

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF BARBOSA DE SOUZA ET AL. V. BRAZIL**

**JUDGMENT OF SEPTEMBER 7, 2021**  
***(Preliminary objections, merits, reparations and costs)***

In the case of *Barbosa de Souza et al. v. Brazil*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges: \*

Elizabeth Odio Benito, President;  
L. Patricio Pazmiño Freire, Vice President;  
Humberto Antonio Sierra Porto, Judge;  
Eduardo Ferrer Mac-Gregor Poisot, Judge;  
Eugenio Raúl Zaffaroni, Judge, and  
Ricardo Pérez Manrique, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and  
Romina I. Sijniensky, Deputy Secretary,

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and with Articles 31, 32, 42, 65 and 67 of the Court's Rules of Procedure (hereinafter "the Rules" or "the Rules of the Court"), delivers this judgment which is structured as follows:

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\* Judge Eduardo Vio Grossi did not participate in the deliberation and signing of this judgment, for reasons of force majeure.

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**I**  
**INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE**

1. *The case submitted to the Court.* On July 11, 2019, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court, in accordance with Articles 51 and 61 of the American Convention, the case of "Márcia Barbosa de Souza and her family concerning the Federative Republic of Brazil" (hereinafter "the State", "the State of Brazil" or "Brazil"). According to the Commission, the dispute relates to the alleged situation of impunity surrounding the death of Márcia Barbosa de Souza, in June 1998, at the hands of the then state deputy, Mr. Aécio Pereira de Lima. The Commission concluded that: i) "parliamentary immunity as defined in the domestic regulations" resulted in a discriminatory delay in the criminal proceedings, ii) "the fact that the investigation and [the] criminal trial for the death of Márcia Barbosa de Souza took more than nine years violated the guarantee of reasonable time and constituted a denial of justice" iii) "the evidentiary deficiencies were not resolved, nor were all the lines of investigation exhausted, a situation that was incompatible with the duty to investigate with due diligence" and iv) the murder of Márcia Barbosa de Souza, as a consequence of an act of violence, together with the failings and delays in the investigations and the criminal proceedings, affected the mental integrity of her next of kin.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

- a. *Petition.* On March 28, 2000, the Center for Justice and International Law (CEJIL), the *Movimento Nacional de Direitos Humanos* (MNDH) /*Regional Nordeste* and the *Gabinete de Assessoria Jurídica às Organizações Populares* (GAJOP) filed the initial application on behalf of the alleged victims.
- b. *Admissibility Report.* On July 26, 2007, the Commission adopted Admissibility Report No. 38/07 (hereinafter the "Admissibility Report" or "Report No. 38/07"), in which it concluded that the initial petition was admissible.
- c. *Merits Report.* On February 12, 2019, the Commission issued Merits Report No. 10/19 (hereinafter "Merits Report" or "Report No. 10/19"), pursuant to Article 50 of the Convention, in which it reached a series of conclusions<sup>1</sup> and made various recommendations to the State.
- d. *Notification to the State.* On April 11, 2019, the Merits Report was notified to the State, which was granted two months to report on its compliance with the recommendations. The State submitted a report in which it expressed its willingness to comply with the recommendations, but did not present a specific proposal in this regard. Furthermore, it did not request an extension.

3. *Submission to the Court.* On July 11, 2019, the Commission submitted to the jurisdiction of the Inter-American Court all the facts and alleged human rights violations described in the

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<sup>1</sup> The Commission concluded that the State is responsible for the violation of the rights to personal integrity, judicial guarantees, equality and non-discrimination and judicial protection, established in Articles 5(1), 8(1), 24 and 25(1) of the American Convention, in relation to the right to life (Article 4 of the Convention) and the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of M.B.S. and S.R.S., mother and father of Márcia Barbosa de Souza. The Commission also concluded that Brazil violated Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter "Convention of Belém do Pará") in respect of Márcia Barbosa de Souza.

Merits Report “given the need to obtain justice and reparation for the [alleged] victims.”<sup>2</sup>

4. *Requests of the Inter-American Commission.* Based on the foregoing, the Commission asked the Court to conclude and declare the State’s international responsibility for the violations established in its Merits Report (*supra* para. 2c) and to order the measures of reparation described and analyzed in Chapter IX of this judgment. The Court notes with concern that, between the presentation of the initial petition before the Commission and the submission of the case before this Court, more than 21 years have elapsed.

## II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representatives.* The submission of the case by the Commission was notified by the Court to the State and to the representatives of the alleged victims<sup>3</sup> (hereinafter “the representatives”) on August 14, 2019.

6. *Brief of pleadings, motions and evidence.* On October 21, 2019, the *Gabinete de Assessoria às Organizações Populares* (GAJOP) and the Center for Justice and International Law (CEJIL) presented their brief of pleadings, motions and evidence (hereinafter “pleadings and motions brief”) before the Court, pursuant to Articles 25 and 40 of the Court’s Rules of Procedure. The representatives agreed substantially with the arguments of the Commission and requested that the Court declare the violation of Articles 8 and 25 of the Convention, in relation to Articles 1(1) and 2 of the same instrument, and of Article 7 of the Convention of Belém do Pará, to the detriment of M.B.S, S.R.S. and Mt.B.S, mother, father and sister, respectively, of Mrs. Barbosa de Souza. They also alleged that the State violated Article 5 of the Convention, in relation to Article 1(1) of the same instrument, to the detriment of M.B.S, S.R.S. and Mt.B.S. Likewise, they asked the Court to order measures of non-repetition and to require the State to provide adequate reparation to the alleged victims. Through their representatives, the alleged victims also requested access to the Victim’s Legal Assistance Fund of the Inter-American Court (hereinafter “Assistance Fund of the Court” or the “Fund”).

7. *Answering brief.* On February 17, 2020, the State<sup>4</sup> presented before the Court its answering brief to the submission of the case, to the Merits Report of the Inter-American Commission and to the pleadings and motions brief of the representatives (hereinafter

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<sup>2</sup> The Commission designated Commissioner Antonia Urrejola Noguera and then Executive Secretary Paulo Abrão as its delegates. It also appointed Silvia Serrano Guzmán and Henrique Napoleão Alves, lawyers of the IACHR’s Executive Secretariat, as its legal advisers.

<sup>3</sup> The representatives of the alleged victims are the *Gabinete de Assessoria às Organizações Populares* (GAJOP) and the Center for Justice and International Law (CEJIL).

<sup>4</sup> On January 13, 2021, the State submitted to the Inter-American Court an updated list of its designated agents in the present case: Ambassador Antônio Francisco Da Costa and Silva Neto, Brazil’s ambassador in San José and agent of the State; Minister João Lucas Quental Novaes de Almeida, Director of the Department of Human Rights and Citizenship; Minister Marcelo Ramos Araújo, Head of the Human Rights Division; Secretary Ricardo Edgard Rolf Lima Bernhard, Deputy Head of the Human Rights Division; Secretary Daniel Leão Sousa, adviser of the Human Rights Division; Secretary Débora Antônia Lobato Cândido, adviser of the Human Rights Division; Secretary Lucas dos Santos Furquim Ribeiro, Human Rights Unit of the Embassy of Brazil in San Jose; Tony Teixeira de Lima, lawyer of La Unión; Dickson Argenta de Souza, lawyer of La Unión; Taiz Marrão Batista da Costa, lawyer of La Unión; Beatriz Figueiredo Campos da Nóbrega, lawyer of La Unión; Andrea Vergara da Silva, lawyer of La Unión; Milton Nunes Toledo Juner, Head of the Special Counsel for International Affairs of the Ministry for Women, the Family and Human Rights (MMFDH); Bruna Nowak, coordinator of International Human Rights Disputes of the Special Counsel for International Affairs of the MMFDH; Aline Albuquerque Sanf Anna de Oliveira, coordinator of International Affairs of the Legal Counsel of the MMFDH; Juliana Mendes Rodrigues, technical adviser of the National Secretariat of Policies for Women of the MMFDH; Daniele de Sousa Alcântara, coordinator of Crime Prevention Policies for Women and Vulnerable Groups of the Ministry of Justice and Public Security (MJSP); Evandro Luiz dos Santos, official of the MJSP, and Joselito de Araújo Sousa, Federal Police Commissioner.

“answer” or “answering brief”). In its brief, the State presented three preliminary objections and rejected the alleged violations of Articles 5, 8 and 25 of the Convention in relation to Article 1(1) thereof, as well as Article 7 of the Convention of Belém do Pará. It also objected to the measures of reparation requested by the representatives and the Commission.

8. *Observations on the preliminary objections.* On June 10 and 11, 2020, the representatives and the Commission, respectively, presented their observations on the preliminary objections raised by the State.

