides that:

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.

183. The Inter-American Court has stated repeatedly that the States Party "have an obligation to provide effective judicial remedies to victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1.1)."²⁷⁰

184. In view of the murder of the alleged victim, these rights belong to his next-of-kin, "who are the interested party in seeking justice and to whom the State must provide effective remedies to ensure access to justice, the investigation and eventual punishment of those responsible, if applicable, and comprehensive reparation of the consequences of the violations."²⁷¹

185. According to the case law of the Court, when a criminal investigation is the suitable remedy to redress the violation of a right enshrined in the Convention, it must be undertaken *ex officio* and without delay, in strict compliance with due diligence.²⁷² Meeting this obligation is particularly relevant in cases

²⁷⁰ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 91.

²⁷¹ I/A Court H.R., *Garibaldi et al. v. Brazil*, para. 116; *Case of Valle Jaramillo et al.*, para. 170; *Case of Kawas Fernández*, para. 120.

²⁷² I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 104. The Court has also held that this obligation not only arises from the provisions of the Convention, but is also derived from domestic law. Thus, the IACHR observes that Article 5 of the Code of Criminal Procedure (CPP) of Brazil in force at the time of the events provided that "in public action crimes, the police investigation shall be initiated: I- *ex officio*; II- at the request [...] of the victim or his duly authorized representative." In addition, Article 10 of the CPP established that "the investigation shall conclude within 10 days if the defendant was arrested in *flagrante delicto*, or was in pretrial detention, in which case the time [continues ...]

involving the murder of a journalist. Both the Commission and the Court have referred to the chilling effect that crimes against journalists have on other media professionals and on citizens who intend to report abuses of power or unlawful acts of any kind.²⁷³ This chilling effect can only be prevented “by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law.”²⁷⁴

186. The IACHR observes that after the murder of journalist Aristeu Guida da Silva the police authorities opened an investigation into the events. That investigation lasted for a period of two years, during which it was assigned to various Civil Police offices. In April 1997, the Office of the Public Prosecutor decided to bring charges against four individuals identified as perpetrators of the journalist’s murder and the criminal case was brought before the Court of São Fidélis. Each of the defendants was prosecuted individually. The accused mastermind was murdered in 1998, and the case against him was therefore terminated. Pereira Sobrosa was tried and convicted in a first and second trial, but then acquitted in a final judgment in 2008. Another one of the defendants, military police officer De Pinho, escaped from a detention center, was never apprehended, and his trial—conducted in his absence—resulted in his acquittal in 2012. Defendant Dos Anjos Rosa was also a fugitive at the beginning of the proceedings. His trial was postponed until his arrest in 2010, and he was acquitted in 2013. In sum, none of these cases led to the judicial determination of the facts or the eventual punishment of the perpetrators.

187. Although the obligation to investigate, prosecute, and punish the perpetrators of a human rights violation is an obligation of means, and not of outcome, the bodies of the Inter-American System have reiterated that this obligation must be fulfilled in accordance with the principles arising from the American Convention.

188. In the instant case, the Commission must examine whether, as a whole, the investigation and criminal cases opened in the murder of journalist Aristeu Guida da Silva were conducted with due diligence and with respect for the right to a fair trial, and whether they were an effective remedy for ensuring the relatives’ rights of access to justice, truth, and reparation. Accordingly, the IACHR will examine whether the State authorities took action in the investigation and criminal proceedings to guarantee: (i) effective protection from threats, intimidation, or pressure on judges, prosecutors, and witnesses; (ii) the adequate exhaustion of the lines of investigation and the identification of the perpetrators of the crime; (iii) the advancement of the investigations and cases within a reasonable time period; and (iv) the participation of the murdered journalist’s relatives in the proceedings. All of this will be analyzed in light of the international standards discussed *supra* with respect to the general and specific obligations of States to investigate, prosecute, and if appropriate, punish the perpetrators in cases involving the murder of journalists based on the exercise of their right to freedom of expression.

[... continuation]

period shall be calculated starting from the day on which the arrest warrant is executed, or within 30 days if the defendant is free with or without bond.”

²⁷³ 1/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248, para. 148; IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family (Colombia). October 23, 2010, para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999, para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999, para. 58. *See also*: IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011, para. 716.

²⁷⁴ IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family (Colombia). October 23, 2010, para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999, para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999, para. 58. *See also*: IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011, para. 716. *See also*: 1/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248, para. 211.

i. Protection from threats, intimidation, or pressure on judges, prosecutors, and witnesses

189. The IACHR has expressed that when a matter involves a violent death attributed to government officials or powerful criminal organizations, as in the instant case, the States must ensure that the responsibility to investigate and prosecute human rights violations is assigned to the authorities that are in the best position to handle them with autonomy and independence. Accordingly, the States must establish safeguards to ensure that the competent authorities can operate without being influenced by the government official or criminal organization allegedly involved in the crime and, at the same time, ensure that the witnesses and relatives of the victim are able to take part in the proceedings without fear of reprisal. These safeguards might entail, for example, removing the investigation from the jurisdiction of the local authorities, changing the venue of criminal cases, and/or taking special measures to protect witnesses, victims, and judges.

190. This is particularly relevant in cases of murdered journalists in which there is evidence of the participation of government officials and criminal organizations that are influential in the State. As the Inter-American Court has acknowledged, due diligence in the investigation of such matters involves taking account of the patterns of behavior of that power structure, since these types of structures generally act to ensure that the crime goes unpunished, through the exercise of outside pressure, attacks, threats, and other forms of intimidation aimed at judges, prosecutors, witnesses, and others who take part in criminal investigations.

