

**REPORT Nº 37/10**  
PUBLICATION (ARTICLE 51)  
CASE 12.308  
MANOEL LEAL DE OLIVEIRA  
BRAZIL<sup>1</sup>  
March 17, 2010

**I. SUMMARY**

1. On May 22, 2000, the Inter-American Press Association, (hereinafter “the petitioner,”) lodged a complaint before the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) against the Federative Republic of Brazil (hereinafter “Brazil,” “the State,” or “the Brazilian State”). According to the petition, Mr. Manoel Leal de Oliveira was murdered on January 14, 1998, in Bahia state, allegedly for motives related to the exercise of his profession as a journalist. In subsequent communications, the petitioner points out that several years have passed and the crime has gone unpunished. The petition claims violations of the rights enshrined in Articles 4 (right to life), 13 (right to freedom of thought and expression), 8 (right to due process), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention) in accordance with Article 1(1) of that instrument, to the detriment of Manoel Leal de Oliveira.

2. The State has neither disputed nor questioned the allegations presented by the petitioner.

3. After analyzing the admissibility of the instant case, the Commission concludes that the petition satisfies the requirements set forth in Articles 46 and 47 of the Convention. The IACHR likewise concludes that the Brazilian State is responsible for violations of the rights to life, freedom of thought and expression, due process guarantees and judicial protection, embodied in Articles 4, 13, 8, and 25 respectively, of the American Convention, all in relation to the obligation to respect and ensure the rights enshrined in the Convention provided by Article 1(1) of that treaty, to the detriment of Manoel Leal de Oliveira and his relatives. Finally, the Commission presents its recommendations to the Brazilian State pursuant to Article 50 of the American Convention.

**II. PROCESS BEFORE THE COMMISSION**

4. On May 22, 2000, the Commission received a complaint to which it assigned the number 12.308. On July 14, 2000, the Commission forwarded it to the State, granting it a period of three months to submit information. On February 13, 2001, the Commission reiterated to the State its request of July 14, 2000, granting it 30 days to respond. On February 12, 2002, the IACHR received additional information from the petitioners.

5. On January 24, 2003, the Commission advised the State that, in view of the lack of response to its requests for information, it had decided to apply the provisions of Article 37.3 of its Rules of Procedure and defer its examination of the admissibility issues so as to take them up together with its examination of the merits. Therefore, the Commission requested the petitioner to submit its observations on the merits within a two month period. On March 21, 2003, the IACHR received the petitioner’s observations on the merits, and these were forwarded to the State on April 24, 2003.

6. On September 10, 2004, the Commission requested the State and the petitioners to submit current information on the status of the judicial case as well as copies of the pertinent portions of the judicial record; this information was submitted by the petitioner and forwarded to the State on May 10, 2005.

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<sup>1</sup> Commissioner Paulo Sergio Pinheiro, a national of Brazil, did not participate in the deliberations or vote in this case in accordance with Article 17(2)(a) of the Rules of Procedure of the IACHR.

7. On January 27, 2006, the Commission advised the parties of its willingness to mediate a friendly settlement agreement. The petitioner sent a note expressing its willingness to initiate this process. On February 16, 2006, the State submitted a document requesting a thirty day extension to respond to the proposal for a friendly settlement, which was granted by the Commission in a communication dated February 28, 2006.

### **III. POSITION OF THE PARTIES**

#### **A. Position of the petitioner**

8. The petitioner claims that journalist Manoel Leal de Oliveira was murdered for motives relating to the exercise of his profession, which would entail a violation of the right enshrined in Article 13 of the American Convention. With respect to the admissibility requirements, the petitioner asserts that five years have passed since the crime was committed with no conclusion to the criminal proceeding, which constitutes an unjustifiable delay, for which an exception to the exhaustion of domestic remedies set forth in Article 47(2)(c) of the Convention is applicable.

9. The petitioner points out that on January 14, 1998, Manoel Leal de Oliveira was murdered in Itabuna city, Bahia state, by gunmen from the region. The incident occurred after "A Região" newspaper, where Manoel de Oliveira was the editor, had published reports denouncing corruption and irregularities allegedly committed by municipal government officials and police authorities.

10. According to the petitioner, journalist Manoel Leal de Oliveira was married, the father of three children, and the founder of "A Região" newspaper. Manoel de Oliveira was well-known in the city for his inveterate activism and had contested several lawsuits brought against him for denouncing acts of corruption involving local politicians.

11. According to the petitioner, in 1997, Manoel Leal and his friend Flávio Eduardo Monteiro, the newspaper's marketing director, had been warned by individuals in the municipal administration that his death had been commissioned. The petitioner points out that only a few months prior to the crime, "A Região" had published a series of reports denouncing the Mayor of Itabuna, Fernando Gomes Oliveira, and the Police Chief of the Financial Crimes Division, Gilson Prata, who was responsible for investigating fraud in the Mayor's office.

12. The petitioner asserts that on the day of the crime, a group of suspects was observed in a Silverado pick-up truck close to the journalist's home; two men were in the back section, and a third was the driver. That same day, Manoel de Oliveira allegedly had received a telephone threat and an official from his company had informed him of the existence of a plot to harm him.

13. The petitioner claims that on January 14, 1998, shortly before 8:00 p.m., Manuel Leal de Oliveira was returning by car to his home, located on 1<sup>st</sup> street in the Jardim Primavera neighborhood of Itabuna City. Three men in a white Chevrolet Silverado pick-up truck were waiting for him a few meters from the house. When the journalist parked his automobile, two men allegedly emerged from the pick-up truck, one of whom fired several shots at him. The last bullets hit the victim in the back, while he attempted to flee toward the home of his son, Marcel, two doors down. With several bullet wounds, Manoel Leal de Oliveira died en route to the hospital, where he was being taken by family members in his own vehicle.

14. The petitioner emphasizes that the two main suspects of being the perpetrators of the crime, Monzar Brasil (also known as Mozart Brasil) and Roque Souza, worked as aides to Police Chief Gilson Prata. Another suspect, Marcones Rodrigues Sarmiento, was an official with the company owned by the husband of Maria Alice Araújo, secretary of government for the municipality of Itabuna.

15. The petitioner claims that a police investigation was opened, led by Police Chief João Jacques Valois Coutinho who, after questioning twenty-five people, issued a final report in the case on August 13, 1998, stating that there was insufficient evidence to charge any of the suspects.

16. The petitioner points out that the Federal Police received an anonymous telephone tip naming the suspects in the crime: Marcones Rodrigues Sarmento, Monzar da Costa Brasil, and Roque Cardoso Souza, the latter two civilian police officers of Bahia state.

17. The petitioner claims that once the case came under the jurisdiction of the Public Ministry of Bahia, public prosecutor [*promotor de justiça*] Ulisses Campos de Araújo concluded, on September 22, 1998, that it was impossible to prosecute due to the lack of evidence and determined that the investigation would be archived until such time as new evidence emerged.

18. The petitioner emphasizes that on November 18, 1998, Judge Marcos Antonio Santos Bandeira upheld the decision to archive the police investigation. Moreover, after reviewing the investigation in the context of crimes against journalists reported in Salvador newspapers, in April 2000, public prosecutor [*promotora*] Cinthia Portela requested that the case be reopened in April 2000, and filed an indictment on September 17, 2001. This complaint was received by Judge Marcos Bandeira on September 20, 2001, and on June 17, 2003, he indicted Monzar Castro Brasil and Thomaz Iracy Moisés Guedes. Pursuant to Article 366 of the Brazilian Criminal Procedures Code, suspect Marcones Rodrigues Sarmento was prosecuted separately as he could not be located by means of a personal summons.

19. The petitioner states that the Brazilian authorities were negligent in conducting the investigation and failed to perform key procedures to identify and punish the authors of the crime.

20. The petitioner claims that the telephonic threat received by the journalist on the day of the crime and the warning passed along to him by an official at the newspaper concerning an alleged plot to harm him were never investigated. Moreover, items in the victim's possession at the moment of the crime were not taken into custody, including a paper containing the words "Roque X-9," presumably referring to one of the suspects, Roque Souza. This paper allegedly was found in Manoel Oliveira's pocket and the information written on it would have been received by telephone shortly before the crime was committed.

21. Moreover, no municipal civil servant was called in to give a statement during the investigation, including the Mayor, Fernando Gomes, whom the journalist's relatives had identified as a suspect of the crime, since he was one of the individuals most frequently criticized by the "A Região" newspaper.

22. The petitioner asserts that the Federal Police did not pursue the investigation of the crime, despite information received concerning the name of three suspects through an anonymous tip. Moreover, state attorney general Ulisses Campos de Araújo was complicit in the fact that the Police Chief in charge of the police inquiry failed to call on Police Chief Gilson Prata to provide a statement, with the excuse that he did not consider it "relevant" to the investigation. Manoel de Oliveira's family had identified Gilson Prata as a suspect, in light of the published reports denouncing him in the newspaper for which the former served as editor.

23. The petitioner stresses that prosecutor Ulisses Campos de Araújo merely agreed with the statements made by Police Chief Valois Coutinho, despite being aware that the main suspects had ties to the police and other influential people, which could compromise the investigation.

24. On November 18, 1998, nine months after the crime, the investigation was archived for lack of evidence.

25. The petitioner claims that in a February 11, 1998 letter, the National Federation of Journalists [*Federação Nacional dos Jornalistas*] requested that then Minister of Justice Íris Rezende conduct an investigation into the crime; her assistant, Cristina Antinoro, responded in a March 19, 1998

letter asserting that the crime did not fall under the jurisdiction of the Ministry of Justice or the Federal Police.

26. The petitioner calls attention to the lack of a witness protection program in Itabuna city, asserting that former police officer Roberto Figueiredo provided a statement concerning the homicide on two occasions at the police station, under constant pressure. Roberto Figueiredo must have felt threatened by the knowledge that another witness, taxi driver Leopoldino Nobre, was murdered after reporting that on the day of the crime, he drove suspect Marcones Rodrigues Sarmiento from the Itabuna airport to the home of municipal secretary Maria Alice Pereira Araújo. According to the petitioner, Roberto Figueiredo was threatened into remaining silent about the case.

27. Finally, the petitioner claims that the prevailing impunity in cases where journalists have been murdered in the exercise of their profession is a threat to freedom of expression in Bahia state, as several crimes of this nature remain unsolved.

#### **B. Position of the State**

28. The initial petition and subsequent communications from the petitioners were forwarded to the State, which offered no response or arguments concerning admissibility or merits.

### **IV. ANALYSIS OF ADMISSIBILITY**

29. Pursuant to the regulations in force when the case was opened, the State's silence, and the ample opportunity the parties had to submit their arguments on admissibility and on the merits of this case, on January 24, 2003, the Commission decided to apply the rule set forth in Article 37.3 of its Rules of Procedure. It will therefore decide simultaneously the question of the admissibility and the merits of the petition.

#### **A. The Commission's Competence *ratione temporis*, *ratione personae*, *ratione materiae* and *ratione loci***

30. The Commission notes that the Federative Republic of Brazil is a State Party to the American Convention, which it ratified on September 25, 1992. The petition describes as the alleged victim Manoel Leal de Oliveira, an individual with respect to whom Brazil has undertaken to respect and ensure the rights embodied in the Convention. Therefore, the Commission has competence *ratione personae* to examine the claim.

31. In accordance with Articles 44 of the American Convention and 23 of the Commission's Rules of Procedure, the petitioner, as a legally recognized nongovernmental entity, is eligible to submit petitions to the IACHR concerning alleged violations of the American Convention.

32. The Commission has competence *ratione materiae* to examine the petition insofar as it refers to alleged violations of rights protected in the American Convention. Likewise, the Commission has competence *ratione temporis*, since the facts alleged occurred when the obligation to respect and ensure the rights set forth in the Convention was in force for the State. Finally, the Commission has competence *ratione loci* to take up this petition insofar as the violations allegedly occurred within the territory of the Brazilian State.

#### **B. Other admissibility requirements for the petition**

##### **1. Exhaustion of domestic remedies**

33. According to Article 46(1)(a) of the American Convention, for a petition lodged before the Inter-American Commission in accordance with Article 44 of that instrument to be deemed admissible, the domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable the national authorities to take

up an alleged violation of a protected right, and where appropriate, to resolve it, before it is taken up by an international entity.