9. *Public hearing.* Through an Order of November 27, 2020,<sup>5</sup> the President of the Court called the State, the representatives and the Inter-American Commission to a public hearing to receive their final oral arguments and observations, respectively, on the preliminary objections and possible merits, reparations and costs, and to hear the statements of a witness and an expert witness proposed by the representatives; an expert witness proposed by the State, and an expert witness proposed by the Commission. The public hearing was held on February 3 and 4, 2021, during the Court’s 139<sup>th</sup> Regular Session, which took place via videoconference.<sup>6</sup>

10. *Amici curiae.* The Court received six *amici curiae* briefs presented by: 1) lawyers and investigators from Brazil<sup>7</sup>; 2) the International Law Clinic of the University of Curitiba (UNICURITIBA)<sup>8</sup>; 3) the Human Rights and Environmental Law Clinic of the University of the State of Amazonas<sup>9</sup>; 4) the International Human Rights Clinic of the Federal University of Rio

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<sup>5</sup> Cf. *Case of Barbosa de Souza et al. v. Brazil. Summons to a Hearing.* Order of the President of the Inter-American Court of Human Rights of November 27, 2020. Available at: [http://www.Courtidh.or.cr/docs/asuntos/barbosa\\_27\\_11\\_2020\\_por.pdf](http://www.Courtidh.or.cr/docs/asuntos/barbosa_27_11_2020_por.pdf).

<sup>6</sup> The following persons were present at the hearing: a) for the Inter-American Commission: Joel Hernández García, then President of the IACHR; Marisol Blanchard, Deputy Executive Secretary of the IACHR; Jorge Meza Flores and Analía Banfi Vique, advisers of the IACHR, b) for the representatives: Beatriz Galli, Thaís Detoni, Gisela de León, and Viviana Kristicevic, of CEJIL; Rodrigo Deodato de Souza Silva and Eliel David Alves da Silva, of GAJOP, and c) for the State: Antônio Francisco Da Costa and Silva Neto, Ambassador of Brazil in Costa Rica and agent; João Lucas Quental Novaes de Almeida, Director of the Human Rights and Citizenship Division and case agent; Minister Marcelo Ramos Araújo, Head of the Human Rights Division and agent; Secretary Débora Antônia Lobato Cândido, Adviser of the Human Rights Division and case agent; Secretary Lucas dos Santos Furquim Ribeiro, Human Rights Section of the Embassy of Brazil in San José and case agent; Tony Teixeira de Lima, Lawyer of La Unión and case agent; Milton Nunes Toledo Juner, Head of the Special Counsel for International Affairs of the Ministry for Women, the Family and Human Rights (MMFDH) and case agent; Bruna Nowak, Coordinator of International Human Rights Disputes of the Special Counsel’s Office for International Affairs of MMFDH and case agent; Aline Albuquerque Sanf Anna de Oliveira, Coordinator of International Affairs of the MMFDH Legal Consultancy and case agent; Juliana Mendes Rodrigues, Technical Adviser to the National Secretariat of Policies for Women of the MMFDH and case agent; Daniele de Sousa Alcântara, Coordinator of Policies for the Prevention of Crimes against Women and Vulnerable Groups of the Ministry of Justice and Public Security (MJSP) and case agent; Evandro Luiz dos Santos, public official of the MJSP and case agent, and Joselito de Araújo Sousa, Federal Police Commissioner.

<sup>7</sup> The brief was signed by Ramiro Gomes Von Saltiel and Ivonei Souza Trindade. The brief discusses the lack of a legal definition of femicide at the time of the facts, the obligation to investigate and the alleged responsibility for the violation of the right to life. It also establishes the obligation to make reparations, the right to a reasonable time in criminal proceedings and the alleged violation of the right to reasonable time in the specific case.

<sup>8</sup> The brief was signed by Priscila Caneparo dos Anjos, Valentina Vaz Boni, Juliana Absher Sá e Silva, Kimberly Coelho de Oliveira and Sabrina Hatschbach Maciel. The brief addresses parliamentary immunity in the Brazilian Constitution and the alleged structural violence against women in Brazil.

<sup>9</sup> The brief was signed by Sílvia Maria da Silveira Loureiro, Jamilly Izabela de Brito Silva, Antonio Lucas Feitoza Pantoja, Fabiana Rodrigues da Rocha, Gabriel Henrique Pinheiro Andion, Isabela Augusto Vilaça, Laura Loureiro Gomes, Luana Vieira Amazonas, Luane Antella Moreira, Lucas Schneider Veríssimo de Aquino, Maiza Lima Bruce Raposo da Câmara, Mayara Ellen Lima e Silva, Raíssa de Moraes Pereira, and Rayssa Vinhotte dos Santos. The brief describes the alleged systematic pattern of gender-based violence in Brazil, the legislation and policies to combat gender-based violence in Brazil, the criminal protection of gender-based violence in Brazilian criminal law, femicide and the current understanding of the Brazilian Supreme Federal Court, the alleged use of the political prerogative of the perpetrator of the crime as a factor to delay proceedings through parliamentary immunity, and the alleged gap in regulatory provisions related to gender-based violence in Brazil.

de Janeiro<sup>10</sup>; 5) the Human Rights Clinic of the Brazilian Institute for Teaching, Research and Development (IDP)<sup>11</sup>, and 6) the Human Rights Clinic of the Federal University of Bahia.<sup>12</sup>

11. *Final written arguments and observations.* On March 5, 2021, the representatives<sup>13</sup> and the State submitted their final written arguments with the attached documents, and the Commission presented its final written observations.

12. *Observations of the parties and of the Commission.* On March 24, 2021, the State and the Commission submitted comments on the annexes presented by the representatives. In this regard, the Commission indicated that it had no observations.

13. *Deliberation of the instant case.* The Court deliberated the present judgment through a virtual session held on September 6 and 7, 2021.<sup>14</sup>

### **III JURISDICTION**

14. The Inter-American Court has jurisdiction to hear this case, in the terms of Article 62(3) of the American Convention, because Brazil has been a State Party to that instrument since September 25, 1992, and accepted the contentious jurisdiction of the Court on December 10, 1998. Brazil also ratified the Convention of Belém do Pará on November 27, 1995.

### **IV PRELIMINARY OBJECTIONS**

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<sup>10</sup> The brief was signed by Raisa Duarte Da Silva Ribeiro, Carolina Cyrillo, Thainá Mamede, Alissa Ishakewitsch, Giovanna Neves Barbastefano, Isadora Marques Merli, Matheus Zanon, Tayara Causanilhas, Alanna Aléssia Rodrigues Pereira, Alice Mac Dowell Veras, Ana Beatriz Eufrazino de Araújo, Ana Clara Abrahão Maia Ribeiro, Ariel Linda Gomes de Oliveira, Bruno Stigert de Sousa, Camila Senatore Moore, Giulia Alves Maia, Isabelle Dianne Gibson Pereira, Izabelle Pontes Ramalho Wanderley Monteiro, Janayna Nunes Pereira, Júlia André Roma, Júlia Vasques Siqueira, Juliana Moreira Mendonça, Juliana Santos Bezerra, Lara Campos de Paulo, Lara Ribeiro Pereira Carneiro, Larissa Emilia Guilherme Ribeiro, Leticia Borges Guimarães, Liliane Palha Velho, Livia de Meira Lima Paiva, Luis Alves de Lima Neto, Luziane Alves de Andrade Cruz, Marcela Siqueira Miguens, Maria Pacheco Da Costa Vieira Dos Santos, Marilha Boldt, Marina Müller Dos Santos Moreira, Marina Oliveira Guimarães, Raquel Lopes Folena, Raquel Moreira Dos Santos, Sofia Travancas Vieira, Taís Alvim Vasconcellos, Tarssyo Rocha de Medeiros and Thaisa Da Silva Viana. The brief describes the theoretical and contextual foundations of femicide and practical applications.

<sup>11</sup> The brief was signed by Máira de Amorim Rocha, Priscilla Sodrê Pereira and Luciana Silva Garcia. The brief addresses the legislative changes aimed at modifying the Maria da Penha Law, allegedly harming actions to combat violence against women.

<sup>12</sup> The brief was signed by Bruna Matos da Silva, Bruna Rafaela de Santana Santos, Carolina Muniz de Oliveira, Christian Lopes Oliveira Alves, Eduarda da Silva Pereira dos Santos, Ianine Vitória dos Anjos, Malu Stanchi, Marina Muniz Pinto de Carvalho Matos, Matheus Ferreira Gois Fontes, Thiago Silva Castro Vieira and Luiza Rosa Barbosa de Lima. The brief describes the alleged impunity in relation to gender violence, and the socioeconomic, racial and regional markers.

<sup>13</sup> In their final written arguments, the representatives of the alleged victims asked the Court to withhold the names of Márcia Barbosa de Souza's next of kin, since they fear the public exposure that the case could have, due to the intense media coverage of the facts and the gender stereotypes that have been constructed around Ms. Barbosa de Souza. The representatives also pointed out that it was for this reason that the mother and sister of Márcia Barbosa de Souza did not participate in the public hearing before the Court. Finally, they added that the purpose of the confidentiality is to "protect the physical and psychological integrity of Márcia Barbosa's family, as well as to avoid their revictimization, given the sensitivity of the case" and, therefore, they requested that the Court, in the judgment and subsequent documents, refer to Ms. Barbosa de Souza's next of kin only by their initials. In this regard, the Court considers that the confidentiality of the identity of the next of kin in question is appropriate and must be respected, both in the context of the present proceedings before the Court and with respect to the statements or information that any of the parties may make public about the case.

<sup>14</sup> This judgment was deliberated and approved during the Court's 143<sup>rd</sup> Special Session which, due to the exceptional circumstances caused by the COVID-19 pandemic, was held virtually using digital platforms in accordance with the provisions of the Rules of the Court.