191. In this respect, the Inter-American Court has found that threats and intimidation against judges and witnesses “cannot be examined in isolation, but should be analyzed in the context of obstructions to the investigation of the case. Consequently, such acts become another means of perpetuating impunity and preventing the truth of what happened from being known.”²⁷⁵

192. The IACHR observes that in the instant case the members of the “Cerol” death squad—including Council Member Rodrigues Silva—intimidated and exercised a strong influence over the local police authorities and the population of the city of São Fidélis. This was widely acknowledged by the police, the Office of the Public Prosecutor, and the national courts (*supra* para. 67, 72, 103, 109). Indications of the influence of this criminal organization were also seen in various statements given during the investigation that made reference to the complicity of the local police in crimes perpetrated by the death squad. Specifically, one witness reported that a public servant from the local police station (the 141st CPC) may have committed acts of concealment and obstruction in the investigations of Aristeu Guida da Silva’s murder.

193. The Inter-American Commission finds that although some State authorities made efforts to ensure that the investigating authorities would be able to work free from the influence of the criminal organization allegedly involved, these actions were late and insufficient, resulting in excessive delays in the investigation and, as explained below, facilitating the obstruction of the proceedings.

194. Indeed, the Commission notes that on June 5, 1995, after the co-owner of the newspaper *Gazeta de São Fidélis* complained of the inadequate handling of the investigations by the 141st CPC, the Civil Police Chief of the State of Rio de Janeiro ordered that the investigations be conducted by a police department specializing in crimes against the person, located in the city of Rio de Janeiro (the “DDV/DPE”). The DDV/DPE was involved in the investigations from June 16 to September 26, 1995, at which time it asked to have the investigations transferred to the Regional Division of the Civil Police of Campos (the “DRCP”), because of the excessive caseload under its responsibility and the proximity of the DRCP to the city of São Fidélis.

195. Nevertheless, the IACHR observes that on October 31, 1995, the DRCP returned the case file to São Fidélis on the rationale that it would not be able to investigate the case without a direct order from the

²⁷⁵ I/A Court H.R., *Case of Gutiérrez and Family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 119.

Civil Police Chief. Without any apparent explanation, the investigations returned to the 141st CPC of São Fidélis where they remained for more than a year, in spite of the fact that there was a decision from the Civil Police Chief of Rio de Janeiro indicating that the investigations were to be conducted by a police department in another region.

196. This fact was of concern to the authorities of the Office of the Public Prosecutor who, on November 21, 1996, asked the Prosecutor General of the Republic to appoint an independent police authority to continue the investigations. As described in the statement of the facts, at that time the Public Prosecutor indicated that the investigations were not being conducted satisfactorily and noted that there were numerous interests surrounding the case, given the fact that council members and members of the military police were suspected of being the masterminds and direct perpetrators of the crime, respectively. At the time, the Public Prosecutor concluded that the investigations could not continue under the authorities of the region.

197. Nevertheless, it was not until February 21, 1997 that the Civil Police Chief ordered that the specialized Homicide Police (the “DDV/DPE”) be put back on the case. Upon taking charge of the investigations, that office found that the case had been “handled poorly” during the year and three months that it had remained in the hands of the 141st CPC which, in the opinion of the DDV/DPE, jeopardized the ascertainment of the truth. In spite of these statements, there is nothing in the case file to indicate that any investigation was opened to determine the degree of participation of State agents in the concealment of the crime.

198. The IACHR observes that this context also included threats and acts of harassment against judges, witnesses, and relatives of the victim. In fact, the case file indicates that the police agencies, as well as the Office of the Public Prosecutor and the national courts, acknowledged the threats received by witnesses and by the victim’s family, and the public’s fear about the case. Various witnesses reported to State agencies that they had received threats; at least one key witness said that he had changed his testimony as a result of threats; at least two witnesses were the victims of attempted bribery by the suspected masterminds of the crime, and several people who were interviewed did not want to be identified. The victim’s relatives also reported receiving threats during the investigations and stated that they had sought protection from the local authorities, but had not received support (*supra* para. 112). The case file indicates that this climate of threats and intimidation meant that many people did not dare provide accurate testimony about what had happened (*supra* para. 109-114).

199. Because of these threats, some of the statements that witnesses and relatives gave during the investigation were taken at places other than the local police station for security reasons. Nevertheless, the Commission notes that the State did not take any additional measures to protect the witnesses and relatives who were threatened during the investigation. In particular, it notes that there is nothing in the case file to indicate that there was any investigation to determine the origin of the threats reported and to punish the perpetrators, which exacerbated the reported climate of intimidation and defenselessness.

200. The body of evidence shows that the threats and intimidation continued during the prosecution of the defendants. For this reason, in 1999 the Court of São Fidélis asked the Court of Justice of Rio de Janeiro for a change of venue in the trial. That Court assessed the fear of the local population and the witnesses over the crimes committed by the “Cerol” group and the threats made against the chief judge of the Court of São Fidélis, and ordered that the trial be moved to another jurisdiction (*supra* para. 103). Nevertheless, the Commission observes that the other two criminal cases that resulted in the acquittal of two of the defendants—including a military police officer, who had fled at the time of the trial—were tried before a jury court in the city of São Fidélis in spite of the change of venue request made by the Office of the Public Prosecutor in at least one of those cases (*supra* para. 94-95).