34. The prior exhaustion requirement is applied when adequate and effective remedies are actually available in the domestic system to remedy the alleged violation. In this regard, Article 46(2) stipulates that the requirement shall not be applied when the domestic legislation of the State does not afford due process of law for the protection of the right that has allegedly been violated; or when the alleged victim has been denied access to the remedies under domestic law; or when there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies. According to Article 31 of the Commission's Rules of Procedure, when the petitioner claims one of these exceptions, it shall be up to the State concerned to demonstrate that the remedies available under domestic law were not exhausted, unless this circumstance is clearly evident from the record of the petition.

35. According to international human rights principles reflected in the precedents established by the Commission and by the Inter-American Court, in the first place, the State named in the petition may expressly or tacitly waive its right to invoke this rule.<sup>2</sup> Secondly, to be timely, the objection based on the non-exhaustion of domestic remedies must be made in the early stages of the proceedings before the Commission, lest a tacit waiver of the requirement on the part of the interested State be presumed.<sup>3</sup> Thirdly, in keeping with the applicable burden of proof, the State claiming non-exhaustion must indicate which domestic remedies are to be exhausted and present evidence that they are available.<sup>4</sup> Consequently, if the State in question does not present timely arguments concerning this requirement, it is considered to have waived its right to contest the petition based on the non-exhaustion of domestic remedies and, therefore, to satisfy the corresponding burden of proof.

36. In the instant case, the State, in its communication, has offered no argument whatsoever concerning the petition's fulfillment of the admissibility requirements. As a result, the Commission understands that it has tacitly waived its right to exercise that defense.

37. In any event, the petitioner asserts that in the two years and four months following the alleged events, not even the police investigation had been concluded, arguing that this constitutes an unwarranted delay in the process in accordance with Article 46(2)(c) of the Convention. The State, for its part, has neither denied nor questioned the position of the petitioners in the ninety day period established by the Rules of Procedure that were in effect for the Commission at the time,<sup>5</sup> nor has it done so since.

38. In the Commission's view, it is worth recalling that once a crime has been committed which the State has a duty to investigate *ex officio*, the latter has the obligation to set the criminal law

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<sup>2</sup> IACHR, Report N° 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, paragraph 42; Inter-American Court, Ximenes Lopes Case. Preliminary Exceptions. Judgment of November 30, 2005. Series C, No. 139, paragraph 5; Moiwana Community Case. Judgment of June 15, 2005. Series C No. 124, paragraph 49; Case of the Serrano Cruz Sisters. Preliminary Exceptions. Judgment of November 23, 2004. Series C No. 118, paragraph 135.

<sup>3</sup> Inter-American Court., Mayagna (Sumo) Awas Tingni Community Case. Preliminary Exceptions. Judgment of February 1, 2000. Series C No. 66, para. 53; Castillo Petruzzi et al Case. Preliminary Exceptions. Judgment of September 4, 1998. Series C No. 41, paragraph 56; Loayza Tamayo Case. Preliminary Exceptions. Judgment of January 31, 1996. Series C No. 25, paragraph 40. The Commission and the Court have established that "an early stage of the proceedings" must be understood as "the admissibility stage of the proceeding before the Commission, in other words, before any consideration of the merits [...]". See, for example, IACHR, Report N° 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mendiola, Colombia, October 13, 2005, , citing the Inter-American Court, Herrera Ulloa Case. Judgment of July 2, 2004. Series C No. 107, paragraph 81.

<sup>4</sup> IACHR, Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons living with HIV/AIDS, Guatemala, March 7, 2005, paragraphs 33-35; Inter-American Court, Mayagna (Sumo) Awas Tingni Community Case. Preliminary Exceptions, op cit 4, paragraph 53; Durand and Ugarte Case. Preliminary Exceptions. Judgment of May 28, 1999. Series C No. 50, paragraph 33; and the Cantoral Benavides Case. Preliminary Exceptions. Judgment of September 3, 1998. Series C No. 40, paragraph 31.

<sup>5</sup> The State abstained from presenting its observations throughout this proceeding with respect to the question of admissibility and the merits, despite repeated requests by the Commission. The only document forthcoming from the State was submitted at the hearing on the case at the Commission's 118th Regular Session on October 14, 2003, in other words, three years and three months after the first documents were forwarded to it by the Commission.

system into motion and to process the matter until its final conclusion,<sup>6</sup> and that in such cases, this constitutes the ideal venue for clarifying the facts, judging the perpetrators and establishing the appropriate punishments, apart from making other types of monetary reparations possible. Since over eight years have passed since the commission of the crime, during which time the perpetrators and intellectual authors have not been determined and punished, the Commission believes that the exception set forth in Article 46(2)(c) of the American Convention is applicable to this petition.

## **2. Time period for lodging the complaint**

39. Article 46(1)(b) of the Convention stipulates that petitions must be lodged within a period of six months from the date on which the petitioner was notified of the final judgment exhausting domestic remedies. The petitioner lodged the complaint on May 22, 2000, two years and four months after the death of Manoel Leal de Oliveira.

40. According to Article 32 of the IACHR's Rules of Procedure, "in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case." In this regard, the Commission concludes that, taking into account the alleged facts and the situation of domestic remedies, and that the State has not provided information concerning the situation of domestic remedies, the petition was lodged within a reasonable period of time.

## **3. Duplication of proceedings and res judicata**

41. There is no indication in the files that the petition lodged before the Inter-American Commission is currently pending in any other international proceeding for settlement, or that it substantially duplicates any other petition or communication that has already been taken up by the Commission or by any other international entity, in accordance with Articles 46(1)(c) and 47(d) respectively.

## **4. Characterization of the facts alleged**

42. For the purposes of admissibility, the Commission must determine whether the facts described in the petition tend to establish a violation of rights set forth in the American Convention, as stipulated in Article 47(b), or whether the petition, pursuant to Article 47(c), should be discarded as "manifestly groundless" or "obviously out of order." The relevant criteria for determining these thresholds differ from those used to determine the merits of a petition.

43. The petitioner claims that the events leading to the death of Manoel Leal de Oliveira and the lack of an adequate investigation into the occurrences constitute a violation of the rights set forth in Articles 4, 13, 8, and 25 of the American Convention, in relation to Article 1(1) of that instrument. In the Commission's opinion, the facts of the case, *prima facie* could establish a violation of Manoel Leal de Oliveira's right to life, to freedom of thought and expression, to due process and to judicial protection. Therefore, the instant petition satisfies the requirements in terms of the characterization of the facts alleged.

44. In light of the foregoing, the Commission concludes that it is competent to take up the instant petition which, in accordance with Articles 46 and 47 of the American Convention, is admissible in the terms described.

## **V. ANALYSIS OF THE MERITS**

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<sup>6</sup> IACHR, Report N° 52/97, Case 11.218, Arges Sequeira Mangas, IACHR Annual Report 1997, paragraphs 96 and 97. See also, Report N° 55/97, paragraph. 392.

## A. The context of impunity with regard to the assassination of journalists in Bahia state

45. Prior to examining the established facts, the Commission considers it important to call attention to the context for the murder of journalist Manoel Leal de Oliveira, who was known in Itabuna city for his daring condemnations of internal corruption and irregularities in the municipal administration.<sup>7</sup>

46. The Commission is aware that ten journalists were murdered in Bahia state, in the northeast of Brazil, between 1991 and 1998.<sup>8</sup> Most of these crimes show signs of having been related to news coverage on corruption, drug trafficking, and gang organizing, along with other offenses in which politicians and members of the police are allegedly involved.

47. According to information received by the Commission, Bahia state is one of the most dangerous places in Brazil to exercise the journalistic profession. This information indicates that in cases of attacks, threats, and murders perpetrated against journalists, the investigations are overwhelmingly unsatisfactory, manifestly incomplete or manipulated, and frequently marked by influence peddling in the region. This state of impunity fosters violence against journalists, leading to gross violations of freedom of expression. In Bahia state in particular, nongovernmental organizations document murders, attacks, and threats against journalists who speak out against the political or police authorities. In general, in the southernmost part of Bahia, those who speak out against environmental offenses or against individuals linked to the traditional political circles are subject to similar violations.<sup>9</sup>

48. Studies by nongovernmental organizations indicate that certain subjects are particularly delicate in terms of news coverage. In the northeastern region of Brazil, such subjects would have to do mainly with illegal gambling, corruption, connections between politicians and organized crime, “*coronelismo*,” and coverage of electoral campaigns.<sup>10</sup>

49. According to information received by the Commission, in many cases involving the murder of journalists the police investigations are archived, demonstrating the lack of interest on the part of the authorities to clarify such crimes. Time and again, the local police are placed in charge of investigations even when their own members have been identified as the main suspects in the crimes.

50. With regard to the broader context of the difficulty of investigating police violence in Brazil, the IACHR described, in its 1997 report on the human rights situation in Brazil, the cover-up and obstruction of justice in cases where the civilian or military police are under investigation.<sup>11</sup> In that report, the Commission reiterated that the obstruction of justice is exacerbated by fear of reprisals among witnesses of crimes in which police agents or other public authorities are suspects. In its 2006 annual report, *Human Rights Watch* stressed the prevailing impunity for crimes committed by civilian and military police in Brazil.<sup>12</sup> With respect to crimes against journalists, this reality has been condemned by national

<sup>7</sup> ‘A Região’ newspaper, 11/10/1997. p. 1, 4 and 5; 11/17/1997. p. 1 and 6; 12/8/1997, p. 1 and 2; 12/22/1997, p. 1 and 5.

<sup>8</sup> Reporters without Borders, Bahia: Culture of Impunity? Investigation into the murder of journalist Manuel Leal de Oliveira, available at: [www.rsf.org/print.php3?id\\_article=3973/](http://www.rsf.org/print.php3?id_article=3973/); Observatório da Imprensa, Jornalista assassinado – RSF denuncia cultura da impunidade, available at: <http://observatorio.ultimosegundo.ig.com.br/cadernos/cid091020021.htm>. Besides Manoel de Oliveira, the following journalists were murdered in Bahia state during the time period mentioned: Vítor Emanuel Lena (March 26, 1991), Ivan Rocha (April 22, 1991), José Machado Portinho (January 15, 1992), João Alberto Ferreira Souto (February 19, 1994), Eliés Haun Filho (March 7, 1994), Roberto Almeida (March 12, 1995), Nivanildo Barbosa Lima (July 22, 1995), Sandoval Muniz Duarte (August 18, 1996), Ronaldo Santana de Araújo (October 9, 1997).

<sup>9</sup> Inter-American Press Association, “Risk Map for Journalists” – Brazil, Colombia, México, page 166. Available at: <http://www.impunidad.com/MAPADERISCOS.pdf>.

<sup>10</sup> Idem.

<sup>11</sup> IACHR, Report on the Human Rights Situation in Brazil, September 29, 1997, Chapter III, paragraph 25.

<sup>12</sup> Human Rights Watch, Annual Report. January 18, 2006, available at: <http://hrw.org/portuguese/docs/2006/01/18/brazil12424.htm>.

and international press organizations such as Reporters without Borders,<sup>13</sup> IFEX,<sup>14</sup> and the Inter-American Press Association.<sup>15</sup>

## B. Facts established

51. The Inter-American Commission observes that the State has not disputed any of the arguments relating to admissibility or the merits offered by the petitioner. Article 42 of the IACHR's Rules of Procedure, which was in effect until April 30, 2001, stipulated that "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 maximum period set by the Commission under the provisions of Article 34(5), as long as other evidence does not lead to a different conclusion." The language of this Article is similar to Article 39 of the Commission's current Rules of Procedure.

52. The article transcribed above means that if the State has not contested the facts alleged and if there is no other evidence that could lead to the opposite conclusion, the Commission may presume the alleged facts to be true. In this regard, the Inter-American Court understands that

The manner in which the government conducted its defense would have sufficed to prove many of the Commission's allegations by virtue of the principle that—except in criminal matters which are not applicable in the case at hand—the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law.<sup>16</sup>

53. While in principle, the burden of proof in a process before the Inter-American Commission is on the complainant or petitioner, the lack of a rebuttal by the State leads in practice to the opposite situation, in which the State must offer evidence disputing the alleged facts. If the State does not dispute the merits or produce evidence to call them into question, the Commission may assume that they are true, as long as there is no evidence that would lead to the opposite conclusion.

54. The Inter-American Court of Human Rights has pointed out that in processes concerning 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. The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State".<sup>17</sup>

55. Taking into account the aforementioned rules concerning the burden and generation of proof and the evidence submitted by the petitioner and collected by the Commission itself, the Commission must evaluate several elements in establishing the grounds for its decision.