15. In the case *sub judice*, the **State** presented the following preliminary objections: a) the Court's lack of jurisdiction *ratione temporis* over facts prior to the date of acceptance of the Court's jurisdiction, and b) the alleged failure to exhaust domestic remedies, which will be analyzed in that order. The State also presented as a preliminary objection "the lack of jurisdiction *ratione personae* in relation to the victims not listed in the Commission's Report." Subsequently, in its final written arguments, the State indicated that this argument corresponded, in reality, to a matter prior to the analysis of the merits. The Court notes that, in accordance with its constant case law, this argument does not constitute a preliminary objection, since its analysis cannot result in the inadmissibility of the case or in the Court's lack of jurisdiction to hear it. Therefore, the Court will examine this matter in the following chapter as a prior consideration.<sup>15</sup>

**A. Alleged lack of jurisdiction *ratione temporis* over facts prior to the date of acceptance of the Court's jurisdiction**

**A.1. Arguments of the parties and of the Commission**

16. The **State** asked the Court to declare its lack of jurisdiction *ratione temporis* with respect to the alleged human rights violations that occurred prior to December 10, 1998. Specifically, it argued that the Inter-American Court has jurisdiction *ratione temporis* only to examine alleged violations of Articles 8 and 25 of the Convention in proceedings initiated after December 10, 1998. In this sense, it argued that only possible violations linked to judicial proceedings initiated after the date indicated in its declaration of acceptance of the Court's jurisdiction would be subject to the Court's jurisdiction, so that "criminal proceedings initiated before the established time limit, even if they continue after that date, cannot be invoked."

17. The **representatives** pointed out that, under the terms of Brazil's acceptance of the Court's contentious jurisdiction, "the Court has jurisdiction to examine all the facts that occurred after December 10, 1998, even if their execution began prior to that date." They also noted that, after that date, "several separate events occurred within the context of the judicial proceedings that violated the rights of the [alleged] victims [...]."

18. The **Commission** observed that, taking into account that Brazil acceded to the American Convention years before it accepted the Court's contentious jurisdiction, the temporal jurisdiction of the Court is more limited than that of the Commission when it analyzed the instant case. It noted that an act which occurred before the date of ratification of the Court's jurisdiction should not be excluded from consideration when it may be relevant to the determination of what happened. Thus, it emphasized that the Court has jurisdiction to rule on facts that would have resulted in the State's alleged responsibility for the situation of impunity surrounding the death of the alleged victim and the alleged violations of the rights of her next of kin, as well as to examine the circumstances surrounding the death of Márcia Barbosa insofar as they are relevant as background for the legal consequences deriving from her death for the State in terms of its duty to investigate. In addition, it argued that the Court would also be competent to rule on the alleged omissions and shortcomings in the initial proceedings, since these could have had legal effects with respect to the State's obligations in the conduct of the investigation and the alleged situation of impunity surrounding the act.

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<sup>15</sup> Cf. *Case of Rodríguez Revolorio et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of October 14, 2019. Series C No. 387, para. 18, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 15, 2020. Series C No. 407, para. 16.

## **A.2 Considerations of the Court**

19. The **Court** notes that Brazil ratified the American Convention on Human Rights on September 25, 1992, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women on November 27, 1995. Subsequently, on December 10, 1998, the State of Brazil recognized the contentious jurisdiction of the Court. In this regard, the Court recalls that in its declaration, Brazil indicated that the Court would have jurisdiction over “facts subsequent to” such recognition. The terms of the recognition of jurisdiction made by the State of Brazil are as follows:

The Government of the Federative Republic of Brazil declares its **recognition as binding, for an indefinite period of time, ipso jure, of the jurisdiction of the Inter-American Court of Human Rights** on all matters relating to the interpretation or application of the American Convention on Human Rights, according to Article 62 of that Convention, on the condition of reciprocity, and **for matters arising after the time of this declaration.**<sup>16</sup> (Emphasis added)

20. The Court reiterates that it cannot exercise its contentious jurisdiction to apply the American Convention and declare a violation of its provisions with respect to alleged facts or conduct by the State that could imply its international responsibility, which occurred prior to such recognition of jurisdiction, as it has affirmed in previous cases against the State of Brazil.<sup>17</sup>

21. Furthermore, in its constant case law, the Court has established that judicial acts or acts related to an investigative process may involve separate violations and may constitute “specific and autonomous violations of denial of justice.”<sup>18</sup> Thus, the Court may examine and rule on alleged violations referring to acts or decisions in judicial proceedings that occurred after the date of recognition of the Court’s contentious jurisdiction, even when the judicial proceedings began on a date prior to the recognition of the Court’s jurisdiction.

22. The Court observes that both the Commission and the representatives indicated that they did not seek a declaration of international responsibility of the State for events prior to December 10, 1998. In consideration of the above criteria, the Court has jurisdiction to analyze the alleged actions and omissions of the State that took place in the investigations and criminal proceedings related to the alleged murder of Márcia Barbosa de Souza, after December 10, 1998, both in relation to the American Convention and to Article 7 of the Convention of Belém do Pará.

23. For the foregoing reasons, the Court reaffirms its settled case law on this issue and finds the preliminary objection to be partially grounded.

## **B. Alleged failure to exhaust domestic remedies**

### **B.1. Arguments of the parties and of the Commission**

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<sup>16</sup> Cf. OAS, *General information on the Treaty: American Convention on Human Rights. Brazil, acceptance of jurisdiction*. Available at: <http://www.oas.org/juridico/spanish/firmas/b-32.html>.

<sup>17</sup> Cf. *Case of Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2010. Series C No. 219, para. 16; *Case of the Workers of Hacienda Brasil Verde v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of October 20, 2016. Series C No. 318, para. 63; *Case of Xucuru Indigenous People and its members v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 5, 2018. Series C No. 346, para. 31, and *Case of Herzog et al. v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of March 15, 2018. Series C No. 353, para. 27.

<sup>18</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Preliminary objections*. Judgment of November 23, 2004. Series C No. 118, para. 84, and *Case of Herzog et al. v. Brazil, supra*, para. 28.

24. The **State** argued that, despite the availability of adequate domestic remedies, the representatives did not proceed to exhaust them and did not demonstrate their exhaustion in their initial petition before the Commission. In relation to the criminal proceedings, it pointed out that at the time when the petition was presented to the Commission, in 2000, the domestic remedies for the punishment of those responsible for the death of Márcia Barbosa had not been exhausted. It indicated that some of the domestic remedies were exhausted during the processing of the case before the Commission, many years after the case was notified to the State. It also affirmed that, during the processing of the case before the Commission, the domestic remedies for the protection of all the rights allegedly violated were made available to the alleged victims. It emphasized that there were several adequate and effective domestic remedies for the clarification of the events and responsibilities, and that there were no State actions aimed at impeding access to these remedies. It added that some of these remedies were even exhausted without any unjustified delay. It further argued that the exception to the exhaustion of remedies of unwarranted delay was not present, since the complexity of the case justified the time elapsed between the facts and the conviction.

25. The **representatives** emphasized that the analysis of the admissibility of a case is primarily the responsibility of the Inter-American Commission, except in cases of serious errors that violate the right to defense of the parties, which did not occur in this case. They indicated that the State, in its first statements before the Commission, made no mention of the failure to exhaust domestic remedies, which would have implied a tacit waiver of this preliminary objection. They also pointed out that the only defense of the State in relation to the admissibility of the case was presented on July 17, 2007, days before the approval of the Admissibility Report. They affirmed that, both on the date of submission of the case and on the date of the admissibility analysis by the Commission, the exceptions to the exhaustion of domestic remedies provided for in Article 46(2)(b) and (c) of the American Convention, respectively, were presented. The representatives also argued that, at the time when the initial petition was presented to the Commission, the exception of the impossibility of exhausting domestic remedies had arisen, since the Legislative Assembly of the state of Paraíba had twice failed to authorize the initiation of criminal proceedings. They also alleged that, at the time of approval of the Admissibility Report on the case, there had been unwarranted delay in the judicial proceedings. Finally, they pointed out that the State would be violating the principle of *estoppel* by not having argued before the Commission that the unwarranted delay should be analyzed taking into account the “[...] time elapsed between the date of the facts and the time of the presentation of the petition [...]” and by alleging it now before the Court.

26. The **Commission** recalled that domestic remedies must be exhausted, or else one of the exceptions in Article 46(2) of the American Convention must be applicable, at the time of the decision on the admissibility of the case, and not necessarily at the time the petition was lodged. It emphasized that, in its Admissibility Report, it had expressed its opinion on the applicability of the exception established in Article 46(2)(c) of the American Convention, regarding unwarranted delay, since it was not until July 2005 that the formal accusation against the then state deputy was filed,<sup>19</sup> and that, at the time when the report was prepared, more than eight years had elapsed since the homicide in question without the responsible party having been determined. The Commission considered the deadline for the presentation of the petition to be reasonable, since two years had passed since the murder of Ms. Barbosa de Souza, without the corresponding domestic judicial process having been carried out. Regarding possible civil remedies, it indicated that did not have the opportunity to analyze them during the admissibility stage of the case, since the State had only mentioned in a generic manner

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<sup>19</sup> According to the Commission's Admissibility Report, cited in its Merits Report, the formal accusation ("complaint") was presented in July 2005. However, from the body of evidence it appears that the correct date is March 2003.

that there was a civil action for reparations and that this was separate from the criminal proceeding, without clearly identifying the remedy or offering adequate or detailed information on its regulation, or proving the effectiveness of any specific civil remedy to address the violations alleged by the representatives. Therefore, it considered that the information presented by the State before the Court was time-barred, and that, given the effects on the lives of persons, the effective remedy would be the investigation carried out by the State *ex officio*. Finally, it argued that the requirement to exhaust domestic remedies is related to facts that are alleged to violate human rights and that the representatives' claim for reparations arises from the declaration of the State's international responsibility, which is an automatic derivation of such responsibility. Thus, the American Convention does not require the exhaustion of additional mechanisms of reparation related to facts in respect of which the relevant domestic remedies, that is, the criminal proceeding, were duly pursued.