201. The Commission observes that during one of the trials at least one key prosecution witness—the co-founder of the newspaper *Gazeta de São Fidélis*—reported that he had received a new threat meant to keep him from testifying. He requested protection in order to be able to travel to the city of São Fidélis (since he lived in another locality) and safely testify before the jury court. In response, the local judge said that the court lacked the resources to provide protection, and determined that the witness would be

heard by a court in another jurisdiction. However, the court never managed to hear his testimony in a timely manner prior to the final trial session (*supra* para. 113). The Commission notes that the only prosecution witness who testified at that time was the victim's ex-wife, who asked to testify outside the defendant's presence.

202. In view of the above, the Inter-American Commission finds that the repeated threats and harassment of judges, witnesses, and relatives of the victim, plus the absence of protection measures and guarantees of an independent investigation, had an intimidating effect; it caused people to stop cooperating in the search for the truth and it hindered the investigations and the criminal proceedings. In addition, the lack of protection for witnesses and relatives continued for a long period of time, which contributed to serious negligence in pursuing the arrest, prosecution, and punishment of the perpetrators and in guaranteeing the participation of the victim's relatives in this case. Indeed, the IACHR observes with concern that during the processing of the case before the Inter-American System the petitioner has informed on the victim's relatives continued fear in light of what happened.

ii. Identification of perpetrators and exhaustion of lines of investigation

203. The IACHR reiterates that the investigation of the violations perpetrated in this case should have been conducted in strict compliance with due diligence, given the seriousness of the offense and the nature of the rights violated—the rights to life and freedom of expression—which clearly sent an intimidating message to those who practice journalism in the region.

204. The above includes the obligation to diligently take measures to obtain and preserve evidence. On this point, the Inter-American Court has specified the governing principles that must be observed in the investigation of a violent death. According to the case law of the Court, State authorities conducting an investigation of this kind must attempt, at a minimum, *inter alia*: (a) to identify the victim; (b) to gather and preserve evidence pertaining to the death so as to aid in the possible criminal investigation of the perpetrators; (c) to identify potential witness and obtain their statements regarding the death under investigation; (d) to determine the cause, manner, place and time of death, as well as any pattern or practice that might have caused the death; and (e) to establish the distinction among natural death, accidental death, suicide, and homicide. It is also essential to conduct an exhaustive investigation of the crime scene, and for professional experts to perform rigorous autopsies and examinations of human remains, using the most appropriate procedures.²⁷⁶

205. In addition, in the case of violence against journalists, the criminal investigations must exhaust the lines of inquiry related to the practice of journalism. The Inter-American Court has thus held that, in keeping with its obligations of investigation and protection, the State must take account of the reasonable connection between the attack motivated by the exercise of freedom of expression and the acts of violence perpetrated.²⁷⁷

206. Under these principles, the State is also required to investigate and, if appropriate, punish all perpetrators of such crimes, including the masterminds, direct perpetrators, accomplices, collaborators, and those who later cover up the violations of human rights committed. They must also investigate the organizations involved in the execution of the crimes or the criminal organizations to which the perpetrators belong. As explained earlier, “due diligence” requires that the investigations undertaken by the State bear in mind “the complexity of the facts, the context in which they occurred, and the systematic patterns that explain why the events occurred,” making certain that there are no “omissions in gathering evidence or in the

²⁷⁶ *Cfr.* I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 127; I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, para. 102; *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 121. *Cfr.* United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/.12 (1991).

²⁷⁷ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248, para. 211.

development of logical lines of investigation.”²⁷⁸ This obligation is especially relevant in cases of violence against journalists, which is often committed by criminal networks acting with the tolerance or acquiescence of State agents, where the direct perpetrator of the crime is only carrying out orders.

207. With respect to the collection and preservation of evidence, the IACHR first observes that the police authorities apparently concluded the investigation without taking any measures to effectively conduct the procedures requested by the Office of the Public Prosecutor. It notes in particular that the police in charge of the investigation failed to take statements from various individuals as requested by the Office of the Public Prosecutor—including from the former Municipal Council attorney of São Fidélis, identified as a participant in the crime. They failed to obtain the documentation and identification of the motorbike belonging to a military police officer identified as a direct perpetrator, which was reportedly used in the commission of the crime, and they also failed to perform the ballistics examination of the bullets used in the crime and the firearms seized in the arrest of two of the suspects, including the military police officer (*supra* para. 62-63). Those proceedings that were eventually conducted were clearly delayed. In fact, the information on the registration of weapons by the suspects was requested on December 13, 1995, and added to the case file on March 18, 1997.

208. The Commission further notes that the authorities delayed in adding evidence to the case file that was essential to the progress of the investigation. For example, the results of the crime scene inspection were added to the file six months after it was performed (*supra* para. 61).

209. The IACHR also observes that the investigation was closed, in spite of the fact that investigators were never able to locate a key piece of evidence for determining the motive for the murder and identifying the suspects. This was a cassette tape that had been turned over the police by the alleged victim’s wife, which contained the audio recording of the Municipal Council session at which journalist Guida da Silva was insulted and threatened. The authorities acknowledged that the tape had been in their custody, and that it had been lost (*supra* para. 76).