56. In its evaluation of the evidence, the Commission takes into consideration the criteria set forth by the Inter-American Court of Human Rights. In this regard, the Court has stated that

The standards of proof are less formal in an international legal proceeding than in a domestic one. The latter recognizes different burdens of proof, depending upon the nature, character, and seriousness of the case. The practice of international and domestic courts shows that direct

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<sup>13</sup> Reporters without Borders, Report on the Murder of Manoel Leal - Journalists murdered in Bahia state, available at: [www.redemorena.com.br/rsf2001.htm](http://www.redemorena.com.br/rsf2001.htm); Reporters without Borders, Bahia: Culture of Impunity? Investigation into the murder of journalist Manuel Leal de Oliveira, available at: [www.rsf.org/print.php3?id\\_article=3973](http://www.rsf.org/print.php3?id_article=3973).

<sup>14</sup> IFEX, RWB calls on authorities to end impunity in cases of murdered journalists. Press Release of October 7, 2002, available at: <http://www.ifex.org/es/content/view/full/17579>.

<sup>15</sup> Inter-American Press Association, Report of the March 18, 2002 meeting, available at: <http://www.sipiapa.org/portuques/pulications/ibarguenimpunity-port.cfm>.

<sup>16</sup> Inter-American Court, Velásquez Rodríguez Case, Judgment of July 29, 1988, Series A, No 4, paragraph 138.

<sup>17</sup> *Id.*, paragraphs 135 and 136.

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.<sup>18</sup>

57. The IACHR concludes that in view of the lack of a response from the Brazilian State within the time period established by the Commission, as prescribed by the IACHR's Rules of Procedure, it may assume that the claims presented are true, as long as there is additional supporting evidence. Moreover, the Commission shall deliberate on the merits of the case after examining the arguments and evidence presented by the parties, and information that is a matter of public knowledge, as stipulated in Article 42 of its Rules of Procedure.

58. In keeping with the foregoing, and based on the claims made by the petitioner, the lack of responsive information from the Brazilian State, and the copies of the judicial files and other evidence that make up the record, the Commission now proceeds to decide on the facts established in the instant case.

### **Murder of Manoel Leal de Oliveira and irregularities in the police investigation**

59. Mr. Manoel Leal de Oliveira, a journalist, married and the father of three children, was the editor and director of "A Região" newspaper, which had a reputation for denouncing local authorities including judges, influential politicians, and police officials. He was well known in his home city as a controversial and courageous agitator and had faced several lawsuits as a result of the denunciations made.<sup>19</sup>

60. Throughout 1997, "A Região" newspaper had published a number of articles criticizing the municipal administration of Itabuna city and denouncing fraud and corruption.<sup>20</sup> In October 1997, it reported that Police Chief Gilson Prata had received R\$ 4,500 (four thousand five hundred *reais*) from the Mayor of Itabuna, with the justification that the funds were to pursue investigations of irregularities within the Mayor's office itself. The newspaper also reported that two of the Police Chief's aides allegedly had received R\$ 1,500 (one thousand five hundred *reais*) and that their personal expenses had been covered by the Mayor's office during their stay in Itabuna.<sup>21</sup>

61. In November 1997, Manoel de Oliveira and his friend Flávio Eduardo Monteiro, marketing director of "A Região" newspaper, were warned by municipal administration officials that plans were being made to ambush them.<sup>22</sup>

62. At 8:00 p.m. on January 14, 1998, Manoel Leal de Oliveira was shot as he arrived at his home in Itabuna city, Bahia state.<sup>23</sup> Gunmen shot the journalist six times with firearms, and he died en route to the hospital.<sup>24</sup> On the day of the crime, a Silverado pick-up truck was seen parked near Manoel Leal's house during the evening, with two men sitting in the back seat and a third in the driver's seat.<sup>25</sup> That same day, around 4:00 p.m., the victim had received a telephone call informing him that he would

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<sup>18</sup> *Idem*, paragraphs 128 and 130; Godínez Cruz Case, Judgment of January 20, 1989, Series. C No. 5, paragraphs 133-36; Fairén Garbí and Solís Corrales Case, Judgment of March 15, 1989, Series C No. 6, paragraph 130-33; Gangaram Panday Case, Merits, Judgment of January 21, 1994, paragraph 49.

<sup>19</sup> 'A Região' newspaper, 09/22/1997, p. 1, 2, and 5; 09/29/1997, p. 1, 6, and 12; 10/06/1997, p. 1; 11/3/1997, p. 1 and 4;

<sup>20</sup> 'A Região' newspaper, 8/4/1997, p. 1; 8/11/1997, p. 1 and 9; 09/22/1997, p. 1 and 5; 09/29/2007, p. 1 and 6; 10/6/1997, p. 1 and 15; 11/3/1997, p. 1 and 4; 11/17/1997, p. 1 and 6; 12/8/1997, p. 1 and 2; 12/22/1997, p. 1 and 5; 12/9/1997, p. 1 and 7.

<sup>21</sup> Statement of Monzar Brazil – Criminal Case n. 65/2001, p. 187.

<sup>22</sup> 'A Região' newspaper, 12/01/1998. p. 03.

<sup>23</sup> Police Investigation, decision on pp. 78/79 and 84/88. 'A Região' newspaper, 18/01/1998. p. 15; 30/03/1998, p. 1.

<sup>24</sup> Police Investigation. pp. 26 and 60.

<sup>25</sup> Statement of witness Sadraque Souza Reis - Criminal Case n. 65/2001, fl. 2031.

not be alive the following day. At 6:00 p.m., an official from his company, José Freitas Oliveira, called to warn him that a group of people intended to harm him.<sup>26</sup>

63. Following the homicide, a piece of paper was found in the journalist's pocket containing the words "Roque X-9" which, according to some witnesses, refers to Roque Cardoso Souza, aide to Police Chief Gilson Prata and one of the main suspects in the murder. The words had been written by the journalist himself after having received an anonymous telephone call.

64. It is telling that the crime occurred just a few meters from the city's Military Police Battalion and Penitentiary Complex, located on the same street where the journalist resided, and yet none of the suspects' movements were observed, in addition to the fact that they would have spent the entire afternoon at the front door of the journalist's home. This shows that the murderers were unconcerned about a possible police presence near the scene of the crime.

65. Witnesses, the victim's relatives, and the local media identified the civilian police and members of the Mayor's office of Itabuna as the main suspects of having plotted the murder of Manoel Leal de Oliveira. They identified in particular then Mayor, Fernando Gomes, municipal secretary Maria Alice Araújo Pereira, and civilian Police Chief Gilson Prata as the possible intellectual authors. They also identified Marcones Rodrigues Sarmiento, Monzar Castro Brasil, and Roque Cardoso Souza as possible perpetrators of the crime; the latter two are civilian police officers from the state of Bahia.

66. The investigation into the crime began with the opening of a police inquiry in conjunction with the 15<sup>th</sup> Regional Interior Police Division under the jurisdiction of Police Chief João Jacques Oliveira Valois Coutinho.

67. The final report of the police inquiry forwarded to the Judiciary on August 13, 1998, concluded *inter alia* that:

(...)

b. The procedures performed by the police, including those of a strictly investigatory nature and others of a technical-scientific nature, were exhaustive.

c. Twenty-five people were heard, and little or nothing was obtained from their statements regarding the material or intellectual authors of the crime, either because the witnesses were ignorant of the facts or because what they knew, bore no causal relationship to the criminal incident or with facts that would make it possible to arrive, through inductive reasoning, at the authorship of the matter.

68. On November 18, 1998, Judge Marco Antonio Santos Bandeira ordered the case archived until such time as new evidence should be presented.<sup>27</sup>

69. During the police inquiry, on February 11, 1998, the National Federation of Journalists, fearing impunity for this crime, submitted a written request for an investigation to then Minister of Justice Íris Rezende.<sup>28</sup> His assistant, Cristina Antinoro, responded on March 19, 1988 that the crime did not fall under the jurisdiction of the Ministry of Justice or the Federal Police.<sup>29</sup>

### **Reopening of the police inquiry**

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<sup>26</sup> Statement of José Freitas Oliveira, official with Gráfica Colorpress – Criminal Case n. 65/2001, p. 21.

<sup>27</sup> Criminal Case n. 65/2001, pp. 304.

<sup>28</sup> Criminal Case n. 65/2001, p. 207.

<sup>29</sup> Criminal Case n. 65/2001, p. 215.

70. After the police inquiry was archived on November 18, 1998, the case was reopened in April 2000 by public prosecutor [*promotora pública*] Cíntia Portela, who filed a complaint against Marcones Rodrigues Sarmiento, Monzar Castro Brasil, and Thomaz Iracy Moisés Guedes on September 17, 2001.<sup>30</sup> This reopening of the case occurred after several international entities such as Amnesty International, Reporters without Borders,<sup>31</sup> and IFEX,<sup>32</sup> and local media and press associations such as the Brazilian Press Association [*Associação Brasileira de Imprensa*] and the National Federation of Journalists [*Federação Nacional de Jornalistas*],<sup>33</sup> mobilized to press state and federal authorities to clarify the crime.

71. After the investigation was reopened, Pedro Roberto Santos Figueiredo testified to public prosecutors in Itabuna that on the day of the crime and on the days following the incident, taxi driver Leopoldino Nobre reported having driven an individual known as “Marcone” from the airport to the house of then municipal secretary Maria Alice Pereira Araújo<sup>34</sup>, who in fact was the one who paid the taxi driver for the trip. Pedro Roberto Figueiredo claims that he forwarded this information to Police Chief João Jacques Valois to aid in the investigation. This information was never investigated during the inquiry and, a few days after it had been brought to the attention of the aforementioned delegate, taxi driver Leopoldino Nobre was found dead,<sup>35</sup> a crime that also is pending clarification by the police and judicial authorities of Bahia state.<sup>36</sup>

72. Accused Monzar Costa Brasil and Thomaz Iracy Moisés Guedes were not indicted until June 17, 2003, in Public Criminal Case n. 65/ 2001. It should be noted that Marcones Rodrigues Sarmiento was not affected by the indictment as he was not personally summoned to answer the charges.<sup>37</sup>

73. Accused Monzar Brasil worked as an aide to Police Chief Gilson Prata. Accused Marcones Rodrigues Sarmiento was an official in the company owned by the husband of municipal secretary Maria Alice Araújo.<sup>38</sup>

74. In a September 25, 2003 verdict, a Jury Court [*Tribunal do Júri*] sentenced Monzar Costa Brasil to 18 years in prison. Meanwhile, he was released after a *habeas corpus* petition was lodged on December 23, 2003, and remained free pending the upholding or reversal of the sentence by the Court of Justice [*Tribunal de Justiça*] of Bahia.<sup>39</sup>

75. The second defendant, Thomaz Iracy Moisés Guedes, was acquitted in a unanimous verdict by the Jury Court [*Tribunal do Júri*] of the Itabuna judicial district on September 25, 2003.<sup>40</sup> The prosecution itself believed he was innocent and requested that the Jury acquit him. The third and last defendant, Marcones Rodrigues Sarmiento, was acquitted in December 2005, in a decision that the Public Ministry opposed, arguing that it was contrary to the evidence found in the record.

<sup>30</sup> Criminal Case n. 65/2001, p. 386/388.

<sup>31</sup> See supra note 13.

<sup>32</sup> IFEX, Call to presidential candidates to respect freedom of the press. Alert of October 5, 1998, available at: <http://www.ifex.org/es/content/view/full/6934>.

<sup>33</sup> Paragraph 69 of the report of the Federação Nacional de Jornalistas, FENAJ report on freedom of expression and violence against journalists. 1998, available at: <http://www.fenaj.org.br/federacao/comhumanos/Relatorio1998.htm>.

<sup>34</sup> Statement of witness Pedro Roberto Santos Figueiredo – Criminal Case n. 65/2001, p. 2037.

<sup>35</sup> Observatório da Imprensa, Jornalista Assassinado – desaparece uma testemunha, available at: <http://observatorio.ultimosegundo.ig.com.br/cadernos/cid091020021.htm>.

<sup>36</sup> Supra note 26.

<sup>37</sup> Public Criminal Case [*Ação Penal Pública*] n. 065/2001. pp. 2, 5 and 6.

<sup>38</sup> Statement of witness Pedro Roberto Santos Figueiredo – Criminal Case 65/2001, pp. 649/650.

Statement of Maria Alice Araújo Pereira – Criminal Case n. 65/2001, pp. 370/371.

<sup>39</sup> ‘A Região’ newspaper, 6/5/2004. p.1.

<sup>40</sup> Criminal Case n. 65/2001 – Judgment of Acquittal – pp. 2,053.