## **B.2 Considerations of the Court**

27. The **Court** recalls that Article 46(1)(a) of the American Convention provides that, in order to determine the admissibility of a petition or communication submitted to the Commission in accordance with Articles 44 or 45 of the Convention, it is necessary that the remedies under domestic law have been pursued and exhausted, in accordance with generally recognized principles of international law,<sup>20</sup> or that one of the exceptional circumstances indicated in Article 46(2) has been proven.

28. This Court has specified that the appropriate procedural moment for the State to present an objection regarding failure to exhaust domestic remedies is in the admissibility proceeding before the Commission.<sup>21</sup> It has also affirmed that the State presenting this objection must specify the domestic remedies that have not yet been exhausted and demonstrate that these remedies are suitable and effective.<sup>22</sup> Furthermore, the arguments that give substance to the preliminary objection filed by the State before the Commission during the admissibility stage must correspond to those raised before the Court.<sup>23</sup>

29. Based on the foregoing, in this case, the Court considers it necessary to examine whether the objection of exhaustion of domestic remedies was presented at the proper procedural opportunity. In its brief of July 19, 2007, the State alleged failure to exhaust domestic remedies, arguing that the criminal proceeding was following its regular course in accordance with the Brazilian Constitution and domestic law; that the alleged victim's next of kin had not been prevented from accessing the domestic remedies and that they could have intervened in the criminal proceeding or brought a civil action for compensation against Mr. Aécio Pereira de Lima.<sup>24</sup> Thus, the Court finds that the State, in effect, presented the preliminary objection of failure to exhaust domestic remedies at the appropriate procedural moment, prior to the Admissibility Report of the Inter-American Commission. The Court also finds that the State presented similar arguments in the admissibility stage before the Commission and in the preliminary objection before the Court, and specified the remedies that,

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<sup>20</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 85, and *Case of Martínez Esquivia v. Colombia. Preliminary objections, merits and reparations*. Judgment of October 6, 2020. Series C No. 412, para. 20.

<sup>21</sup> Cf. *Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, para. 88, and *Case of Moya Solís v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 425, para. 21.

<sup>22</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, para. 88, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil, supra*, para. 30.

<sup>23</sup> Cf. *Case of Furlan and Family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012 Series C No. 246, para. 29, and *Case of Moya Solís v. Peru, supra*, para. 21.

<sup>24</sup> Cf. Communication sent by the State to the Inter-American Commission on July 19, 2007 (evidence file, folios 588 to 619).

in its opinion, had not been exhausted.

30. Accordingly, it is incumbent upon the Court to determine whether, at the time of the Commission's assessment of admissibility, the domestic remedies had been exhausted or whether any of the grounds stipulated as exceptions to the requirement to exhaust domestic remedies were applicable. The Court observes that the argument used by the representatives to justify the presentation of the initial petition in the case before the Commission, on March 28, 2000,<sup>25</sup> was the impossibility of exhausting domestic remedies (Article 46(2)(b) of the Convention) because the Legislative Assembly of Paraíba had not authorized the initiation of criminal proceedings, in application of parliamentary immunity. Subsequently, on October 2, 2006,<sup>26</sup> the representatives argued the hypothesis of Article 46(2)(c), citing an excessive delay in the processing of the criminal proceeding examining the alleged murder of Márcia Barbosa de Souza. In its Admissibility Report of July 26, 2007, the Commission agreed with the representatives in considering that there was an unwarranted delay in the processing of the aforementioned criminal case.<sup>27</sup>

31. In this regard, it should be noted that at the time when the petition was submitted to the Commission, two years after the murder of Márcia Barbosa de Souza, criminal proceedings had not been initiated because the Legislative Assembly of Paraíba had not lifted the immunity of Mr. Aécio Pereira de Lima; therefore, at that time, the exception to the exhaustion of domestic remedies provided for in Article 46(2)(b) of the Convention was applicable. At the time the Commission issued the Admissibility Report, in 2007, the criminal proceedings against the then congressman Aécio Pereira de Lima had not been concluded, and more than nine years had already passed since the murder of Ms. Barbosa de Souza.

32. The Court recalls that one of the main disputes in the instant case is whether the State is responsible for violating the guarantee of reasonable time, given the duration of the criminal proceedings for the homicide in question. In this regard, the Court considers that determining whether the time elapsed constituted an unwarranted delay, in the terms of Article 46(2)(c) of the American Convention, is a debate that is directly related to the merits of the case regarding Articles 8 and 25 of the Convention.

33. The State also argued in its answering brief that the verification of the exhaustion of domestic remedies by the Commission should have been carried out when the representatives' initial petition was presented, and not when the admissibility decision was issued. However, the Court has already pointed out that the fact that the analysis of compliance with the requirement to exhaust domestic remedies is carried out at the time of deciding on the admissibility of the petition does not affect the subsidiary nature of the inter-American system, and in fact allows the State to resolve the alleged situation during the admissibility stage.<sup>28</sup> This Court finds no reason to depart from the aforementioned criterion.

34. Consequently, since there is a close relationship between the State's preliminary objection and the analysis of the merits of the dispute, the Court dismisses the preliminary objection filed by the State.

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<sup>25</sup> Cf. Initial petition of the representatives of March 28, 2000 (evidence file, folios 731 to 741).

<sup>26</sup> Cf. Communication of the petitioners to the Inter-American Commission of October 2, 2006 (evidence file, folios 641 to 648).

<sup>27</sup> Cf. Admissibility Report No. 38/07 (evidence file, folios 383 to 393).

<sup>28</sup> Cf. *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297, para. 28, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2019. Series C No. 394, para. 22.

## V PRIOR CONSIDERATION

### A. Arguments of the parties and of the Commission

35. The **representatives** requested that the Court also consider the sister of Márcia Barbosa de Souza as an alleged victim. They argued that, in this case, exceptional circumstances were present, in light of Article 35(2) of the Rules, which must be taken into account when determining the alleged victims. They indicated that at the time of Márcia Barbosa de Souza's death, her sister Mt.B.S. was only 17 years old and that she participated in the judicial process over the years and witnessed the suffering of her parents due to the impunity surrounding the facts. They added that her distress had led her not to participate in the international proceedings, owing to the intense media coverage of the case, which resulted in the public exposure of Márcia Barbosa de Souza's life. Furthermore, they alleged that Ms. Mt.B.S. has been deeply affected by the events of this case because she, like her sister, is a black, poor, *nordestina* (northeastern) woman living in Brazil in a context of systematic violations against women and impunity in relation to these actions. They added that the inclusion of Mt.B.S. as an alleged victim would not affect the State's right of defense because all of Márcia Barbosa de Souza's relatives are victims of the same human rights violations, which result from the same facts.

36. The **State** argued that Márcia Barbosa de Souza's sister, Mt.B.S., does not appear as an alleged victim in the Commission's Merits Report, and therefore her inclusion by the representatives could only be accepted in exceptional circumstances, which are not present in the case *sub judice*. Therefore, it asked the Court to declare its lack of jurisdiction *ratione personae* with respect to the alleged victim Mt.B.S.

37. The **Commission** emphasized that, although it did not expressly identify Ms. Mt.B.S. in the Merits Report, it recognized that the violations of personal integrity extended to her relatives, and not exclusively to her two parents. It further argued that the application of Article 35(1) of the Court's Rules of Procedure is not absolute, since the purpose of this rule is not to hinder the development of the process with formalisms, but to bring the definition given in the judgment closer to the demand for justice. Finally, it indicated that the violations of the right to personal integrity of Ms. Mt.B.S. as "a member of the family nucleus of the [alleged] victim, derive directly from the facts that are being analyzed by the Court and regarding which the State has exercised and has the opportunity to exercise its right of defense."

### B. Considerations of the Court

38. According to the Court's constant case law on this issue, Article 35(1) of its Rules of Procedure provides that the alleged victims must be identified in the Merits Report, in accordance with Article 50 of the American Convention. It is therefore incumbent upon the Commission to identify precisely and at the proper procedural moment the alleged victims in a case before the Court, except in the exceptional circumstances contemplated in Article 35(2) of the Court's Rules of Procedure. According to the latter, when it is justified that it was not possible to identify the alleged victims in cases of massive or collective violations, the Court shall decide in due course whether to consider them victims in accordance with the nature of the violation.<sup>29</sup>

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<sup>29</sup> Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 48, and *Case of Ríos Avalos et al. v. Paraguay. Merits, reparations and costs*. Judgment of August 19, 2021. Series C No. 429, para. 15.