210. These shortcomings and omissions demonstrate the State’s lack of due diligence in collecting and preserving evidence. As discussed, this led to the omission and loss of important pieces of evidence, and made it more difficult to determine the truth of what had happened and identify and punish all of the perpetrators. Indeed, as noted earlier, in its motion of November 21, 1998, the Office of the Public Prosecutor itself found that the investigation of the crime was “not being handled satisfactorily, as the requests of the Office of the Public Prosecutor have been ignored and nothing more has been done.” Similarly, an officer from the Homicide Police confirmed that the proceedings were “handled poorly, which did a disservice to the discovery of the real truth”. The Commission observes that at least one of the defendants –Pereira Sobrosa – was acquitted for “insufficient evidence for a guilty verdict” (*supra* para. 108). There is no record that any corrective measures were taken or that any sanctions were imposed against the authorities for these omissions in collecting and preserving evidence.

211. The IACHR observes that the authorities in charge of the preliminary investigations identified four perpetrators of Guida da Silva’s murder: one mastermind and three direct perpetrators. In addition, the investigations established that the crime was motivated by the victim’s journalistic work. Nevertheless, the criminal action brought against the alleged mastermind was closed after he was murdered. The trial of the individuals identified as the direct perpetrators resulted in their acquittal, as the jury court found that the evidence presented by the Office of the Public Prosecutor was insufficient to establish their criminal responsibility.

212. In analyzing the State’s due diligence in the identification of all of the perpetrators, the IACHR notes that the case failed to sufficiently examine the criminal organization allegedly responsible for

²⁷⁸ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 158; I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, paras. 106-110 & 167.

the murder, particularly the potential responsibility of other public servants possibly linked to the “Cerol” death squad. In fact, even though the police authorities and the Office of the Public Prosecutor concluded that there was “strong evidence” of the participation of State agents linked to members of the “Cerol” death squad in Aristeu Guida da Silva’s murder, the case file does not show that any effective steps were taken to determine the death squad’s mechanisms of operation and its links and connections to State agents. The record reflects only that in April 1997—nearly two years after the murder—the Specialized Homicide Police requested information from the intelligence body of the public safety department about the aforementioned death squad. The intelligence body replied that it did not have any information with respect to the matter (*supra* para. 66).

213. The case file thus reflects that the lack of an exhaustive investigation into the “Cerol” group was one of the factors leading to impunity in this case. For example, the authorities failed to follow up on the body of evidence that pointed to the involvement of a military police officer and the former Municipal Council attorney of São Fidélis—fully identified by witnesses—as the potential mastermind and member of the death squad. They also failed to obtain a statement from the former Municipal Council attorney. As a result, the Office of the Public Prosecutor decided not to bring charges against those individuals, finding that it was necessary to conduct further investigative proceedings. Nevertheless, there is no information in the case file on the existence of such investigations or their outcome. The State made no observations with respect to the matter.

214. There is also nothing in the file to show that possible links between the violent death of the alleged mastermind, Council Member Rodrigues Silva (which occurred weeks after the Court of São Fidélis issued the order for him to stand trial) and the murder of Guida da Silva had been explored for purposes of identifying systematic patterns of conduct by the death squad and to identify all of the perpetrators.

215. Finally, the IACHR observes that there were obstructions of justice in this case relating to the escape of two of the defendants—Dos Anjos Rosa and military police officer De Pinho—and the failure to execute the arrest warrants against them. Especially notable was the inaction on the part of the authorities and the long periods of time between the requests for information on the defendants’ whereabouts that were issued by the Court with jurisdiction over the case.

216. Indeed, on August 19, 1997 defendant and military police officer De Pinho escaped from the 8th Military Police Battalion of Rio de Janeiro, where he was being held in custody. The commander in charge did not provide any information on the circumstances of the escape. The State also failed to provide information on the results of any investigation into this incident. According to the information available, during the decade in which the case was at a standstill, the Court of São Fidélis requested information from various police agencies regarding the execution of the warrant for the defendant’s arrest and from other state bodies and private companies regarding the defendant’s address in September 2002, May, October, and November 2003, August 2005, November 2007, February 2009, and March 2010. The IACHR notes in particular that when an arrest warrant was executed in 2009 at an address provided by the Federal Revenue Service in 2003, the defendant had moved away from that place a little more than one year earlier. There is also no information about other specific measures taken to carry out the arrest warrant.

217. The IACHR also notes that on November 10, 1998, defendant Dos Anjos Rosa was freed from custody after an order for his release was issued in a different criminal case, in spite of the fact that there was an outstanding pretrial detention order against him for the murder of Aristeu Guida da Silva. The IACHR notes that the authorities themselves acknowledged that the defendant had been “erroneously released by police authorities.” Prior to his release, the inter-state police service was consulted to verify any potential impediments to Dos Anjos Rosa’s release, and he was still freed. The defendant remained a fugitive until December 22, 2010, when he was arrested while driving a stolen vehicle. It took two years from the date of his escape for the Court to send official letters to state and police agencies asking for the execution of the pretrial detention order. Those letters were sent again in October 2002, October 2003, January 2006, April, June, July, and December 2007, September 2009, and February, May, and September 2010. The police bodies generally reported that the arrest warrant was still pending execution, without indicating what specific measures had been taken to this end.