### C. Considerations of Law

76. The Commission now proceeds to examine whether in the instant case the State of Brazil violated the rights to life, freedom of thought and expression, due process, and judicial protection enshrined in Articles 4, 13, 8, and 25 respectively of the American Convention, in relation to the State's duty to respect and ensure human rights under the provisions of Article 1(1) of that instrument, to the detriment of Manoel Leal de Oliveira.

#### 1. Right to Life (Article 4 in relation to Article 1.1 of the American Convention)

77. According to Article 4 of the American Convention:

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.

78. The right to life is a fundamental right, and the exercise of this right is essential for the exercise of all other human rights. The Inter-American Court has stated that the enjoyment of this right:

(...) is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning. Owing to the fundamental nature of the right to life, restrictive approaches to it are inadmissible. In essence, the fundamental right to life includes not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.<sup>41</sup>

79. Moreover, according to Article 1(1) of the American Convention:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

80. This provision sets forth the general obligations of States with respect to human rights. The first is to respect the rights enshrined in the American Convention and the second is to guarantee the exercise of those rights. The Inter-American Court understands that, as a consequence of the obligation to guarantee rights, States must "prevent, investigate, and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."<sup>42</sup>

81. In the case of *Ximenes Lopes vs Brasil*, the Inter-American Court asserted that in order to effectively ensure the right to life, it must fulfill "the duty to investigate aspects affecting that right, as derived from Article 1(1) of the Convention, together with the substantive right that must be safeguarded, protected and guaranteed."<sup>43</sup> With regard to the obligation to respect this right, States must abstain from depriving of life persons subject to their jurisdiction, through the actions of their organs or agents.

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<sup>41</sup> Inter-American Court, *Villagrán Morales et al Case (Street children Case)*, Judgment of November 19, 1999, paragraph 144.

<sup>42</sup> Inter-American Court, *Velásquez Rodríguez Case*, *supra* note 13, paragraph 166.

<sup>43</sup> Inter-American Court, *Ximenes Lopes Case*. Judgment of July 4, 2006. Series C No. 150, paragraph 147, citing the following cases: *Baldeón García Case*, Judgment of April 6, 2006. Series C No. 147, paragraph 92; *Pueblo Bello Massacre Case*. Judgment of January 31, 2006. Series C No. 140, paragraph 142 ; and *Mapiripán Massacre Case*, Judgment of September 15, 2005. Series C No 134, paragraph 233.

### **1.a The State failed in its obligation to respect the right to life of Manoel Leal de Oliveira**

82. It is a basic principle of international human rights law that States must answer internationally for acts or omissions by any of their organs or agents, including judicial and police investigatory bodies, which violate internationally recognized human rights.<sup>44</sup> According to the Inter-American Court:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention. According to Article 1(1) any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in that article.<sup>45</sup>

83. According to the jurisprudence of the inter-American system for the protection of human rights, in order to establish that there has been a violation of the rights embodied in the Convention, "it is not necessary to determine the guilt of the authors or their intention, nor is it necessary to identify individually the agents who are attributed with the violations."<sup>46</sup>

84. In the case at hand, the Commission considers it important to stress that Manoel Leal de Oliveira received threats following the publication of articles denouncing members of the Executive Branch of Itabuna City and the civilian police of Bahia state;<sup>47</sup> and that two members of the civilian police were accused of his murder, one of whom was convicted by a first instance court as a material author;<sup>48</sup> that immediately before the crime, Manoel Leal had been alerted by officials from the municipal administration that authorities from the police and the local Executive Branch were planning his death;<sup>49</sup> and that the victim had made enemies of local police officials.

85. In light of the foregoing, in the Commission's view it has been established that agents of the Brazilian State participated in the homicide of Manoel Leal de Oliveira on January 14, 1998, and concludes that the State violated, to his detriment, its obligation to respect the right to life enshrined in Article 4 in relation to Article 1(1) of the American Convention.

### **1.b The State failed in its obligation to guarantee the right to life of Manoel Leal de Oliveira**

86. Taken together, Articles 4 and 1(1) of the Convention require States to guarantee the right to life of individuals subject to their jurisdiction, which translates into the duty to prevent and investigate violations of this right, to punish those responsible, and to make reparations to the victims' next of kin, when the violation results from the conduct of the State.

87. In keeping with the jurisprudence of the Inter-American Court of Human Rights, in order for an investigation of the right to life to be patently effective, it must be rapid, impartial, and conducted

<sup>44</sup> Inter-American Court, Case of the Serrano Cruz Sisters, supra note 2, paragraph 71 and 73.

<sup>45</sup> Inter-American Court, Gómez Paquiyauri Brothers Case, paragraph 72.

<sup>46</sup> Inter-American Court, Mapiripán Case, supra note 43, paragraph 110; 19 Merchants Case. Judgment of July 5, 2004. Series C No. 109, paragraph 141; Maritza Urrutia Case. Judgment of November 27, 2003. Series C No. 103, paragraph 41, and the "Street children Case" (Villagrán Morales et al). Judgment of November 19, 1999. Series C No. 63, paragraph 75.

<sup>47</sup> See paragraphs 61, 62, 63, 120 and 121 of this report.

<sup>48</sup> See paragraph 74 of this report.

<sup>49</sup> See paragraphs 61 of this report.

with all due diligence.<sup>50</sup> In the case at hand, this means that the investigatory authority has the obligation to perform all of the inquiries necessary to ensure that Manoel de Oliveira's murderers are punished. Nonetheless, the evidence provided by the petitioners, and the other evidence obtained, demonstrate that the investigation carried out by the civilian police was evasive and marred by a number of irregularities. The reasons leading the IACHR to arrive at this conclusion can be found in paragraphs 110 to 141, *infra*.

88. The Commission considers that when the case was reopened in April of 2000, the criminal case brought by the Public Ministry on September 17 of that year had been compromised by the failure to carry out critical actions in the course of the previously archived police inquiry. In effect, many of the irregularities that occurred at that time came to light during the preparation of the criminal case and as new witnesses and suspects were called in to give statements. These irregularities also abound in paragraphs 110 to 141 herein.

89. As will be discussed in the analysis of the violation of Articles 8 and 25 of the American Convention in relation to its Article 1(1), the Commission observes that the Brazilian State has not demonstrated, and does not even claim, that it has duly investigated the murder of Manoel de Oliveira; it likewise notes that the crime was never clarified in terms of identifying and punishing its material and intellectual authors. Moreover, the State has not compensated the victim's family, even though the participation of public agents has been demonstrated.

90. Based on the foregoing, the Inter-American Commission concludes that the Brazilian State violated its obligation to guarantee the right to life of Manoel de Oliveira, embodied in Articles 4 and 1(1) of the American Convention, taken together, due to its failure to duly investigate his murder, punish those responsible, and make reparations to Manoel Leal de Oliveira's next of kin.

## **2. Right to Freedom of Thought and Expression (Article 13 in relation to Article 1(1) of the American Convention)**

91. Article 13 of the American Convention stipulates that:

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.

92. Freedom of thought is essential for the consolidation of a democratic regime. Since its earliest opinions on the subject, the Inter-American Court consistently has stated that "a democratic society requires the guarantee of the widest possible circulation of news, ideas, and opinions, as well as the widest access to information by society as a whole."<sup>51</sup> Moving to the other extreme, it could be said that the free circulation of ideas and opinions is to democracy as their restriction and censure is to dictatorial regimes.

93. In the inter-American system for the protection of human rights, freedom of thought and expression is recognized and ensured by Article 44(f) of the OAS Charter; Article IV of the Declaration of the Rights and Duties of Man; the aforementioned Article 13 of the American Convention on Human Rights; Article 4 of the Inter-American Democratic Charter; and by the Declaration of Principles on Freedom of Expression.

94. The right to freedom of expression has both an individual and a collective dimension. With regard to the former, it encompasses the prerogative to express, seek, receive, and impart

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<sup>50</sup> Inter-American Court, *Case of the Serrano Cruz Sisters*, *supra* note 2, paragraph 65.

<sup>51</sup> Inter-American Court, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, Resolution of November 13, 1985, Series A No. 5, paragraph 69; *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C No. 74, paragraph 151; *Herrera Ulloa Case*. Judgment of July 2, 2004. Series C No. 107, paragraph 112 and 116; *Ricardo Canese Case*, Judgment of August 31, 2004. Series C No. 111, paragraphs 82 and 86.

information, thoughts, and ideas, and to freely choose the means to that end, while the latter relates to the ability to exchange ideas and information. As the Court has stated:

With regard to the content of the right to freedom of thought and expression, those who are protected by the Convention not only have the right and the freedom to express their own thoughts, but also the right and freedom to seek, receive and impart information and ideas of all kinds. Consequently, freedom of expression has an individual and a social dimension.<sup>52</sup>

95. The concept of freedom of information, from the social standpoint, plays a relevant role in institutional oversight, whether with regard to public administration by the State<sup>53</sup> or to individuals with considerable influence. In this regard, the Inter-American Court has pointed out that

Freedom of expression (...) is indispensable for the formation of public opinion. (...) It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said to that a society that is not well informed is not a society that is truly free.<sup>54</sup>

96. In the instant case, the Commission must analyze whether the Brazilian State is responsible for violating the right embodied in Article 13 of the American Convention for the homicide of Manoel Leal de Oliveira on the one hand, and for the failure to comply with its duty to investigate this crime, on the other.

## **2.a The State violated the right of Manoel Leal de Oliveira to freely express himself and to impart his ideas**

97. Article 13.1 of the American Convention confers upon all individuals the right to impart information and ideas of all kinds and, in turn, protects the right of all citizens to receive them without any illegal or unjustified interference. One of the most violent ways of violating this right is through the murder of social communicators. In this sense, the ninth Principle of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission on Human Rights states that:

The murder, kidnapping, intimidation of, and/or threats to social communicators, as well as the material destruction of communications media, violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation.

98. Similarly, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has stated that:

Unfortunately, longstanding patterns of harassment and oppression of persons whose views and opinions differ from those of persons holding power persist in a number of countries. In many instances, restrictions on the freedom of opinion and expression limit to a significant extent the possibility of violations becoming known and investigated. In the view of the Special Rapporteur, such trends perpetuate patterns such as government corruption and impunity.<sup>55</sup>

99. The Inter-American Court has stated previously that the murder of an individual based on the exercise of a particular activity inhibits others who may also wish to exercise that activity. With respect to freedom of association and to organize trade unions, for example, in the *Huilca Tecse* case the

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<sup>52</sup> Inter-American Court, "The Last Temptation of Christ" Case (Olmedo Bustos et al). Judgment of February 05, 2001. Series C No 73, paragraph 64.

<sup>53</sup> European Court of Human Rights, *Oberschlick v. Austria* Case, Case No. 6/1990/197/257/, Judgment of May 23, 1991.

<sup>54</sup> Inter-American Court, *Compulsory Membership of Journalists* Advisory Opinion OC-5/85 (Articles 13 and 29 of the American Convention on Human Rights), November 13, 1985. paragraph 70.

<sup>55</sup> United Nations, E/CN.4/1998/40, Report of the Special Rapporteur, Mr. Abid Hussain, submitted pursuant to Resolution 1997/27 of the United Nations Human Rights Committee, January 28, 1998, paragraphs 107 and 108.

Court found that the murder of a trade union leader for his commitment and his criticism of the public administration violated the victim's right to freedom of association on the one hand, and on the other, restricted the freedom of certain individuals to freely associate without fear.<sup>56</sup> Likewise, the murder of a journalist for disseminating certain opinions has a dissuasive effect on others who may wish to do the same.

100. In previous cases, the Inter-American Commission has found that the murder, by State agents, of journalists exercising their profession, constitutes a violation of Article 13 of the American Convention. In this regard, it has affirmed that this type of crime has a chilling effect on other journalists, but also on ordinary citizens, by instilling fear of denouncing all kinds of offenses, abuses, or illegal acts.<sup>57</sup>

101. In the *sub judice* case, the Commission deems it worthwhile to mention that the "A Região" newspaper habitually published materials denouncing judges, influential politicians, and members of the police.<sup>58</sup> In addition, it published critiques on the public administration of the Itabuna municipality in Bahia state, around the time of the murder of its editor and founder, Manoel Leal de Oliveira.<sup>59</sup>

102. In December 1997, "A Região" denounced irregularities on the part of the Mayor of Itabuna, Fernando Gomes, having to do with the alleged use of counterfeit fiscal receipts. During the same period, the newspaper denounced Police Chief Gilson Prata and two of his subordinates – Roque Cardoso Souza and Monzar da Costa Brasil – of having been corrupted by the Mayor of Itabuna city.<sup>60</sup> The latter would later be convicted by a first instance court for the murder of Manoel de Oliveira.