39. The Court finds that, both in the submission of the case, and in Merits Report No. 10/19, the Inter-American Commission identified only the mother and father of Márcia Barbosa de Souza as alleged victims of the violations alleged in this case. Thus, in order for the Court to consider Ms. Barbosa de Souza's sister as an alleged victim, it would be necessary for one of the exceptions provided for in Article 35(2) of the Court's Rules of Procedure to be present, which is evidently not the case.

40. Therefore, in application of Article 35(1) of the Rules of Procedure, and in the absence of any of the exceptions set forth in Article 35(2), the Court will consider as alleged victims in the case *sub judice* the mother and father of Márcia Barbosa de Souza,<sup>30</sup> as identified in the Merits Report of the Inter-American Commission.

## VI EVIDENCE

### A. Admissibility of the documentary evidence

41. The Court received various documents submitted as evidence by the Commission, the representatives and the State, attached to their main briefs (*supra* paras. 3, 6 and 7). As in other cases, the Court admits those documents presented in a timely manner (Article 57 of the Rules)<sup>31</sup> by the parties and the Commission, the authenticity of which has not been questioned or challenged.<sup>32</sup>

42. At the same time, the Court observes that the **representatives** presented, together with their final written arguments (*supra* para. 11), a series of documents as annexes.<sup>33</sup> In this regard, the **Commission** indicated that it had no observations. In turn, although the **State** presented various observations on the annexes to the final written arguments of the representatives, these considerations refer to their evidentiary value, not to their admissibility. Consequently, the Court admits the aforementioned documents given that Annexes 1 to 6 refer to aspects discussed at the public hearing of the case and to the questions asked by the judges during said hearing, while Annexes 7 to 9 are documents provided as evidence of the expenses incurred by the representatives in the litigation of this case. The considerations made by Brazil will be taken into account in the assessment of the evidence.

### B. Admissibility of the testimonial and expert evidence

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<sup>30</sup> This conclusion does not imply a denial of the suffering endured by the sister or any other family members of Márcia Barbosa de Souza as a result of the alleged human rights violations in the case under analysis.

<sup>31</sup> Documentary evidence may be submitted, in general and in accordance with Article 57(2) of the Rules of Procedure, together with the briefs of submission of the case, of pleadings and motions or of response, as appropriate. Evidence submitted outside these procedural opportunities is not admissible, except in the circumstances established in Article 57(2) of the Rules (*force majeure* or serious impediment) or if it is a supervening fact, that is, it occurred after those procedural moments.

<sup>32</sup> Cf. Article 57 of the Rules; see also *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Garzón Guzmán et al. v. Ecuador. Merits, reparations and costs*. Judgment of September 1, 2021. Series C No. 434, para. 33.

<sup>33</sup> These documents are: Collective decision No. 1.721/2009, issued by the Regional Electoral Court of Acre (Annex 1); decision on Special Appeal AGR 2000215- 90.1999.822.0000, issued by the Court of Justice of Rondônia (Annex 2); decision on Special Appeal AGR 0027924- 33.2005.8.11.0000, issued by the Court of Justice do Mato Grosso (Annex 3); decision on Special Appeal AGR 0043167-46.2007.8.11.0000, issued by the Court of Justice of Mato Grosso (Annex 4); decision on Habeas Corpus No 209.076 – BA (2011/0130407-9), issued by the Superior Court of Justice (Annex 5); Ordinary Proceeding 0000013- 19.2015.8.03.0000 AP, Court of Justice of Amapá (Annex 6); Tables of expenses and the respective receipts for expenses of GAJOP (Annex 7); Tables of expenses and the respective receipts of CEJIL (Annex 8); and Expenses related to the request for access to the Victims' Legal Assistance Fund – table of costs for preparation and sending of expert opinions and statements (Annex 9).

43. This Court deems it pertinent to admit the statements provided by affidavit<sup>34</sup> and during the public hearing<sup>35</sup> insofar as they are in-keeping with the purpose defined by the President of the Court in the order that required them and with the purpose of this case.

44. The Court notes that, although its admissibility was not challenged, the expert opinion of Soraia da Rosa Mendes, proposed by the representatives of the alleged victims, was not rendered by affidavit; however, it was authenticated by means of the “QR code” digital signature system. At the time of its presentation, the representatives explained that it was not possible for a notary to authenticate the expert’s signature due to the situation caused by the COVID-19 pandemic. The Court considers that this justification is reasonable and is based on reasons of *force majeure*.<sup>36</sup> Consequently, it admits the expert opinion of Mrs. Rosa Mendes insofar as it is in-keeping with the purpose defined by the President in the Order of November 27, 2020.

## VII FACTS

45. In this chapter, the Court will establish the facts of the case based on the factual framework submitted to the Court by the Inter-American Commission, the arguments presented by the parties and the evidence, as follows: A) the context of violence against women in Brazil; B) the relevant regulatory framework; C) the homicide of Márcia Barbosa de Souza, and D) the domestic proceedings.

46. The facts prior to the date of ratification of the Court’s contentious jurisdiction by Brazil (December 10, 1998) are included merely as part of the context and background of the case<sup>37</sup> to facilitate the understanding of what happened and the analysis of the alleged human rights violations. Thus, the Court deems it pertinent to clarify that the facts related to the murder of Márcia Barbosa de Souza and some of the first investigative acts are outside the Court’s jurisdictional competence.

### A. The context of violence against women in Brazil

47. Violence against women in Brazil was, at the time of the facts of this case - and

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<sup>34</sup> The Court received the statements of the following persons: M.B.S, statement rendered by affidavit on January 8, 2021 (evidence file, folios 10170 to 10174), accompanied by a video presented to the Court on January 14, 2021 (evidence file, video archive); Mt.B.S., statement rendered by affidavit on January 8, 2021 (evidence file, folios 10178 to 10182), accompanied by a video presented to the Court on January 14, 2021 (evidence file, video file); Luiz Albuquerque Couto, statement rendered by affidavit on January 7, 2021 (evidence file, folios 10187 to 10191); Wânia Pasinato, expert opinion rendered by affidavit on January 12, 2021 (evidence file, folios 10193 to 10333); Gilberta Santos Soares, expert psychosocial opinion rendered by affidavit on December 18, 2020 (evidence file, folios 10335 to 10358); Javier Hernández García, expert opinion rendered by affidavit on December 20, 2020 (evidence file, folios 10379 to 10395); Edvaldo Fernandes da Silva, expert opinion rendered by affidavit on January 14, 2021 (evidence file, folios 10480 to 10504); Geraldine Grace da Fonseca da Justa, statement rendered by affidavit on January 14, 2021 (evidence file, folios 10505 to 10515); Daniel Sarmento, expert opinion rendered by affidavit on January 14, 2021 (evidence file, folios 10127 to 10167), and Soraia da Rosa Mendes, expert opinion rendered on January 14, 2021 (evidence file, folios 10397 to 10478).

<sup>35</sup> The Court received the statements of Valquíria Alencar, Melina Fachin, Henrique Marques Ribeiro and Carmen Hein of Campos at the public hearing held in this case.

<sup>36</sup> See, statement of April 9, 2020, of the Inter-American Court, “Covid-19 and Human Rights: the problems and challenges must be addressed with a human rights perspective and respecting international obligations.” Available at: <https://www.Courtidh.or.cr/tablas/alerta/comunicado/cp-27-2020.html>.

<sup>37</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 27, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil, supra*, para. 55.

continues to be today- a structural and widespread problem.<sup>38</sup> The absence of national statistics, especially before the 2000s, hinders the design and implementation of effective public policies to combat such violence.<sup>39</sup> At the time of the facts, there was no data on the number of violent deaths of women related to their gender.<sup>40</sup> The first information began to be compiled under the denomination of femicide very recently.<sup>41</sup>

48. At the same time, there was a culture of tolerance of violence against women, illustrated, for example, by the way in which the media presented the news of violence against women, by romanticizing it rather than rejecting it.<sup>42</sup> In this regard, it has been recognized that a high level of tolerance of violence against women is normally associated with, and in some cases generates, high rates of femicide.<sup>43</sup>

49. The first national survey on violence in Brazil, carried out in 1988 by the Brazilian Institute of Geography and Statistics (IBGE),<sup>44</sup> indicated that 63% of the victims of domestic violence were women and that in 70% of these cases, the perpetrator was the woman's husband or partner.<sup>45</sup> Similarly, a study carried out in 2004 estimated that every 15 seconds a woman was severely beaten by a man in Brazil.<sup>46</sup> Another investigation conducted by the Brazilian Senate in 2015 found that one in five women had experienced some form of domestic or family violence,<sup>47</sup> that women with the lowest levels of education are the most affected and

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<sup>38</sup> Cf. IACHR. *Report on the Situation of Human Rights in Brazil*. OAS/Ser.L/V/II.97. Doc. 29 rev.1, September 29, 1997, Chapter VIII, and IACHR. *Report on the Situation of Human Rights in Brazil*. OAS/Ser.L/V/II, February 12, 2021, paras. 87 to 101. See also the expert opinion rendered by Carmen Hein in the public hearing held on February 3 and 4, 2021 before the Inter-American Court.

<sup>39</sup> Cf. Expert opinions rendered by Carmen Hein and Henrique Marques Ribeiro at the public hearing held on February 3 and 4, 2021, before the Inter-American Court.

<sup>40</sup> Cf. Expert opinion rendered by affidavit by Wânia Pasinato on January 12, 2021 (evidence file, folio 10289).