218. The Inter-American Court has stated that the delay in executing arrest warrants contributes to the perpetuation of acts of violence and intimidation in connection with the establishment of the facts, especially when there is evidence that the survivors and certain relatives and witnesses were harassed and threatened.²⁷⁹

iii. Reasonable time period

219. According to the Inter-American case law, the reasonable time period established in Article 8(1) of the American Convention is “not an easy concept to define,” but rather must be interpreted in light of the complexity of the matter; the procedural activity of the interested party; the behavior of the judicial authorities;²⁸⁰ and the impairment to the legal situation of the person involved in the proceedings.²⁸¹

220. With respect to the first element, the Commission observes that the police investigation did not effectively begin until nearly one month after the victim was killed, and lasted nearly two years. It also notes that the criminal case against Pereira Sobrosa lasted 11 years, and the cases of De Pinho and Dos Anjos Rosa lasted for 15 and 16 years, respectively. The Commission is of the opinion that the complexity of the case does not justify a procedural delay of this magnitude, as the motives and main suspects were identified by the court authorities at the initial stages of the investigation. The State argued that the flight of de Marques de Pinho and Rosa dos Anjos contributed to the procedural delays in their cases. Nevertheless, the Commission finds that the State failed to demonstrate that it had taken the necessary measures to locate those defendants and ensure that they stand trial.

221. In contrast, the Commission observes that the procedural activity of the victim’s relatives at no time hindered the investigation or the criminal case, which concerned a crime that is supposed to be investigated by the State on its own initiative. Accordingly, the procedural delay is fundamentally related to the conduct of the court authorities.

222. Indeed, the Commission observes that both the investigation and the criminal case involved long periods of inactivity on the part of the authorities in charge of them. The IACHR notes that the State explained that the special criminal procedure of the jury court entails a more extensive process and additional procedural stages in comparison to a regular criminal case. It stated that the complexity of this special proceeding, in addition to the characteristics of this specific case, which involved four defendants, was “sufficient to demonstrate the [existing] obstacles to a prompt and agile pace in the proceedings.”

223. Without prejudice to the above, the IACHR observes that the delay in the case did not arise from the nature of the special criminal procedure of the jury court. Most of the delays were attributable to the conduct of the authorities during the preliminary investigation and in the execution of the arrest warrants. Indeed, as previously noted, the investigation was delayed during the year and three months that it was overseen by the 141st CPC. After the order to stand trial was issued, the criminal case was at a standstill for more than ten years during the fruitless search for the defendants. This delay allowed for the loss of essential testimony from people who died during this long process. For example, Delcio Mello Mouta, one of the key witnesses who was subjected to major pressure and threats during the case, died in 2002 (*supra* para. 111). In addition, on June 3, 2013 the officer of the court verified that Guida da Silva’s sister, another prosecution witness, had died in 2010.

²⁷⁹ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 175; *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 322.

²⁸⁰ I/A Court H.R., *Case of Genie Lacayo v. Nicaragua*. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30, para. 77; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999, para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999, para. 30.

²⁸¹ *Cf.* I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 134, para. 112; *Case of Valle Jaramillo, et al.* Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 155.

iv. **Obligation to facilitate the participation of the victims in the investigations**

224. The Commission reiterates that this matter took place in the context of a pattern of violence and intimidation against witnesses and relatives of the victim by death squads in the State of Rio de Janeiro, possibly in connection with local authorities, whose aim was to prevent the establishment of the facts of Guida da Silva's murder and the punishment of the perpetrators. Consequently, the victim's relatives saw their participation in the investigation and the criminal case limited. There is nothing in the case file to indicate that the State took special measures to protect the lives and safety of the alleged victim's family and to ensure their participation in the process, in spite of the repeated assertions that they were being subjected to threats and acts of harassment and the fact that two of the defendants were fugitives from justice, which could reasonably cause greater fear among the witnesses. There is also nothing to indicate that an investigation was ever opened with respect to the matter. When the State fails to ensure the protection of the victim's relatives, it contributes to the perpetuation of acts of violence and intimidation against them and prevents the establishment of the facts.²⁸²

225. In view of the above, the IACHR finds that the lack of due diligence in the government's investigation has been proven. This lack of due diligence is evidenced by the failure to take the necessary protection measures to address the threats that arose during the investigations, the delay and inaction in the execution of the arrest warrants and the serious omissions in the collection and preservation of evidence, and the unreasonableness of the time period of the investigations and the criminal cases. In sum, it is the Commission's opinion that the State has failed to act with due diligence to investigate, prosecute, and punish the perpetrators of journalist Guida da Silva's murder. To date, the crime has gone unpunished; Mr. Guida da Silva's relatives have not had access to the truth and to justice, and the journalists in the region do not have the reassurance of knowing that a crime meant to silence them will not be met with impunity.

226. For all of these reasons, the Commission concludes that the State has violated the rights to a fair trial and judicial protection established in Articles 8 and 25 of the American Convention, in relation to Article 1.1 thereof, to the detriment of the victim's relatives. Based on the information in the case file, the Commission understands that the next-of-kin include the victim's wife Jossandra Lima da Silva, their three children,²⁸³ and his father Álvaro Neves da Silva. Also includes his siblings Agnaldo, Reinaldo, and Angela de Fatima Guida da Silva, and his niece Ana Paula Guida da Silva, all of whom have taken part in the investigation and the criminal case.

C. **Analysis of the violation of the right to humane treatment (Article 5), in relation to the general obligation to respect rights (Articles 1.1), of the American Convention**

227. Article 5 of the American Convention establishes that:

Every person has the right to have his physical, mental, and moral integrity respected.