103. In its earlier analysis on the violation of Article 4 of the American Convention, the Commission concluded that State agents had participated in the homicide of Manoel Leal de Oliveira, on January 14, 1998. The Commission likewise concludes that the murder occurred in function of the articles and stories that the victim had published in "A Região" newspaper, with the goal of silencing him and in reprisal for the information published. Therefore, Brazil violated the right of Manoel de Oliveira to freely express himself and impart his ideas, embodied in Article 13 of the American Convention.

## **2.b The State violated its obligation to investigate the murder of Manoel Leal de Oliveira**

104. The failure to conduct a thorough investigation into the murder of a journalist for the purpose of silencing him has a chilling effect on the free circulation of ideas and opinions. This type of crime leads to self-censorship to the detriment of ordinary citizens and social communicators alike. This effect can only be avoided through decisive action on the part of the State to punish all those who attack, threaten, murder, or carry out any sort of reprisals against an individual for expressing his or her ideas and opinions.<sup>61</sup>

105. The Commission observes that the absence of an effective investigation into this type of crime and the attendant failure to identify and punish all those responsible, inhibits the exercise of freedom of expression especially as it concerns the freedom to denounce and report on the conduct of civil servants.

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<sup>56</sup> Inter-American Court, *Huilca Tecse Case*. Judgment of March 3, 2005. Series C No. 121, paragraph 66.

<sup>57</sup> IACHR, Annual Report 1999, Report 50/99, Case 11.739 (Héctor Félix Miranda), Mexico, paragraph 52, and IACHR, Annual Report 1999, Report 130/99, Case 11.740 (Victor Manuel Oropeza), Mexico, paragraph 58.

<sup>58</sup> See paragraph 59 of this report.

<sup>59</sup> See *supra* notes 21 and 22.

<sup>60</sup> See *supra* note 22.

<sup>61</sup> IACHR, Annual Report 1999, Report 50/99, Case 11.739 (Héctor Félix Miranda), Mexico, paragraph 52.

106. This inhibitory effect is especially serious inasmuch as it closes channels of access to public management. In this regard, the Commission has already stated its opinion in the sense that “the need for an open and wide-ranging debate, at the core of a democratic society, necessarily involves those persons who are involved in devising and implementing public policy (...)”.<sup>62</sup>

107. In the instant case, the Commission considers that by failing to duly investigate the homicide of Manoel de Oliveira, the Brazilian State allowed other journalists to feel that they must refrain from reporting information about corruption and irregularities committed by public officials.

108. The IACHR stresses that some of the statements given in cooperation with the police investigations, were never acted upon by Police Chief João Jacques Valois Coutinho, head of the police inquiry,<sup>63</sup> which was disastrous for those citizens willing to denounce arbitrary acts and matters of pressing public interest. Moreover, witness Pedro Roberto Santos Figueiredo was pressured and threatened after providing statements, which he had made of his own volition to the aforementioned official.<sup>64</sup>

109. Finally, as it has been demonstrated that the murder of Manoel de Oliveira was motivated by the publication of certain news stories and aimed to silence him, pursuant to Article 13 in relation to 1(1) of the Convention, the IACHR concludes that the Brazilian State violated the right to freedom of thought and expression to his detriment, by failing to fulfill its duty to investigate the aforementioned murder.

### **3. The Right to Due Process and Judicial Protection (Articles 8 and 25 in relation to Article 1.1 of the American Convention)**

110. Article 8 of the Convention provides that:

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

[...]

111. Article 25 of the Convention provides that:

1. 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.

[...]

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<sup>62</sup> IACHR, Third Report on the Human Rights Situation in Paraguay, Chapter IV, Report on Freedom of Expression in Paraguay. OEA/Ser./L/VII.110 doc. 52. March 9, 2001, paragraph 43.

<sup>63</sup> See paragraphs 129, 130 and 131 of this report.

<sup>64</sup> Idem.

112. Article 1(1) of the American Convention stipulates:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

113. According to the provisions of Article 1(1) of the American Convention, States Parties to the inter-American human rights system have the duty to investigate and punish those responsible for violations of human rights, and where appropriate, to make reparations to the victims or their next of kin. As the Inter-American Court has explained with reference to the foregoing conventional rules:

Under Article 25, in relation to Article 1.1 of the American Convention, the State has the duty to guarantee to every person the right to administration of justice and, principally, to simple and prompt recourse to ensure, among other measures, that those responsible for human rights violations are prosecuted and that reparations are made for the harm suffered. As this Court has affirmed, Article 25 "is one of the basic pillars, not only of the American Convention but of the very rule of law in a democratic society...."

This article is directly related with Article 8.1 of the American Convention, that embodies the right of all persons to a hearing, with due guarantees and within a reasonable time, by an independent and impartial judge or tribunal to determine his rights of any nature.

Consequently, the State has the duty to investigate human rights violations, prosecute those responsible, and avoid impunity. The Court has defined impunity as "the lack of investigation, prosecution, capture, trial, and conviction of those responsible for violations of the rights protected by the American Convention" and has affirmed that "States have the obligation to use all legal means at their disposal to combat that situation since impunity fosters chronic recidivism of human rights violations and total defenselessness of victims and their relatives."<sup>65</sup>

114. The obligation of States to investigate and punish human rights violations must be undertaken in a serious manner and not as a mere formality.<sup>66</sup> In this regard, the Inter-American Court has stated that when occurrences are not seriously investigated, they are aided, in a sense, by the government, thereby making the State responsible on an international plane.<sup>67</sup>

115. With respect to the obligation of States to investigate, the Inter-American Commission has also stated that:

The fact that no one has been convicted in the case or that, despite the efforts made, it was impossible to establish the facts, does not constitute a failure to fulfill the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive, serious and impartial investigation.<sup>68</sup>

116. It is important to note that, the jurisprudence of the Inter-American Court has established that when the State has the duty to investigate a violation of human rights, it must provide effective, prompt judicial remedies (art. 25) in accordance with the rules of due process of law (art. 8.1), all in

<sup>65</sup> Inter-American Court, "Mapiripán Massacre " Case, supra note 43, paragraph 111.

<sup>66</sup> Inter-American Court, Ximenes Lopes Case, supra note 43, paragraph 148, Baldeón García Case, supra note 4, paras. 92 and 93; Pueblo Bello Massacre Case, supra note 25, para. 143; and Mapiripán Massacre Case, supra note 21, paras. 219 and 223.

<sup>67</sup> Inter-American Court, Velásquez Rodríguez Case, supra note 13, paragraph 177.

<sup>68</sup> IACHR, Annual Report 1997, Report N° 55/97, Case N° 11.137 (Juan Carlos Abella et al), Argentina, paragraph 412. On this subject, see also IACHR, Annual Report 1997, Report N° 52/97, Case N° 11.218 (Arges Sequeira Mangas), Nicaragua, paragraphs 96 and 97.

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.<sup>69</sup>

117. Keeping in mind the aforementioned parameters, the IACHR now proceeds to summarize the flaws in the investigatory phase that had significant consequences for the criminal case brought five years after the crime and for the judgment of the accused, and concludes that the Brazilian State violated the right to due process and judicial protection to the detriment of the relatives of Mr. Manoel Leal de Oliveira. Likewise, the IACHR underscores the state of impunity that results from such circumstances.

### **3.a The police investigation into the murder of Manoel Leal de Oliveira was not conducted with due diligence**

118. According to the jurisprudence of the Inter-American Court, if an investigation into a human rights violation is to be effective in the terms of the Convention, all actions necessary to obtain the desired purpose must be carried out.<sup>70</sup> In the case *sub judice*, the State failed to take a number of steps necessary to bring to light the material and intellectual authors of the murder of Manoel Leal de Oliveira.

119. The crime scene was never sealed off for evidence collection.<sup>71</sup> One of the witnesses reported having to participate in an identification procedure using photographs, rather than in person and further stated that no public prosecutor was present at the time.<sup>72</sup> Police Chief Jacque Valois refuted this assertion in his statement in Criminal Case n. 65/2001. Later the same Police Chief retracted his remarks and confirmed that the identification had occurred as the witness described without the presence of the public prosecutor.<sup>73</sup>

120. A statement by an “A Região” newspaper official that he had alerted Manoel de Oliveira to an ambush that was being planned for him was never investigated.<sup>74</sup> Not all those who witnessed the homicide were questioned.<sup>75</sup> On the day of the crime, Manoel Leal de Oliveira received a telephone call that tipping him off to the planned murder. This event was never investigated by the police.<sup>76</sup>

121. The victim typically used pieces of paper to jot down information from telephone calls to be used in stories for his newspaper. Following the homicide, a piece of paper with the words “Roque X-9” was found in the journalist’s pocket. This piece of paper, and other objects that were found with the

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<sup>69</sup> Inter-American Court. *Moiwana Community Case*. Judgment of June 15, 2005. Series C No. 124, paragraph 142; Inter-American Court, *Case of the Serrano Cruz Sisters*, supra note 2, paragraph. 76; Inter-American Court, “*Mapiripán Massacre*” Case, supra note 43, paragraph 195.

<sup>70</sup> Inter-American Court, *Case of the Serrano Cruz Sisters*, supra note 2, paragraph 83.

<sup>71</sup> On this matter, it is relevant to cite Article 6 of the Brazilian Criminal Procedures Code:

Art. 6º Upon learning that a crime has been committed, the police authorities should:

II – take custody of any objects relating to the incident, once they have been handed over by forensic experts;

III – collect all evidence that might serve to clarify the incident and its circumstances;

(...)

VI – proceed with the identification and confrontation of individuals and objects;

(...)

<sup>72</sup> Criminal Case n. 65/2001, fl. 2031 – Statement of Sadraque Souza Reis.

<sup>73</sup> Statement of witness João Jacques Valois Coutinho – Criminal Case n. 65/2001, pp. 2044.

<sup>74</sup> Statement of José Freitas Oliveira, official of Gráfica Colorpress. Criminal Case n. 65/2001, p. 21.

<sup>75</sup> Statement of Juliano Soares Miranda – Criminal Case n. 65/2001, p. 60.

Statement of José Carlos Moura – Criminal Case n. 65/2001, 345/346.

<sup>76</sup> Statement of José Freitas Oliveira – Criminal Case n. 65/2001, p. 20 reverse side.

victim, were never analyzed by the civilian police during the investigation,<sup>77</sup> in violation of Brazilian criminal procedures law.<sup>78</sup>

122. The ballistics test comparing the projectiles found in the journalist's body and Monzar Castro Brasil's weapon led nowhere and was inconclusive as to whether the weapon in question belonged to the suspect or not.<sup>79</sup>

123. No municipal civil servant was called in to give a statement during the investigation, not even then Mayor Fernando Gomes, whom the victim's family had identified as a suspect in the crime because he was one of the individuals most criticized by "A Região" newspaper.<sup>80</sup> The Secretary of Government, Maria Alice Araújo Pereira, and the prefect, Fernando Gomes, asserted that they did not provide a statement because they had not been called upon to do so by Dr. Valois, the delegate in charge of the investigation at the time.<sup>81</sup>

124. On August 13, 1998, the civilian Police Chief of Itabuna forwarded to the Public Ministry the investigation report concluding that there was insufficient evidence concerning the authorship of the crime. The public prosecutor [*promotor de justiça*] of Itabuna, Dr. Ulisses Campos de Araújo, in turn, did not file a criminal suit or request that the investigation continue, and, on September 22, 1998, he decided that the file should be archived.<sup>82</sup> The same prosecutor was negligent in the sense that Police Chief Valois, the officer in charge of the police inquiry, had not called Police Chief Gilson Prata in to give a statement, even though the family of the journalist had identified him as a suspect because of the criticism directed at him in "A Região" newspaper. Two aides to Police Chief Gilson Prata were later accused of the crime, which demonstrates the negligence of the authorities conducting the inquiry in failing to take statements from persons about whom there was sufficient information to indicate that such an action was warranted.

125. Upon receiving the police inquiry, prosecutor Ulisses Campos de Araújo did not request that new evidence be gathered and held fast to his opinion that none of the individuals under investigation would be indicted, despite being aware that the main suspects had personal and professional ties to members of the civilian police.