<sup>41</sup> Cf. Expert opinion rendered by Carmen Hein at the public hearing held on February 3 and 4, 2021 before the Court.

<sup>42</sup> Cf. BLAY, Eva Alterman. "Violencia contra la mujer y políticas públicas. Estudios Avanzados" (Violence against women and public policies. Advanced Studies) vol. 17, nº 49, São Paulo, Sept./Dec. 2003, page 93. Available at: [http://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S0103-40142003000300006](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0103-40142003000300006).

<sup>43</sup> Cf. Geneva Declaration Secretariat. Chapter 4: When the Victim is a Woman. *Global Burden of Armed Violence: Lethal Encounters*. 2011, pg. 122. Available at: [http://www.genevastatement.org/fileadmin/docs/GBAV2/GBAV2011\\_CH4\\_rev.pdf](http://www.genevastatement.org/fileadmin/docs/GBAV2/GBAV2011_CH4_rev.pdf). The Geneva Declaration on Armed Violence and Development, which is now endorsed by over 100 states, is a diplomatic initiative aimed at "addressing the interrelations between armed violence and development". The Geneva Declaration was first adopted by 42 states on June 7, 2006 during a Ministerial Summit in Geneva. The Ministerial Summit "reflected a strong common political will by both representatives of the donor community and by countries directly affected by armed violence to address the challenge of developing measures to reduce political and criminal armed violence in order to enhance sustainable development at the global, regional, and national level. Information Available at: <http://www.genevastatement.org/the-geneva-statement/what-is-the-statement.html>.

<sup>44</sup> Cf. LINHARES, Leila. Violence against women in Brazil and the Convention of Belém do Pará In *El Progreso de las Mujeres en Brasil* UNIFEM, Ford Foundation, CEPIA: Brasília. 2006, p. 261. Available at: <http://www.mpsp.mp.br/portal/page/portal/Cartilhas/Progresso%20das%20Mulheres%20no%20Brasil.pdf>.

<sup>45</sup> Cf. LINHARES, Leila. Violence against women in Brazil and the Convention of Belém do Pará. In *El Progreso de las Mujeres en Brasil*, supra, p. 262.

<sup>46</sup> Cf. VENTURI, Gustavo; Recamán, Marisol; Oliveira, Suely of (Orgs.). *La mujer brasileña en los espacios público y privado*. 1. edition. São Paulo: Editora Fundação Perseu Abramo. 2004, p. 26. Available at: <https://library.fes.de/pdffiles/bueros/Brazilien/05629-introd.pdf>.

<sup>47</sup> According to Article 5 of Law No. 11.340 ("Maria da Penha Law"), "[...] domestic and family violence against women is any act or omission based on gender that causes death, injury, physical, sexual or psychological suffering and moral or patrimonial damage [if it occurs] within the domestic unit, understood as the permanent living space of persons, with or without family ties, including those added sporadically; [...] within the family, understood as the community formed by persons who are or are considered to be related, united by ties of kinship, affinity or by express will; [...] in any intimate relationship of affection, in which the aggressor lives or has lived with the victim, regardless of cohabitation." This provision also states that personal relationships are independent of sexual orientation. Cf. Law No 11.340 of August 7, 2006 (evidence file, folios 8922 to 8931).

that women between the ages of 20 and 29 are most likely to suffer domestic violence for the first time.<sup>48</sup>

50. In 2006, Law No. 11.340 (hereinafter “Maria da Penha Law”)<sup>49</sup> was enacted to combat domestic and family violence against women. Data from 2006 to 2013 indicate that, although the number of homicides of women decreased immediately after the law came into force, it subsequently increased again.<sup>50</sup>

51. Between 2006 and 2010, data from the World Health Organization on homicides of women, collected in 84 countries, placed Brazil in seventh place.<sup>51</sup> Despite the enactment of Law No. 13.194 (hereinafter the “Femicide Law”), which defined femicide as an aggravated form of homicide<sup>52</sup> in the Criminal Code, the Latin-American Faculty of Social Sciences (hereinafter “FLACSO”)<sup>53</sup> in 2015, and the United Nations High Commissioner for Human Rights<sup>54</sup> in 2016, ranked Brazil as the country with the fifth highest rate of gender-related homicides of women in the world. Subsequently, a study on the evolution of violence in Brazil, conducted by the Institute for Applied Economic Research (*Instituto de Pesquisa Econômica Aplicada*) (hereinafter “IPEA”) in 2018, showed that murders of women in the country had increased by almost 5% between 2006 and 2016.<sup>55</sup> Likewise, a survey carried out by a newspaper in Brazil also presented data showing a renewed increase in the number of homicides of women in 2017.<sup>56</sup>

52. On the other hand, it was observed that in the state of Paraíba murder rates for women between 1990 and 2000 did not vary substantially. However, by 2017, the number of women murdered per 100,000 inhabitants almost doubled in relation to 1990.<sup>57</sup>

53. It is important to note that violent deaths of women in Brazil do not occur evenly; there is a significant difference by race.<sup>58</sup> Overall, the rate of victimization of black women in the

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<sup>48</sup> Cf. Report “Domestic and family violence against women”, published in August 2015 by the Federal Senate of Brazil, p. 11 to 18. Available at: <https://www12.senate.leg.br/institucional/omv/entenda-a-violence/pdfs/violence-domestica-e-familiar-contr-a-mulher>.

<sup>49</sup> Cf. Law No. 11.340 of August 7, 2006 (evidence file, folios 8922 to 8931).

<sup>50</sup> Cf. WAISELFISZ, Julio Jacobo. *Map of violence 2015: Homicide of Women in Brazil*. Brasilia: FLACSO BRAZIL. 2015, p. 12-20. Available at: [http://www.onumulheres.org.br/wp-content/uploads/2016/04/MapaViolence\\_2015\\_mulheres.pdf](http://www.onumulheres.org.br/wp-content/uploads/2016/04/MapaViolence_2015_mulheres.pdf).

<sup>51</sup> Cf. WAISELFISZ, Julio Jacobo. *Map of violence 2012 – Supplementary Notebook 1: Homicide of Women in Brazil*. São Paulo: Instituto Sangari. 2012, p. 11. Available at: [https://assets-compromissOASititude-jpg.sfo2.digitaloceanspaces.com/2012/08/Mapa-Violence-2012\\_HomicidiosMulheres.pdf](https://assets-compromissOASititude-jpg.sfo2.digitaloceanspaces.com/2012/08/Mapa-Violence-2012_HomicidiosMulheres.pdf).

<sup>52</sup> Cf. Law Nº 13.104 of March 9, 2015. Available at: [http://www.planalto.gov.br/ccivil\\_03/ Ato2015-2018/2015/lei/L13104.htm](http://www.planalto.gov.br/ccivil_03/ Ato2015-2018/2015/lei/L13104.htm).

<sup>53</sup> Cf. WAISELFISZ, Julio Jacobo. *Map of Violence 2015: Homicide of Women in Brazil*, *supra*.

<sup>54</sup> Cf. UN. “UN: Femicide rate in Brazil is the fifth highest in the world; National Guidelines seek solution.” April 9, 2016, updated on April 12, 2016. Available at: <https://Brazil.un.org/pt-br/72703-onu-taxa-de-femicides-no-Brazil-e-quinta-maior-do-mundo-diretrizes-nacionais-buscam>.

<sup>55</sup> Cf. IPEA, “Brazil surpasses for the first time the threshold of 30 homicides per 100,000 inhabitants.” June 5, 2018. Available at: <http://www.ipea.gov.br/portal/index.php?option=comcontent&view=article&id=33411&catid=8&Itemid=6>.

<sup>56</sup> Cf. Velasco, Clara; Caesar, Gabriela; and Reis, Thiago. “The number of women victims of homicide grows in Brazil”. *Online newspaper G1.7*. March 2018. Available at: <https://g1.globo.com/monitor-da-violence/noticia/cresce-n-de-mulheres-vitimas-de-homicidio-no-Brazil-dados-de-femicide-sao-subnotificados.ghtml>.

<sup>57</sup> Cf. *Amicus curiae* brief presented by the International Law Clinic of the University of Curitiba (UNICURITIBA) (merits file, folios 647-648).

<sup>58</sup> The expert witness Geraldine Grace da Fonseca da Justa stated that the poorest women, especially black women, are among the main victims of violence in Brazil. Cf. Affidavit rendered by Geraldine Grace da Fonseca da Justa on January 14, 2021 (evidence file, folios 10505 to 10515).

country is 66 times higher than for white women.<sup>59</sup> For example, between 2003 and 2013, there was a decrease of almost 10% in homicides of white women, but an increase of 54% in homicides of black women.<sup>60</sup> Data provided by the Violence Monitor,<sup>61</sup> collected in all regions of Brazil, shows that during the first half of 2020, 75% of murdered women were black.<sup>62</sup> Young women, between 15 and 29 years of age, are also the main victims of femicide in Brazil. The specific profile of women who are murdered in Brazil in greater numbers corresponds to young, black and poor women.<sup>63</sup> In Paraíba, the murder rate for black women has remained high since 2000, when measurements began. Furthermore, between 2000 and 2017, the number of black women murdered doubled.<sup>64</sup> In 2018, the homicide rate for black women in the state of Paraíba was four times higher than for other women<sup>65</sup>.