228. The Inter-American Court has held that the relatives of the victims of certain human rights violations can, in turn, be victims.²⁸⁴ Specifically, the Court has found that the right to mental and emotional integrity of victims' relatives has been violated based on the additional suffering they have endured as a result of the particular circumstances of the violations perpetrated against their loved ones and owing to the

²⁸² I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 175; *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 322.

²⁸³ According to the case file, at the time of his murder his children were 1, 3, and 10 years of age. Testimony of Jossandra Lima da Silva before the Jury Court of the District of São Fidélis on July 4, 2013. Case No. 2.801/97, pp. 1765. Attachment to the State's communication of November 11, 2013.

²⁸⁴ I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 112; I/A Court H.R., *Case of Bueno Alves v. Argentina*. Judgment of May 11, 2007. Series C No. 164, para. 102.

subsequent acts or omissions of the State authorities in relation to the facts.²⁸⁵ Accordingly, the Inter-American Court has established that “the obligation to investigate human rights violations is among the positive measures that the State must adopt to guarantee the rights established in the Convention. Additionally, the State must, if possible, try to reestablish a right that has been violated and, if applicable, repair the damage produced by human rights violations.”²⁸⁶

229. Applying the principle of *iura novit curia*, the IACHR finds that it is necessary in this case to examine the infringement of the right to humane treatment established in Article 5.1, as a consequence of the lack of due diligence in the official investigative proceedings into the murder of Guida da Silva and because of the threats received by the victim’s relatives during the investigation and the respective criminal cases. In so doing, the IACHR notes that although it did not address the alleged violation of Article 5 in its admissibility report, the facts supporting this violation are an integral and essential part of the case and, moreover, arise from the information and documents provided by the parties over the course of the proceedings before the IACHR. The IACHR also notes that the State was aware during the proceedings of the facts on which the allegation is based and had the opportunity to offer its observations with respect to the matter.

230. The IACHR observes, as discussed in the section on Articles 8 and 25, that the State in this case failed to act with due diligence in conducting the official investigation. As the Commission indicated, this lack of due diligence was apparent in the delay and inaction in executing the search warrants, in the serious omissions in the collection and preservation of evidence, and in the unreasonable length of time taken for the investigations and the criminal proceedings. In addition, the IACHR found that Guida da Silva’s relatives have been the victims of threats and harassment subsequent to his murder, and that there is no evidence in the case file to indicate that the State has taken the necessary measures to protect them or to investigate the matter. Specifically, the Commission concluded in the section on the rights to a fair trial and judicial protection that there was no complete and effective investigation into the facts of this case.

231. The Commission further observes that the loss of a loved one in a situation such as the one described in this case, as well as the absence of a complete and effective investigation, has adversely affected the mental and emotional wellbeing of the relatives of journalist Guida da Silva—added to which is the suffering and anguish of not knowing the truth about what happened. As stated previously, the State is responsible for its failure to seriously investigate the murder of Guida da Silva, and as a result the crime has gone unpunished. On this point, the Court has established that the absence of effective remedies is a source of additional suffering and anguish for the relatives of victims, who, in the instant case—nineteen years after the fact—have not found justice.

232. Therefore, the IACHR concludes that the State violated Article 5.1 of the Convention, in relation to Article 1.1 thereof, to the detriment of the relatives of Aristeu Guida da Silva, to wit: his wife Jossandra Lima da Silva; his three children;²⁸⁷ his father Álvaro Neves da Silva; his siblings Agnaldo, Reinaldo, and Angela de Fatima Guida da Silva, and his niece Ana Paula Guida da Silva.

²⁸⁵ I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. Series C No. 167, para. 112; I/A Court H.R., *Case of Vargas Areco v. Paraguay*. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155, para. 96.

²⁸⁶ I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 98; I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988, Series C No. 4, para. 166; I/A Court H.R., *Case of Heliodoro-Portugal v. Panama*. Judgment of August 12, 2008. Series C No. 186, para. 142; I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Judgment of November 20, 2007. Series C No. 168, para. 99.

²⁸⁷ According to the case file, at the time of his murder his children were 1, 3, and 10 years of age. Statement of Jossandra Lima da Silva before the Jury Court of the District of São Fidélis on July 4, 2013. Case No. 2.801/97, p. 1765. Attachment to the State’s communication of November 11, 2013.

VI. ACTIONS SUBSEQUENT TO REPORT N° 39/14

233. On July 17, 2014, the Inter-American Commission approved Report N° 39/14 on the merits of this case, which consists of paragraphs 1 to 232 *supra*, with the following recommendations to the State:

1. That it carry out a complete, impartial and effective investigation within a reasonable time period that would make it possible to clarify the circumstances of the murder of Aristeu Guida da Silva and determine the corresponding responsibilities.

2. That it deploy the corresponding administrative, disciplinary or criminal measures with respect to the actions or omissions of state officials that contributed towards the denial of justice and impunity in which the facts of the case remain.

3. That it adopt the necessary measures to prevent crimes against persons due to the exercise of their right to freedom of thought and expression and protect those journalists who are at special risk due to the exercise of their profession. In this sense, the IACHR values the existence of the National Protection Program for Human Rights Defenders and the establishment of the Working Group on "Human Rights of Communication Professionals in Brazil." The IACHR calls on the State to continue to adopt measures to strengthen the national protection program and to guarantee the effective inclusion of men and women journalists in this framework. At the same time, it urges the State to guarantee that said program would have the capacity to coordinate with state and municipal entities to make it effective for people throughout the national territory, including the State of Rio de Janeiro and the municipality of São Fidélis.