126. On May 13, 1998, the Federal Police Chief of Ilhéus, Rubem Paulo de Carvalho Patury Filho, sent an official correspondence to civilian police delegate João Jacques C. Valois Coutinho suggesting that he pursue certain actions.<sup>83</sup> In this letter, the Federal Police delegate states:

It should be noted that we have become aware, through reports that require further investigation, that MOZART or ROQUE, used the money from the contract job (murder of MANOEL LEAL) to acquire a farm in Araçás/BA, and, that a few days before the crime they were found with three vehicles 01 (one) Corsa, 01 (one) Santana (Police license plate JHT – 1119) and one D-20 (police license plate HZF 8016) from Simão Dias/SE. It should be noted that on yesterday's date we received information that we should monitor the bank account assigned to MOZART COSTA BRASIL, (...) which could be investigated more effectively through the Central Bank, which will provide accurate information on deposits or securities deposited and the number of the current

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<sup>77</sup> Statement of Marcel de Oliveira – Criminal Case n. 65/2001, p.171.

<sup>78</sup> Vide supra note 71.

<sup>79</sup> Criminal Case n. 65/2001, pp. 164 and 296.

<sup>80</sup> 'A Região' newspaper, 09/04/2004. p. 04.

<sup>81</sup> Statements [Termo de Declaracoes] of Maria Alice Araújo Pereira – Criminal Case n. 65/2001, pp. 370/371.

Statements of Fernando Gomes – Criminal Case n. 65/2001, pp. 374/375.

<sup>82</sup> Criminal Case n. 65/2001, pp. 303 reverse side.

<sup>83</sup> Official note No 520/98-DIR/DPF.IL/BA of May 13, 1998.

account(s) of the aforementioned individual and whether they really match the income from his wages.<sup>84</sup>

127. The fact that official correspondence was sent by the federal police concerning a crime whose prosecution was not even under its jurisdiction indicates that the way in which the investigation was being handled by the civilian police in Bahia state was causing concern even among Brazilian authorities belonging to other security agencies.

128. Notwithstanding the information provided by the Federal Police, Police Chief João Jacques Valois Coutinho deemed the evidence inconsistent, did not move to enter an indictment, and, on August 13, 1998, sent the investigation to the Public Ministry to be archived.<sup>85</sup> Nonetheless, he claimed that he acted in accordance with consultations with the Head of the Police and the Secretary of Public Security.<sup>86</sup>

129. Moreover, the conclusion that it was impossible to indict any of the suspects was reached despite the fact that some witnesses<sup>87</sup> had confirmed the presence of two of them at the scene moments before the crime was committed.<sup>88</sup> Police Chief Jacques Valois originally denied the identification made by the witnesses but later, in a statement given in criminal case n. 65/2001, affirmed that he had experienced a memory lapse when questioned by the judge [*Juiz de Direito*] in charge of the case.<sup>89</sup>

130. Witness Pedro Roberto Santos Figueiredo, a former police agent, stated that Marcones Rodrigues Sarmento, one of the suspects who was later accused of the crime, was a friend of Mayor Fernando Gomes and municipal secretary Maria Alice, and that when he was imprisoned for a different crime, Maria Alice's husband visited him frequently. He asserted that he was afraid for his life and that of his family and that he had been warned by individuals from the city that he should not give testimony about the case. He underscored that, after he had given a statement to Police Chief Valois, the latter had not acted on it at all and instead had tried to harm him,<sup>90</sup> leading him to consider moving to another city. Despite fear of possible reprisals, Pedro Roberto Santos Figueiredo confirmed that the man he had seen in a Silverado truck near the journalist's home on the day of the crime was policeman Monzar Castro Brasil, whom he knew and who actually greeted him.<sup>91</sup> These statements, although obviously relevant to the clarification of the crime, were never followed up by Police Chief João Jacques Valois.

131. The same witness stated that he had described the circumstances of the murder to a female Police Chief. He recalls experiencing tremendous pressure at the station each time he gave a statement and that a civilian police officer advised him that Dr. Valois "was planning something against the witness."<sup>92</sup> In his statement, he affirmed that a message had been found in journalist Manoel Leal's pocket containing the alias of a person who planned to kill the journalist, and that the document was turned over to Police Chief Jacques Valois.<sup>93</sup>

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<sup>84</sup> Idem.

<sup>85</sup> Statement of witness João Jacques Valois Coutinho – Criminal Case n. 65/2001, pp. 2.043.

<sup>86</sup> 'A Região' newspaper, 03/30/1998. p. 04.

<sup>87</sup> Police Investigation Report – Criminal Case n. 65/2001, pp. 300/302.

<sup>88</sup> Statement of witness Sadraque Souza Reis – Criminal Case n. 65/2001, p. 2032;

Statement of witness Joelma dos Santos Alves – Criminal Case n. 65/2001, p. 2034.

Police Investigation, pp. 203/204.

<sup>89</sup> Statement of witness João Jacques Valois Coutinho – Criminal Case n. 65/2001, pp. 2043 and 2069.

Writ of Identification – Criminal Case n. 65/2001, pp. 203.

<sup>90</sup> Statements [Termo de Declarações] of Pedro Roberto Santos Figueiredo – Proc. Crime n. 65/2001, pp. 349/350.

<sup>91</sup> Statement of witness Pedro Roberto Santos Figueiredo – Criminal Case n. 65/2001, pp. 2037.

<sup>92</sup> Statements of Pedro Roberto Santos Figueiredo – Criminal Case n. 65/2001, 349/350.

<sup>93</sup> Statement of witness Pedro Roberto Santos Figueiredo – Criminal Case n. 65/2001, pp.649/650.

132. Following the reopening of the case in April 2000, Marcones Rodrigues Sarmiento, Monzar Castro Brasil, and Thomaz Iracy Moisés Guedes were indicted on September 17, 2001; the latter two are members of the civilian police. Only Monzar Castro Brasil was convicted of the homicide, while the others, Thomaz Iracy Moisés Guedes and Marcones Rodrigues Sarmiento were acquitted by a Jury Court in September 2003 and December 2005, respectively.

133. In light of the foregoing, the Commission considers that the State violated Article 8(1) of the American Convention by failing to conduct the police investigation into the murder of Manoel Leal de Oliveira with due diligence.

### **3.b The criminal proceeding was not concluded within a reasonable time period**

134. The organs of the inter-American system for the protection of human rights consider that the duty to investigate with due diligence includes the obligation to perform the necessary procedural actions within a reasonable time period.<sup>94</sup> Three basic criteria must be examined in determining the reasonableness of the time period in which the proceedings are carried out: a) the complexity of the matter, b) the procedural actions of the interested party, and c) the conduct of the legal authorities.<sup>95</sup>

135. The murder of Manoel Leal de Oliveira occurred on January 14, 1998 and the criminal case was presented on September 17, 2001. The Commission observes that the aforementioned crime did not present any major complexities of an evidentiary nature that would warrant a delay of three years and eight months to file the criminal case.

136. Regarding the procedural actions of the interested party, it is not relevant to the discussion since the criminal prosecution for the homicide of Manoel Leal de Oliveira was the official duty of the Brazilian State.<sup>96</sup>

137. Having examined the lack of due diligence in the conduct of the police investigation, the Commission concludes that the nearly four year delay between the homicide and the filing of the criminal case is attributable to the conduct of the police authorities responsible for carrying out the investigations. Moreover, it should be noted that over eight years after the commission of the crime, a final judgment has yet to be delivered in relation to the three individuals indicted by the Public Ministry. For the foregoing reasons, the Commission considers that the criminal proceeding was not concluded within a reasonable length of time in the terms of Article 8(1) of the Convention.

### **3.c The homicide of journalist Manoel Leal de Oliveira remains unpunished**

138. The jurisprudence of the inter-American system has often stated that the State's failure to investigate and punish those responsible for violations of the rights enshrined in the Convention is contrary to its duty to guarantee the full exercise of human rights by victims and their relatives.<sup>97</sup> It also undermines the right of society to know what happened.<sup>98</sup> The lack of investigation and impunity are

<sup>94</sup> Inter-American Court, Case of the Serrano Cruz Sisters. Judgment of March 1, 2005. Series C No. 120. Paragraph 65.

<sup>95</sup> Inter-American Court. *Moiwana Community Case*. Judgment of June 15, 2005. Series C No. 124. Paragraph 160. In this regard, see the European Court of Human Rights. *Wimmer v. Germany*, no. 60534/00, § 23, 24 May 2005; *Panchenko v. Russia*, no. 45100/98, § 129, 8 February 2005, and *Todorov v. Bulgaria*, no. 39832/98, § 45, 18 January 2005.

<sup>96</sup> Article 5(1) of the Brazilian Criminal Procedures Code stipulates that "in a crime prosecutable by law, the police investigation will be initiated as a matter of course."

<sup>97</sup> Inter-American Court, *Juan Humberto Sánchez Case*, Judgment of June 7, 2003. Series C, No 99, paragraph 134. See also IACHR, Resolution 1/03 on Trial for International Crimes, October 24, 2003, in IACHR, Annual Report of the Inter-American Commission on Human Rights 2003, December 29, 2002, Annex I.

<sup>98</sup> Inter-American Court, *Trujillo Oroza Case, Reparations*, (Art. 63.1 of the American Convention on Human Rights). Judgment of February 27, 2002. Series C, No 92, paragraphs 99-101 and 109; and *Bámaca Velásquez Case, Reparations*, (Art. 63.1 of the American Convention on Human Rights). Judgment of February 22, 2002. Series C, No 91, paragraphs 74-77.

particularly serious in cases of violations of the right to life, especially when they occur in the framework of a pattern of systematic violations of human rights, because they create a climate conducive to the chronic repetition of such practices.<sup>99</sup>

139. As stated, the Commission has verified a pattern of impunity and the repeated murders of journalists in the exercise of their profession in Bahia state.<sup>100</sup> Likewise it has confirmed a state of persistent impunity in Brazil for crimes in which the civilian or military police are the main suspects,<sup>101</sup> a situation fostered by lax investigations that make it impossible to duly identify and punish the perpetrators. If, on the one hand, the victim and his or her relatives are harmed by the failure to clarify the crime,<sup>102</sup> society is also trampled upon inasmuch as impunity perpetuates certain patterns of human rights violations.

140. In the instant case, the Commission stresses that the failure to ascertain all of the material and intellectual authors of the murder of Manoel Leal de Oliveira was the result of a spurious criminal investigation marred by a number of irregularities. For the Commission and the Court, the simple fact that those responsible for human rights violations were not identified through a diligent investigation and ultimately punished through actions taken in a duly substantiated legal proceeding, suffices to conclude that the State violated Article 1(1) of the American Convention.<sup>103</sup>

141. Finally, in light of the foregoing, the Commission concludes that the State failed to fulfill its obligation to investigate effectively and adequately the homicide committed against Manoel Leal de Oliveira and its obligation to conclude the legal proceeding within a reasonable length of time, in violation of Article 8(1) in relation to Article 1(1) of the American Convention. Moreover, it violated the right to an effective recourse that would punish the perpetrators of the crime in violation of Article 25 of the Convention, also in conjunction with Article 1(1), all to the detriment of the next of kin of journalist Manoel Leal de Oliveira.

#### **4. Federal clause and the duty to respect and guarantee the rights and freedoms set forth in the American Convention (Article 28 in relation to Article 1.1 of the Convention)**

142. In the instant case, the aforementioned violations to the detriment of Manoel Leal de Oliveira and his next of kin stem from the actions and omissions of public agents and institutions of a federated entity (Bahia state) of the Federative Republic of Brazil. In this regard, the Commission calls attention to Brazil's obligation to adopt all the provisions necessary for the fulfillment of the American Convention in all units of its territory and its structures of authority, in accordance with Article 28 of this treaty and general principles of international law.

143. In view of the foregoing, as a general principle of international law, the international responsibility of a State is engaged by the actions of the competent organs and authorities in that State in violation of international obligations.<sup>104</sup>

<sup>99</sup> Inter-American Court. Case of the Gómez Paquiyauri Brothers vs. Peru, Judgment of July 8, 2004. Series C, No 110, paragraph 132; Myrna Mack Chang Case, Judgment of November 25, 2003. Series C, No 101, paragraph 156.

<sup>100</sup> See paragraphs 45 - 50 of this report.

<sup>101</sup> See paragraph 50 of this report.

<sup>102</sup> In this regard, the IACHR has already said that States have the duty to provide relatives of victims, and society as a whole, information on the circumstances surrounding grave violations of human rights and the identity of those who participated in them. IACHR, Annual Report 1998, Report 1/99, Case 10.480 (Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, José Catalino Meléndez, and Carlos Antonio Martínez Romero), para. 148.

<sup>103</sup> Inter-American Court, Villagrán Morales et al Case (Street children Case). Judgment of November 19, 1999. Series C, nº 63; paragraph 228.