54. Regarding the response of the Judiciary to cases of violence against women, in many cases during 1990s, in application of Law 9.099/95,<sup>66</sup> the perpetrators were ordered to pay derisory sums of money as compensation in the civil sphere and only the amount of a basic food basket as a criminal sentence, since most of the aggressions were classified as “crimes of minor offensive potential.”<sup>67</sup>

55. On September 27, 1997, just over a year before the murder of Márcia Barbosa de Souza, the Inter-American Commission published its Report on the Situation of Human Rights in Brazil,<sup>68</sup> in which it noted that the inefficacy of the judicial system in responding to cases of violence against women reflected discrimination against women victims of violence.<sup>69</sup>

56. After the publication of the Merits Report in the abovementioned case, and in response to the recommendations of the Commission, Brazil enacted the Maria da Penha Law in 2006. The Judiciary began its implementation by creating the first specialized courts for women

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<sup>59</sup> Cf. Expert opinion of Carmen Hein rendered during the public hearing held on February 3 and 4, 2021 before the Court.

<sup>60</sup> Cf. Expert opinion of Wânia Pasinato, rendered by affidavit, *supra* (evidence file, folio 10289), and Expert opinion rendered by Carmen Hein in Public hearing, *supra*.

<sup>61</sup> Cf. CAESAR, Gabriela; Grandin, Felipe; Reis, Thiago and Velasco, Clara. “Black women are the main victims of homicide; white women account for almost half of all cases of physical injury and rape.” 2020. Available at: <https://g1.globo.com/monitor-da-violence/noticia/2020/09/16/mulheres-negras-sao-as-principais-vitimas-de-homicidios-ja-as-brancas-compoem-quase-metade-dos-casos-de-lesao-corporal-e-estupro.ghtml>.

<sup>62</sup> Cf. *Amicus curiae* brief presented by the Inter-American of Human Rights Clinic of the Federal University of Rio de Janeiro (merits file, folio 902).

<sup>63</sup> Cf. Expert opinion rendered by Carmen Hein in Public hearing, *supra*.

<sup>64</sup> Cf. *Amicus curiae* brief presented by the Human Rights Clinic of the Federal University of Bahia (merits file, folio 1056), and IPEA, “Atlas da Violência”, Filtro UF: PB. Available at: <https://www.ipea.gov.br/atlasviolence/dados-series/142>.

<sup>65</sup> Cf. *Amicus curiae* brief presented by the Human Rights Clinic of the Federal University of Bahia *supra*, and IPEA “Atlas da Violência 2020”, p. 37. Available at: <https://www.ipea.gov.br/atlasviolence/arquivos/artigos/3519-atlasdaviolence2020completo.pdf>.

<sup>66</sup> Cf. Law No. 9.099 of September 26, 1995. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/l9099.htm](http://www.planalto.gov.br/ccivil_03/leis/l9099.htm).

<sup>67</sup> Cf. Expert opinion of Wânia Pasinato rendered by affidavit, *supra* (evidence file, folio 10205 to 10207).

<sup>68</sup> Cf. IACHR. Report on the Situation of Human Rights in Brazil. OAS/Ser.L/V/II.97, *supra*.

<sup>69</sup> Cf. IACHR. Report on the Situation of Human Rights in Brazil. OAS/Ser.L/V/II.97, *supra*, p. 142 to 145. Also, in 2001, in its Merits Report in the case Maria da Penha Maia Fernandes, the Commission held that: “Given the fact that the violence suffered by Maria da Penha is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors, it is the view of the Commission that this case involves not only failure to fulfill the obligation to prosecute and convict, but also the obligation to prevent these degrading practices. The general and discriminatory judicial ineffectiveness also creates a climate that is conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of society, to take effective action to sanction such acts”. Cf. IACHR. Merits Report No. 54/2001 of April 16, 2001, para. 56. Available at: [http://www.IACHR.oas.org/annualrep/2000sp/CapituloIII/Fondo/Brazil12.051.htm#\\_ftn1](http://www.IACHR.oas.org/annualrep/2000sp/CapituloIII/Fondo/Brazil12.051.htm#_ftn1).

between 2006 and 2010.<sup>70</sup> In March 2012, the United Nations Committee on the Elimination of Discrimination Against Women (hereinafter “CEDAW Committee”) noted the lack of specialized personnel in cases of domestic and family violence within the Judiciary and the absence of data on such violence.<sup>71</sup>

57. In 2019, the National Council of Justice (hereinafter “CNJ”) and IPEA published the report on a study of the performance of the Judiciary in dealing with violence against women, in which they concluded that, although the judicial units specialized in violence against women was definitely a “gain for the treatment of cases, the profile of the magistrate in charge of the court was a decisive factor in the quality of care provided to women. Thus, the service observed that a non-specialized court headed by a magistrate committed [to women’s rights] tended to be more qualified than that of a specialized court headed by a reluctant or even a moderate judge [in relation to the issue of women’s rights].”<sup>72</sup> The report also noted that, despite the fact that the dynamics of domestic violence do not vary much, the response of the Judiciary is very heterogeneous, since it depends on personal and institutional factors.<sup>73</sup>

## B. The relevant regulatory framework

58. At the time of the facts, Article 53 of the Brazilian Constitution established that:

Art. 53. Deputies and Senators enjoy civil and criminal inviolability on account of their opinions, words and votes.

§ 1º - From the date of the issuance of the certificate of electoral victory, members of the National Congress may not be arrested, except in *flagrante delicto* of an unbailable crime, nor may they be criminally prosecuted without prior authorization by the respective House.

§ 2º - The rejection of the demand for authorization or the absence of a decision shall suspend the statute of limitations for the duration of the term of office.

§ 3º - In the event of *flagrante delicto* of an unbailable crime, the case records shall be forwarded within twenty-four hours to the respective Chamber which, by the secret ballot of the majority of its members, shall decide on the arrest and authorize or not the indictment. [...] <sup>74</sup>

59. On December 20, 2001, the National Congress approved Constitutional Amendment No. 35/2001 (hereinafter “EC 35/2001”),<sup>75</sup> which modified part of the text of the above-mentioned provision, which now reads as follows:

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<sup>70</sup> Cf. Expert opinion rendered by Henrique Marques Ribeiro at the public hearing, *supra*.

<sup>71</sup> Cf. UN, CEDAW Committee. *Final observations of the Committee on the Elimination of Discrimination Against Women*. Brazil. Doc. CEDAW/C/BRA/CO/7. March 23, 2012, para. 18. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsmPYo5NfAsNvhO7uZb6iXOQTk81jjBPn%2BluOW1Jupg%2BCZo86RoOdq25SNCEYrK%2FTqi8PcoAl7yAywQZwia%2F4Lki4NfXwOHkXuwIbpqoi180U>.

<sup>72</sup> CNJ and IPEA. Research Report: *The Judiciary- confronting domestic and family violence against women*. 2019, p. 158. Available at: <https://bibliotecadigital.cnj.jus.br/jspui/bitstream/123456789/377/1/Relat%c3%b3rio%20-%20O%20Poder%20Judici%c3%a1rio%20no%20Enfrentament%20c3%a0%20Viol%c3%aancia%20Dom%c3%a9tica%20e%20Familiar%20Contra%20as%20Mulheres.pdf>.

<sup>73</sup> Cf. CNJ and IPEA. Research Report: *The Judiciary: confronting domestic and family violence against women*, *supra*. The study in question found that: “Although the primary objective of the legislation is to provide humanized attention to women in situations of domestic violence, it was found that some legal actors do not believe that the Judicial Branch has the role of providing special attention to women or should carry out actions close to what can be called “public policy,” showing indignation at the expansion of public action on the issue or what they refer to as “indiscriminate use of criminal law.” The processing of proceedings in the Judiciary is, as a general rule, much more rigid than the real dynamics of domestic violence conflicts and the treatment they require.”

<sup>74</sup> Cf. Original text of Article 53 of the Constitution of the Federative Republic of Brazil, October 5, 1988. Available at: [https://www.Senate.leg.br/atividade/const/con1988/con1988\\_atual/art\\_53\\_.asp](https://www.Senate.leg.br/atividade/const/con1988/con1988_atual/art_53_.asp).

<sup>75</sup> Cf. Constitutional Amendment No. 35, December 20, 2001. Available at: [http://www.planalto.gov.br/ccivil\\_03/constitucao/emendas/emc/emc35.htm](http://www.planalto.gov.br/ccivil_03/constitucao/emendas/emc/emc35.htm).

Art. 53. Deputies and Senators shall enjoy civil and criminal immunity for any of their opinions, words and votes.

[...]

§ 2º From the date of their investiture, members of the National Congress may not be arrested, except in *flagrante delicto* for an unbailable crime. In this case, the police record shall be sent within twenty-four hours to the respective Chamber, which, by a majority vote of its members, shall decide as to the arrest.

§ 3º When an accusation has been received against a Senator or Deputy for a crime committed after investiture, the Supreme Federal Tribunal shall notify the respective Chamber which, by initiative of a political party represented therein and by a majority vote of its members, may, until such time as a final decision is issued, suspend the proceedings in the case.

§ 4º The request for a suspension shall be examined by the respective Chamber within a non-extendable period of forty-five days.