4. To adequately repair human rights violations declared in the present report in their material and moral aspects, as well as to defend the work of Mr. Aristeu Guida da Silva as a journalist through the dissemination in a pedagogical format, particularly in the municipalities of the State of Rio de Janeiro, of the applicable Inter-American standards in the field of prevention, protection and the pursuit of justice in cases of violence committed against journalists due to the exercise of their right to freedom of expression.

234. On September 10, 2014, the report was submitted to the State with a time limit of two months for it to inform the Inter-American Commission regarding the measures adopted to comply with its recommendations. On that same date, pursuant to article 43(3) of its Regulation, the Commission notified the petitioner regarding adoption of the merits report and its transmission to the State and asked the petitioner to express their position regarding presentation of the case before the Inter-American Court.

235. On October 9, 2014, the petitioner requested an extension of the time limit for presenting their position regarding presentation of the case before the Inter-American Court; the extension was granted. On November 10, the petitioner reported that while they felt that the Inter-American Court had the jurisdiction to take up the present case, the Inter-American Press Association and not been able to obtain representation of the relatives of Aristeu Guida da Silva.

236. On November 10, 2014 the State requested an extension to present information on compliance with the recommendations contained in Report No. 39/14, which was also granted.

237. By means of a letter of December 1, 2014, the State of Brazil provided its response with respect to compliance with the recommendations contained in Report N° 39/14.

238. With respect to the specific recommendations, Brazil gave the following responses:

239. Recommendation N° 1: the State reiterated the information presented during the merits stage on the criminal trials followed and reiterated that it complied with its obligation in terms of the means of investigation. Brazil also invoked the character of *res judicata* of the decisions adopted by its domestic

courts, by means of which three individuals accused of the murder of Aristeu Guida da Silva were absolved of all responsibility. In this regard, it explained that the principle of *ne bis in idem* established in article 8.4 of the American Convention constitutes a “serious challenge” to the State for complying with this recommendation. Additionally, indicated that at this stage it is appropriate to evaluate whether, in accordance with domestic legislation, there would still be any type of “procedural remedy.”

240. Recommendation N° 2: The State indicated that it should also be determined if procedural mistakes were made, “and, if so,” whether some form of responsibility on the part of the state agents involved could be applied. At the same time, it indicated that possible suspicions regarding omissions or negligence on the part of the authorities in the investigations carried out “must always be based on objective and sufficiently concrete data in order for there to be violations to due legal process.”

241. The State affirmed that it needs “more time for analysis and proper planning” to evaluate “whether and in what way it can comply” with recommendations 1 and 2 of Report N° 39/14. While it did say that it would inform the Commission about its efforts in its next report, the State did not provide information on specific measures that it would adopt in order for it to comply.

242. Recommendation N° 3: The State described the National Protection Program for Human Rights Defenders and its achievements during its 10 years of existence, the mechanisms used to identify journalists as human rights defenders so that they may gain access to the program, and the measures adopted by the executive, legislative and judicial branches for the protection of journalists. The State indicated that this program had been implemented in eight Brazilian states, and in those where it has not been implemented would act the federal body. It also reported that in 2014, the Working Group on “Human Rights of Communication Professionals in Brazil” published its final report, which includes a proposal for the creation of an Observatory on Violence against Communicators [*Observatório de Violência contra Comunicadores*]. The State also referred to Resolution No 06 of the Council for Defense of the Rights of the Human Person (CDDPH) of 2013, in which it issues recommendations to guarantee human rights in the context of demonstrations and public events. In its article 5, the above-mentioned Resolution deals with the free exercise of journalists and communicators and their role in this context. According to the State, efforts have been made by the Union so that the State of Rio de Janeiro will adhere to said instrument. At the same time, it indicated that the referred-to state had already adhered to Resolution No 08 of the CDDPH of 2012, which prohibits the use of formulas for resistance to arrest [*autos de resistência à prisão*], resistance followed by death [*resistência seguida de morte*], which, according to the State, would avoid the occurrence of institutional violence.

243. Recommendation N° 4: the State indicated that at the initiative of the National Secretariat of Justice and other bodies, the jurisprudence of the Inter-American Court of Human Rights had been translated into Portuguese, with a specific volume on the right to freedom of expression. Regarding pecuniary and non-pecuniary reparation measures on behalf of the relatives of Mr. Guida da Silva, the State affirmed that it will study “their feasibility and the best way” to promote them, and indicated that it would submit additional information on reparation measures in its next report. The State did not provide specific information on the measures adopted to vindicate the work of the victim in the case.

244. In their observations about the response of the State, on March 20, the petitioner clarified that “as the petitioner it had resolved that the case in question does not merit consideration by the Inter-American Court of Human Rights; however, in that sense it stressed that it would remain attentive to the evaluation and final report of the Commission.”

245. On March 26, 2015, during its 154^o period of sessions, the Inter-American Commission approved Report No. 23/15, reiterating the recommendations of Report No. 39/14.

VII. ACTIONS SUBSEQUENT TO REPORT N° 23/15

246. As set forth in Article 47.2 of its Rules of Procedure, on May 15, 2015, the IACHR forwarded said report to the State with a time period of one month to submit information on compliance with the final recommendations. On the same date the IACHR forwarded the report to the petitioner and also requested

their observations on compliance with the final recommendations.