<sup>104</sup> Permanent Court of International Justice, Wimbledon Case. Judgment of August 17, 1923, Series A, Nº 1; International Court of Justice, LaGrand Case (Germany v. United States). Judgment of June 27, 2001. General List Nº 104 and the Case of Avena and other Mexican Nationals (Mexico v. United States of America). Judgment of March 31, 2004. General List Nº 128. See also NGUYEN, Quoc Dinh; DAILLIER, Patrick; PELLET, Alain. Public International Law. 5. ed. Paris: L.G.D.J., 1994, p. 737.

144. In the sphere of the inter-American human rights protection system, Article 28 of the Convention stipulates that:

1. Where a State Party is constitute as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.
2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.

145. This provision, in conjunction with Article 1(1) of the Convention, means that States have the duty to take suitable measures in accordance with their constitution and laws to the end that the competent organs, authorities, and structures of the constituent units respect and guarantee the full exercise of the rights embodied in the Convention.<sup>105</sup>

146. The Inter-American Court considers that State signatories of the American Convention may not hide behind the argument that the author of a violation of a right enshrined in this instrument is a federated entity or a province.<sup>106</sup> It is the understanding of the Cour that the international provisions for the protection of human rights adopted by the American States must be respected by them regardless of whether theirs is a federal or unitary structure.<sup>107</sup>

147. The Commission has also pronounced on the content of Article 28 of the American Convention.<sup>108</sup> In the case of Newton Coutinho Mendes, with respect to Brazil, the IACHR has underscored the international responsibility of the State for the exercise of the human rights recognized in the Convention throughout its territory, which extends to the actions and omissions of agents of the State within the jurisdiction of any federated entity.<sup>109</sup> With reference to bringing the federal structure of the Brazilian State into harmony with its duties stemming from the American Convention, the IACHR has stated that:

The so-called “federative principle” whereby the individual States enjoy autonomous status has been used as explanation given in many instances preventing investigation and the determination of those responsible for the violations—frequently serious ones—of human rights, and it has helped to accentuate the impunity accorded to the perpetrators of such violations.<sup>110</sup>

148. In the instant case it should be noted that a Chief of the Federal Police sent a communication containing elements that could have aided the investigation into the murder of Manoel de Oliveira conducted by the civilian police of Bahia state, under the terms set forth in the Brazilian Constitution. This discreet and extra-official involvement of the federal authorities, as well as the express refusal of the Ministry of Justice to intervene in the investigations by arguing lack of jurisdiction,<sup>111</sup> illustrates the difficulty of the Brazilian State in complying with the measures set forth in Article 28 in relation to Article 1(1) of the Convention.

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<sup>105</sup> IACHR, Report on the Situation of Human Rights in Brazil, supra note 14, Chapter 1, paragraph 6.

<sup>106</sup> Inter-American Court, Garrido and Baigorria vs. Argentina Case. Reparations. Judgment of August 27, 1998. Series C No. 39, § 27.

<sup>107</sup> Inter-American Court, The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No 16, paragraph 140.

<sup>108</sup> IACHR, Annual Report 1991. Report No 8/91. Case 10.180, Mexico, paragraph 41 and Annual Report 1993. Report No 14/93. Case 10.956, Mexico.

<sup>109</sup> IACHR, Annual Report 1999. Report No 59/99. Case 11.405 (Newton Coutinho Mendes et al). Brazil, paragraph 117.

<sup>110</sup> IACHR, Report on the Situation of Human Rights in Brazil, Chapter 1, paragraph 5.

<sup>111</sup> See paragraphs 69 and 126 of this report.

149. The Commission deems it important to mention the Brazilian government's efforts to adopt legislative measures to comply with the provisions of the aforementioned conventional provision. In this regard, it refers to the provisions of Article 109, paragraph 5 of the Federal Constitution, included by way of Constitutional Amendment No 45/04 of December 30, 2004. This paragraph empowers the Attorney General of the Republic to initiate the transfer to the Federal Justice system of an investigation or criminal case "for the purpose of ensuring compliance with the obligations derived from the international human rights treaties to which Brazil is party."

150. Lastly, although it falls to the Federal States themselves to choose the appropriate legislative, judicial, and administrative measures to implement the obligations set forth in the Convention in its territorial units, and despite its recognition of the efforts of the Brazilian government in this regard, the Commission observes that in the instant case, Brazil did not take all of the necessary measures to guarantee and respect the rights to life, freedom of thought and expression, due process guarantees, and judicial protection in favor of Manoel Leal de Oliveira and his family members. Therefore, it considers that while the actions giving rise to those violations may have been committed by agents and units of a federated entity, the international responsibility for them lies with the Federative Republic of Brazil,<sup>112</sup> as does the obligation to make the respective reparations.

##### **5. Obligation to make reparation, including indemnity**

151. Taking into account that in the instant case the victim's next of kin were never compensated, the Commission stresses that the Brazilian State has such an obligation since, although the courts have not punished all those responsible for the murder of Manoel de Oliveira, it has been shown that State agents were involved in the crime.

152. Apart from the obligation to investigate and punish any human rights violation committed by its agents, the State also has the obligation to make reparation to the victims of those violations or their next of kin, depending on the situation. In this regard, "a rule of customary law which, moreover, is one of the fundamental principles of current international law and a responsibility of the States" is that stating "when a wrongful act occurs that is imputable to the State, the latter incurs international responsibility for violation of an international rule, and thus incurs a duty to make reparation."<sup>113</sup>

153. With respect to the concept of reparation, the Inter-American Court has explained that

Reparation is a generic term that covers the various ways a state may make amends for the international responsibility it has incurred. The specific method of reparation varies according to the damage caused; it may be *restitutio in integrum* of the violated rights, medical treatment to restore the injured person to physical health, an obligation on the part of the State to nullify certain administrative measures, restoration of the good name or honor that were stolen, payment of an indemnity, and so on. When the right to life is violated, as it was in the instant case, given the nature of the right violated, the reparation is primarily in the form of some pecuniary compensation, as has been the practice of this Court (...). The reparation may also be in the form of measures intended to prevent a recurrence of the offending acts.<sup>114</sup>

154. The Inter-American Court has stated that the indemnities "are compensatory in nature and hence are to be awarded to the degree and in the measure sufficient to compensate for the material and moral damages suffered,"<sup>115</sup> and has indicated, in addition, that the reparation consists of:

<sup>112</sup> IACHR, Annual Report 2001. Report No 35/01, Case 11.634, Jailton Néri da Fonseca, Brazil, February 22, 2001, paragraph 13, and Annual Report 2000. Report No 10/0, Case 11.599, Marcos Aurélio de Oliveira, Brazil, paragraph 21.

<sup>113</sup> Inter-American Court, Castillo Páez Case – Reparations, Judgment of November 27, 1998, Series C No 43, paragraph 50.

<sup>114</sup> Inter-American Court, Garrido and Baigorria Case – Reparations, Judgment of August 27, 1998, Series C No 39, paragraph 41.

<sup>115</sup> *Idem*, paragraph 47.

The measures that are intended to wipe out the effects of the violation. Their quality and amount will depend upon the damage caused at both the material and moral levels. Reparation is not to imply either enrichment or impoverishment for the victim or his heirs.<sup>116</sup>

155. As the International Court of Justice has stated, reparations are an essential complement to the breach of a convention and it is not necessary that they be stipulated in the convention itself.<sup>117</sup> The American Convention provides for reparations in its Articles 1(1) and 63(1). According to Article 1(1), the obligation of States to ensure to all persons subject to their jurisdiction the free and full exercise of the rights and freedoms recognized in the Convention entails their obligation to “prevent, investigate, and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.”<sup>118</sup>

156. According to international law, the duty of the State to make reparations for the human rights violations committed by its agents rests with it, and not with its agents, regardless of the provisions of its domestic law. In this regard, it should be noted that, according to Article 27 of the Vienna Convention on the Law of Treaties, “a party may not invoke the provisions of its internal law as justification for the failure to perform its treaty obligations.” In this regard, the IACHR has stated that:

States’ international obligation to compensate victims of human rights violations committed by their agents is therefore one of its direct, main responsibilities, i.e., it is a direct responsibility of the State and does not require that victims first take personal action against those agents, regardless of the content of domestic provisions on the matter.<sup>119</sup>

157. In this regard, the Commission considers that the impunity for the murder of Manoel Leal de Oliveira does not release the Brazilian State from its obligation to make reparations to the victim’s next of kin in view of the flaws in the investigation and the failure to punish the material and intellectual authors of the crime. The Commission likewise concludes that Brazil has the obligation to make reparations to the family of Manoel Leal de Oliveira for violations of his right to life and freedom of expression committed by agents of the Brazilian State. Such reparation includes establishing an indemnity to be paid by the Brazilian State, to be calculated based on international parameters and in an amount sufficient to compensate the material and moral damages suffered by the family of journalist Manoel Leal de Oliveira, regardless of the outcomes of the respective criminal investigation.

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<sup>116</sup> Inter-Am Ct HR, Castillo Páez Case, Reparations, op. cit, para. 53. The International Court of Justice, Case of *Chorzów Factory*, which refers to the basic principles of international law on reparations for violations of international obligations. It stated as follows in this respect: “The fundamental principle underlying the current concept of an illegal act—a principle that appears to be established by international practice, and especially by decisions of courts of arbitration—is that reparations should, inasmuch as possible, erase all the consequences of an illicit act and reinstate the prior situation that would most likely still exist if the act had not been committed. Restitution should be in kind or, if that is impossible, it should be effected by payment of an amount corresponding to the value of the thing. When indemnification is necessary, it shall be for losses not covered by restitution of the thing in kind, or by payment of its value. These are the principles that should determine the amount of the compensation owed for a violation of international law.” *P.C.I.J. Collection of Judgments, Series A, No. 17, Page. 47.*

<sup>117</sup> See, for example, *Factory at Chorzów Case, Jurisdiction, Judgment N° 8, 1927, Series A, N° 9, p. 21* [unofficial translation]

<sup>118</sup> Inter-American Court, Velásquez Rodríguez Case, supra note 13, paragraph 166.

<sup>119</sup> IACHR, Report N° 83/01, Petition 11.581, Zulema Tarazona Arriate, Norma Teresa Pérez Chávez and Luis Alberto Bejarano Laura (Peru), paragraph 27.

## VII. CONCLUSIONS

158. Based on the foregoing analysis, the Commission concludes that the Brazilian State is responsible for the violation of the rights to life, freedom of expression, due process guarantees, and judicial protection enshrined, respectively, in Articles 4, 13, 8, and 25 of the American Convention to the detriment of Manoel Leal de Oliveira and his family members.

## VIII. RECOMMENDATIONS

159. Based on the analysis and conclusions contained herein, the Inter-American Commission on Human Rights recommends that the Brazilian State:

1. Recognize its international responsibility for the violations of human rights established in this report by the Inter-American Commission,

2. Conduct a thorough, impartial, and effective investigation into the events, so as to identify and punish all of the material and intellectual authors of the murder of Manoel Leal de Oliveira,

3. Conduct a thorough, impartial, and effective investigation into the irregularities that occurred throughout the police investigation of the homicide of Manoel Leal de Oliveira, including actions to impede the identification of its material and intellectual authors,

4. Make reparations to the family of Manoel Leal de Oliveira for the damages suffered. Such reparation should be calculated in keeping with international parameters, and must be in an amount sufficient to compensate the material and moral damages suffered by the victim's family members,

5. Take steps to restore the historical memory of Manoel Leal de Oliveira and other journalists murdered in Bahia state in the 1990s, as mentioned in paragraph 46 *supra*, taking account of the conclusions regarding the international responsibility of the State of Brazil established herein,

6. Adopt, on a priority basis, a global policy of protecting the work of journalists and centralize, as a matter of public policy, efforts to combat impunity for the murders, attacks, and threats perpetrated against journalists, through exhaustive and independent investigations of such occurrences and the punishment of their material and intellectual authors.

## IX. ACTIONS SUBSEQUENT TO THE ISSUING OF REPORT N° 72/06

160. On October 17, 2006, at its 126<sup>th</sup> regular period of sessions, the IACHR adopted Report N° 72/06, under Article 50 of the American Convention. On November 16, 2006, the Commission notified the State of the adoption of such report and set a period of two months for it to comment on compliance with the recommendations contained therein.

161. On November 17, 2006, the Commission notified the petitioners that the report had been adopted and had been forwarded to the State, and asked them to indicate their position regarding referral of the case to the Inter-American Court and to provide information on the victim's family members. In addition, on December 4, 2006, the Commission forwarded to them on a confidential basis certain considerations set forth in the adopted report.