247. On June 12, 2015, the State requested an extension, which was granted for 15 days. Despite the extension requested and granted, until the date of this report, the State did not provide information on the final recommendations. Also, no response was received from the petitioner within the stipulated time.

VIII. ANALYSIS OF COMPLIANCE WITH THE RECOMMENDATIONS

248. Due to the preceding paragraphs, the Commission took into account in this section the information provided by the parties during the monitoring period of report No. 39/14.

249. With respect to the first recommendation on carrying out a complete, impartial and effective investigation within a reasonable time period that would make it possible to clarify the circumstances of the murder of Aristeu Guida da Silva and determine the corresponding responsibilities; as well as with respect to the recommendation related to the corresponding administrative, disciplinary or criminal measures with respect to the actions or omissions of State officials that contributed towards the denial of justice and impunity in which the facts of the case remain, the State indicated that would need “more time for analysis and proper planning” to evaluate “whether and in what way it can comply” with these recommendations. Nonetheless, did not provide information on the specific measures it would take in order to advance with its compliance.

250. Regarding its third recommendation, the IACHR asked the State to adopt the necessary measures to prevent crimes against persons due to the exercise of their right to freedom of thought and expression and protect those journalists who are at special risk due to the exercise of their profession. In this regard, the State reported in general terms that has taken a series of measures to prevent crimes against persons due to the exercise of their right to freedom of thought and expression, as well to protect those journalists that are at special risk due to the exercise of their profession. In particular, reported about the National Protection Program for Human Rights Defenders.

251. The Commission takes note of the information provided by the State, nonetheless, stresses that until the date of this report does not have detailed information on measures to strengthen the national protection program and to guarantee the effective inclusion of men and women journalists in this framework. Likewise, the State did not provide information on measures to guarantee that said program would have the capacity to coordinate with state and municipal entities to make it effective for people throughout the national territory, including the State of Rio de Janeiro and the municipality of São Fidélis.

252. Finally, the Commission recommended the State to adequately repair human rights violations declared in the present report in their material and moral aspects, as well as to defend the work of Mr. Aristeu Guida da Silva as a journalist through the dissemination in a pedagogical format, particularly in the municipalities of the State of Rio de Janeiro, of the applicable Inter-American standards in the field of prevention, protection and the pursuit of justice in cases of violence committed against journalists due to the exercise of their right to freedom of expression. With respect to said recommendation, the State reported that will study the “feasibility and the best way” to promote reparations on behalf of the victims of the violations committed. Nonetheless, did not provide specific information on measures aimed at defending the work of Mr. Aristeu Guida da Silva as a journalist.

IX. CONCLUSIONS AND FINAL RECOMMENDATIONS

253. Upon examining the merits of the case, the Commission concludes that the State of Brazil is responsible for violating the rights to life and to freedom of thought and expression enshrined in Articles 4 and 13 of the American Convention, in relation to Article 1.1 thereof, with respect to Mr. Guida da Silva and of the rights to humane treatment, fair trial and judicial protection, enshrined in Articles 5, 8 and 25 of the Convention, in relation to Article 1.1 thereof, with respect to his relatives.

254. The Committee takes note of the actions taken by the Brazilian State, which represent the first steps towards compliance with the recommendations indicated in the report on the merits 23/15. However, based on the facts and the information provided, the Commission concludes that to date the State has not fully complied with those recommendations. Accordingly, the Inter-American Commission on Human Rights reiterates the following recommendations to the Brazilian State:

1. Carry out a complete, impartial and effective investigation within a reasonable time period that would make it possible to clarify the circumstances of the murder of Aristeu Guida da Silva and determine the corresponding responsibilities.

2. That it deploy the corresponding administrative, disciplinary or criminal measures with respect to the actions or omissions of State officials that contributed towards the denial of justice and impunity in which the facts of the case remain.

3. That it adopt the necessary measures to prevent crimes against persons due to the exercise of their right to freedom of thought and expression and protect those journalists who are at special risk due to the exercise of their profession. In this sense, the IACHR values the existence of the National Protection Program for Human Rights Defenders and the establishment of the Working Group on "Human Rights of Communication Professionals in Brazil." The IACHR calls on the State to continue to adopt measures to strengthen the national protection program and to guarantee the effective inclusion of men and women journalists in this framework. At the same time, it urges the State to guarantee that said program would have the capacity to coordinate with state and municipal entities to make it effective for people throughout the national territory, including the State of Rio de Janeiro and the municipality of São Fidélis.

4. To adequately repair human rights violations declared in the present report in their material and moral aspects, as well as to defend the work of Mr. Aristeu Guida da Silva as a journalist through the dissemination in a pedagogical format, particularly in the municipalities of the State of Rio de Janeiro, of the applicable Inter-American standards in the field of prevention, protection and the pursuit of justice in cases of violence committed against journalists due to the exercise of their right to freedom of expression.

X. PUBLICATION

255. Based on the considerations expressed, and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to publish this report, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, pursuant to the provisions of the instruments governing its mandate, will continue to evaluate the measures adopted by Brazil with respect to the above recommendations until it determines there has been full compliance.

Done and signed in the city of Washington, D.C., on the 13th day of the month of April, 2016. (Signed)
James L. Cavallaro, President; Francisco Eguiguren Praeli, First Vice-president; Margarette May Macaulay, Second Vice-president; José de Jesús Orozco, Esmeralda Arosemena de Troitiño, and Enrique Gil Botero, Commissioners