162. In notes of December 21, 2006 and January 11, 2007, the petitioners requested an extension so that they could give careful consideration to their position regarding referral of the case to the Inter-American Court of Human Rights and also requested that a proposal be made to the State to create a discussion forum regarding the implementation of the recommendations of the Commission. On January 11, 2007, the Commission granted the request for an extension and the relevant information was forwarded to the State. However, thus far, the petitioners have not indicated their position regarding possible referral of the case to the Court, nor have they forwarded the information requested regarding the victim's family members.

163. On January 16, 2007, the State in turn requested an initial six-month extension of the period stipulated in Article 51(1) of the Convention, for the purpose of complying with the recommendations made by the Commission in the report on the merits adopted in the instant case. Said request was based on the renovation in the 2006 elections of nearly all state authorities, which, according to the State, made it difficult to comply fully with the recommendations of Report N° 72/06. On January 30, 2007, the Commission granted the extension, which expired on July 30, 2007.

164. On August 9, 2007, the State requested a second six-month extension in order to comply with the recommendations, indicating that “exceptional circumstances, imposed by the change of players in Bahia state, meant that a longer period was warranted so that progress could be made with the understandings necessary to comply with the recommendations.” It also indicated that in August 2007, a meeting would be held among federal and state governmental representatives to follow up on actions taken in compliance with the said recommendations. Lastly, the State expressly waived the right to make preliminary objections before the Inter-American Court regarding the period stipulated in Article 51(1) of the American Convention.

165. On August 14, 2007, the Commission granted the six-month extension requested by the State, clarifying that the period stipulated in Article 51(1) of the American Convention would be suspended. On December 14, 2007 and January 14, 2008, the IACHR also requested the State to submit preliminary compliance reports.

166. On August 21, 2007, the petitioners submitted a communication requesting the Commission to inform them of the advantages and implications for the case if it were referred to the Inter-American Court, without attaching the information requested by the Commission in November 2006 (*supra* paragraph 161).

167. On September 11, 2007, the Commission decided to convene the parties in the instant case to a working meeting at its 130th regular period of sessions. Said meeting was held on October 11, 2007. At that working meeting, agents of the State reported the intent of Bahia state to comply with the recommendations established in Report N° 72/06 and on the measures that had been adopted to comply with said recommendations. The State also indicated that, within one month, i.e., November 11, 2007, state governmental authorities would hold a meeting to establish targets for compliance with the recommendations.

168. On December 18, 2007, the State submitted a preliminary report on compliance with the recommendations in the Manoel Leal de Oliveira Case in which it reported the decisions adopted at the working meeting held on November 27, 2007, in Bahia state. Said meeting was attended by representatives of the Special Secretariat on Human Rights of the Office of the President of the Republic, the Ministry of Foreign Affairs, the Bahian Press Association, the Court of Justice of Bahia state, and the Office of the Attorney General, as well as the state Secretaries of Justice and Human Rights, and of Public Security.

169. On January 15, 2008, the State submitted information on compliance with the recommendations, indicating that another working meeting would be held in two weeks among federal and state governmental officials, i.e., January 29, 2008. According to this communication, since the petitioners were unable to attend said meeting, another meeting would be held in February 2008, so that the petitioners could help to ensure that the IACHR’s recommendations were implemented in the best manner possible. On January 18, 2008, the Commission forwarded copies of the latter two communications from the State to the petitioners for them to submit their observations within ten days. Thus far, no information whatsoever has been forwarded.

170. On February 12, 2008, the Commission notified the parties of its decision not to refer this case to the Inter-American Court of Human Rights. The IACHR also requested the State to report, within a period of six months, i.e., August 13, 2008, on measures adopted to comply with the recommendations and resolve the situation described in Report N° 72/06. The Brazilian State reported on its compliance

with the recommendations by means of a communication sent to the IACHR on August 13, 2008. The annexes of such communication were later received by the Commission on September 9, 2008.

171. The report approved pursuant to Article 51(1) of the American Convention, which is in the preceding paragraphs, was transmitted to both parties on December 17, 2008 and a one-month deadline was set for the State to report on the measures adopted to comply with the above recommendations.

## **X. COMPLIANCE WITH THE RECOMMENDATIONS**

172. The petitioners presented only one communication, dated April 7, 2009, regarding compliance with the recommendations of Report No. 72/06. For its part, the State sent communications in that regard on December 18, 2007; January 15 2008; August 13, 2008; September 9, 2008; February 20, 2009; March 3, 2009; June 17, 2009; and November 30, 2009. All of these communications were forwarded to the petitioners.

173. With respect to reparations to the family of Manoel Leal de Oliveira, the petitioners express their satisfaction with the agreement reached with his family, but clarify that their policy is to "abstain from negotiating the value to be agreed upon". As to the investigation into the murder of the journalist, the petitioners note the conviction of former policeman Brasil and the absolution of Messrs. Sarmiento and Guedes; with respect to the convicted person, they consider that the benefits he is receiving in prison weaken the exemplary nature of justice, especially since this is a crime committed by a civil servant. Regarding the intellectual responsibility, the petitioners understand the difficulties that the State highlighted, but they point out that the murder of Mr. Leal de Oliveira will not be solved until the intellectual authors are punished. With respect to the position of the State regarding the investigation of irregularities in the case opened for the murder of the journalist, the petitioners insist on "the need to carry out a comprehensive and independent investigation to allow more transparency with respect to the official investigations".

174. The petitioners also recognize the efforts of the State to guarantee the exercise of journalism, and they suggest additional measures that could be put in place, such as those laid out in the Hemispheric Conference on the Judiciary Branch, Press and Impunity, which took place in July 2007. As to restoring of the memory of the journalist, the petitioners accept the proposal of carrying out a public ceremony on a date close to World Press Freedom Day, so as to highlight the image of Manoel Leal de Oliveira as a journalist, and that on such occasion a symbolic reparation be given to his family members.

175. As regards recommendation No. 2, the State informs that Monzar Costa Brasil was convicted to 18 years in prison and that he was deprived of liberty in the *Corregedoria da Polícia Civil* awaiting the decision of an appeal. It further informs that Marcone Sarmiento, another person accused in the case, was absolved by a jury and that the Office of the Public Prosecutor appealed that decision; and that said recourse is still pending. With respect to the investigation of some alleged intellectual author, the State explains that it is difficult to advance, since the material authors did not reveal the existence or name of such person; however, it clarifies that at any moment a new criminal action could be initiated if any person presented new information.

176. Regarding recommendation No. 3, according to the information given by the Head of Civilian Police of Bahia, the *Corregedoria da Polícia Civil* is carrying out an investigation into possible failures in the police investigation opened with respect to the death of the victim.

177. With respect to recommendation No. 4, the State informs that a meeting took place on November 25, 2008 between the authorities of Bahia and the family of the journalist. The state indicates that present in the meeting was Marcel Leal, son of the journalist, who agreed to the payment of an indemnification of R\$ 100.000 (one hundred thousand *reais*) to be divided in equal parts between the four relatives of Mr. Leal de Oliveira. In its most recent communication, the State informs that the government of Bahia issued draft law 18.261 of 2009 by which the government is authorized to grant the above mentioned indemnification.

178. As to recommendation No. 5, the State indicates that on September 21, 2009 it carried out a public ceremony, which was widely disseminated, in the city of Salvador, Bahia, dedicated to the recovery of the historic memory of Mr. Leal de Oliveira and of all the other journalists murdered during the decade of the 90s. The State indicates that present at the event were the relatives of Manoel Leal de Oliveira, the Governor and other state authorities, a representative of the Special Secretariat for human Rights of the Presidency of the Republic, some 150 journalists from all over the country, and a representative of the petitioners. The State finally informed that in the same ceremony Marcel Leal received a commemorative plate, and that he delivered a message dedicated to the memory of his father.

179. Regarding recommendation No. 6, the State informs that the suggested legislative reform to increase the penalties for crimes against journalists were analyzed, and that it was concluded that this would not be the most effective form of protection. The proposal of a specialized police unit was also rejected, since it was considered that the number of crimes against journalists was not enough to warrant such a measure. However, the representatives of the office of the Public prosecutor, the Judiciary Branch, and the Public Security Secretariat of the state of Bahia agreed that the intelligence units of the police should act in those cases where there was a threat to the right to freedom of expression. The State also pointed out that the Federal Constitution protects journalism at Article 220, and that with respect to homicides, aggressions and threats against any person the Criminal Code establishes the punishment for the authors of such crimes at Articles 121, 129 and 147. The State also indicates that on May 3, 2006 the President of the Republic signed the Chapultepec Declaration on freedom of expression<sup>120</sup>.

180. Finally, the State explained that the government of Bahia was in the final phase of preparation of a draft law for the compliance of recommendations in the case of Manoel Leal de Oliveira, and it reiterated its commitment to the IACHR and the inter-American system of human rights.

## **XI. FINAL CONCLUSIONS**

181. Based on the foregoing analysis, the Commission reiterates that the State of Brazil is responsible for the violation of the rights guaranteed by Articles 4 (right to life), 13 (right to freedom of thought and expression), 8 (right to due process), and 25 (right to judicial protection) of the American Convention, in conjunction with Article 1(1) of that treaty, to the detriment of Manoel Leal de Oliveira and his family members.

182. With respect to the first recommendation, the IACHR appreciates the Brazilian State's favorable predisposition, but it notes that the record of the case does not include information on a specific recognition of international responsibility by the Brazilian State for the human rights violations established in this case. On the other hand, in the opinion of the Inter-American Commission, the public ceremony by the authorities of Bahia on September 21, 2009, and other activities related to it constitute compliance with the fifth recommendation regarding the recovery of the historical memory of Mr. Leal de Oliveira and of the other journalists murdered in en Bahía during the decade of the 90s.

183. As to the other recommendations, the Inter-American Commission observes that the State has adopted several measures to facilitate compliance, specifically with respect to the indemnification for the family members, which is advancing at the state level. However, more than 10 years have elapsed since the murder of Manoel Leal de Oliveira, and the State has not completed a diligent investigation to identify, process and try those responsible for the above mentioned crime. To date there is no final decision in the criminal proceedings against Monzar Costa Brasil, and all the other perpetrators of the crime remain free.

184. On the basis of the preceding factual and legal conclusions, the IACHR considers that the State has not completed compliance with the recommendations set forth in Report 72/06.

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<sup>120</sup> This declaration was approved in 1994, under the coordination of the IAPA. According to the Brazilian State, the signature by the President of that country represents the support and commitment of the Government with freedom of expression and of the press.

Accordingly, the IACHR decides to reiterate to the State the recommendations in paragraph 159, numerals 1, 2, 3, 4 and 6.

1. Recognize its international responsibility for the violations of human rights established in this report by the Inter-American Commission;
2. Conduct a thorough, impartial, and effective investigation into the events, so as to identify and punish all of the material and intellectual authors of the murder of Manoel Leal de Oliveira;
3. Conduct a thorough, impartial, and effective investigation into the irregularities that occurred throughout the police investigation of the homicide of Manoel Leal de Oliveira, including actions to impede the identification of its material and intellectual authors;
4. Make reparations to the family of Manoel Leal de Oliveira for the damages suffered. Such reparation should be calculated in keeping with international parameters, and must be in an amount sufficient to compensate the material and moral damages suffered by the victim's family members;
6. Adopt, on a priority basis, a global policy of protecting the work of journalists and centralize, as a matter of public policy, efforts to combat impunity for the murders, attacks, and threats perpetrated against journalists, through exhaustive and independent investigations of such occurrences and the punishment of their material and intellectual authors.

## **XII. PUBLICATION**

185. The Inter-American Commission considers that the Brazilian State has shown goodwill and important initiatives toward compliance with the recommendations, especially as indemnification and moral reparations. However, most of the information on the investigations presented by the State after the merits report was issued is a reiteration of its observations during the processing of the case. Ultimately, the information received from both parties since the report approved pursuant to article 51(2) of the American Convention shows that compliance with four of the six recommendations is still pending.

186. In light of the preceding considerations, and pursuant to Article 51(3) of the American Convention, the IACHR decides to reiterate the recommendations in paragraph 159 *supra* and to make this report public; and to include it in its Annual Report to the OAS General Assembly. The Inter-American Commission, in complying with its mandate, shall continue evaluating the measures adopted by the Brazilian State until the recommendations in paragraph 159, numerals 1, 2, 3, 4 and 6 of this report have been completely complied with.

Done and signed in Washington, D.C., on March 17<sup>th</sup>, 2010. (Signed Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).