§ 5º The stay of proceedings shall suspend the statute of limitation for the duration of the term of office.<sup>76</sup>

60. One of the main changes introduced by EC 35/2001 was that the need for prior authorization from the respective legislative chamber for the criminal prosecution of a member of the National Congress was replaced by the possibility of the chamber suspending the criminal proceeding already in progress. In other words, prior to EC 35/2001, a criminal proceeding against a member of a legislative body could only be initiated with the prior and express authorization of said body, whereas after the entry into force of the amendment, the criminal proceeding could be initiated and processed until the legislative chamber deemed it appropriate to suspend it.

61. Article 27, paragraph 1, of the Brazilian Constitution grants state deputies the same prerogatives as federal deputies.<sup>77</sup>

62. Likewise, at the time of the facts of this case, the Constitution of the state of Paraíba contained a provision similar to that contained in the Brazilian Constitution, which has also been modified in the same terms as EC 35/2001.<sup>78</sup>

63. In addition, the Internal Rules of Procedure of the Legislative Assembly of the state of Paraíba,<sup>79</sup> in force at the time of the facts, established the procedure to be followed in the event of a request for authorization to prosecute a deputy. Article 21 of the Rules of Procedure determined the competence of the Constitution, Justice and Drafting Committee of the Legislative Assembly (hereinafter "Constitution Commission" or "CCJR") to issue a written opinion regarding said request for authorization.<sup>80</sup> The procedure was initiated at the request of the President of the Court of Justice of the state of Paraíba. From that moment on, the President of the Assembly was to forward the file to the CCJR, delivering a copy of the request for authorization to the deputy so that he could present his defense within 10 days. Once the defense had been presented, the Constitution Committee was to proceed with the inquiries it deemed appropriate and, at the end of such inquiries, issue a written opinion within 10 days, concluding whether the authorization should be granted or denied.<sup>81</sup> This opinion was then to

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<sup>76</sup> Cf. Constitution of the Federative Republic of Brazil, October 5, 1988, Article 53. Available at: [http://www.planalto.gov.br/ccivil\\_03/constitucao/constitucao.htm](http://www.planalto.gov.br/ccivil_03/constitucao/constitucao.htm).

<sup>77</sup> Cf. Constitution of the Federative Republic of Brazil, *supra*, Article 27, para. 1.

<sup>78</sup> Cf. Constitution of the state of Paraíba, October 5, 1988, Article 55. Available at: <http://www2.Senate.leg.br/bdsf/handle/id/70448>.

<sup>79</sup> Cf. Internal Rules of Procedure of the Legislative Assembly of the state of Paraíba, Resolution n. 469/91 (evidence file, folios 5993 to 6090).

<sup>80</sup> Article 21 stated that "the Standing Committees and their respective thematic fields or areas of activity are as follows: I- Constitution, Justice and Drafting Committee: [...] p) authorization to prosecute a deputy [...]."

<sup>81</sup> Cf. Internal Rules of the Legislative Assembly of the state of Paraíba, Articles 227 and 229 (evidence file, folio 6071).

be submitted to the Plenary of the Legislative Assembly to be approved or rejected by secret ballot of the majority of the deputies.<sup>82</sup>

64. Also in force at the time of the facts of this case, the Code of Ethics and Parliamentary Decorum, approved by the Legislative Assembly of the state of Paraíba in 1997, through Resolution 599/97, created the Council of Ethics and Parliamentary Decorum and granted it jurisdiction to "issue an opinion in processes of authorization to prosecute a deputy."<sup>83</sup>

### C. The homicide of Márcia Barbosa de Souza

65. Márcia Barbosa de Souza was a twenty year-old Afrodescendant student who lived in the city of Cajazeiras,<sup>84</sup> located in the interior of the state of Paraíba,<sup>85</sup> in the northeast of Brazil. She lived with her father, S.R.S. and her younger sister, Mt.B.S., and very close to the house of her mother, M.B.S. They were a family of limited financial means.<sup>86</sup> Márcia Barbosa and her younger sister, who was just 17 years old at the time,<sup>87</sup> were students. Márcia was about to finish her last year of high school and intended to look for a job to contribute to the family income.<sup>88</sup> Her mother worked as a cleaner at a municipal school in Cajazeiras, and her father was a municipal employee and a taxi driver.<sup>89</sup>

66. Ms. Barbosa de Souza traveled to João Pessoa, the capital of Paraíba, in November 1997 and May 1998 and stayed at the home of her friend M.S.C. and her husband U.M.S.<sup>90</sup> Subsequently, she traveled to that city on June 13, 1998, with her sister Mt.B.S.<sup>91</sup> to participate in a Convention of the Brazilian Democratic Movement Party (PMDB).<sup>92</sup> After the Convention, Ms. Mt.B.S. returned to Cajazeiras<sup>93</sup> and Márcia Barbosa de Souza remained in João Pessoa, possibly to look for work,<sup>94</sup> and stayed at the "Canta-Maré" hotel-lodge.<sup>95</sup>

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<sup>82</sup> Cf. Internal Rules of Procedure of the Legislative Assembly of the state of Paraíba, *supra*.

<sup>83</sup> Cf. Code of Ethics and Parliamentary Decorum, Resolution Nº 599/97 of the Legislative Assembly of the state da Paraíba (evidence file, folio 6093).

<sup>84</sup> Cf. Death certificate of Márcia Barbosa de Souza (evidence file, folios 4590). Said death certificate described Ms. Barbosa de Souza as brown ("parda"). In its census, the Brazilian Institute of Geography and Statistics (IBGE) considers the Brazilian population, by self-declaration, as white, black, yellow, brown and indigenous ("branca", "preta", "amarela", "parda" and "indígena").

<sup>85</sup> Cf. Medical-legal autopsy report, of June 18, 1998 (evidence file, folios 34 to 46).

<sup>86</sup> Cf. Video statement of M.B.S., *supra*; Statement rendered by affidavit by M.B.S., *supra*; Video statement of Mt.B.S., *supra*; Affidavit of Mt.B.S., *supra*; Expert psychosocial opinion of Gilberta Santos Soares, rendered by affidavit, *supra* (evidence file, folio 10337), and newspaper article in "Correio da Paraíba" of July 23, 1998 (evidence file, folio 282).

<sup>87</sup> Cf. Statement of Mt.B.S. rendered by affidavit, *supra*.

<sup>88</sup> Cf. Statement of M.B.S. rendered by affidavit, *supra*.

<sup>89</sup> Cf. Statement of S.R.S., of June 19, 1998, to the Police Homicide Division of João Pessoa (evidence file, folios 18 and 19); Death certificate of Márcia Barbosa de Souza, *supra*, and newspaper article in "Correio da Paraíba", *supra*.

<sup>90</sup> Cf. Statement of M.S.C., of August 10, 1998, to the Police Homicide Division of João Pessoa (evidence file, folios 21 to 23).

<sup>91</sup> Cf. Statement of S.R.S., *supra*.

<sup>92</sup> Cf. Statement of M.S.C., *supra*; stenographic record of the public hearing prepared by the Human Rights Commission of the Legislative Assembly of Paraíba on July 30, 1998 (evidence file, folios 4774 to 4807), and newspaper article "PMs will provide security at PMDB meeting", published in *Folha de São Paulo*, of June 10, 1998. Available at: <https://www1.folha.uol.com.br/fsp/Brazil/fc10069816.htm>.

<sup>93</sup> Cf. Statement of Mt.B.S. of July 2, 1998, to the Homicide Division of João Pessoa (evidence file, folios 8631 and 8632).

<sup>94</sup> Cf. Statement of Mt.B.S. rendered by affidavit, *supra* (evidence file, folios 10178 and 10182).

<sup>95</sup> Statement of Wilson Martins de Souza, of June 29, 1998, made to the Homicide Division of João Pessoa (evidence file, folio 3888).

67. On June 17, 1998, at approximately 7.00 p.m., Ms. Barbosa de Souza received a call from the then state deputy of Paraíba, Aécio Pereira de Lima, and subsequently left to meet him.<sup>96</sup> At 9.00 p.m., at the Trevo Motel, a call was made from the cell phone used by Mr. Pereira de Lima to a residential phone number in the city of Cajazeiras.<sup>97</sup> During the call, Márcia Barbosa de Souza talked to several people<sup>98</sup> and one of them even spoke to Mr. Pereira de Lima.<sup>99</sup>

68. On the morning of June 18, 1998, a passerby observed someone throwing the body of a person,<sup>100</sup> later identified as Márcia Barbosa de Souza,<sup>101</sup> from a vehicle into a vacant lot in Altiplano Cabo Branco, near the city of João Pessoa, in the state of Paraíba.<sup>102</sup> At the time when her body was found, Márcia Barbosa de Souza presented abrasions on her forehead, her nose and her lips. In addition, her lips, nose and back had purplish-blue bruises (ecchymosis) and her body had traces of sand. During the autopsy it was revealed that the cranial, thoracic abdominal cavity and the neck presented internal hemorrhage and the cause of death was determined to be asphyxiation by suffocation, resulting from a mechanical action.<sup>103</sup> In addition, the forensic medical expert who examined her body determined that Ms. Barbosa had been beaten prior to her death<sup>104</sup> and had suffered compression of the neck, although this had not been the cause of death.<sup>105</sup>

69. The complaint filed by the Public Prosecutor's Office attributed the crimes of "double aggravated homicide"<sup>106</sup> and concealment of a corpse to the then state deputy, Mr. Aécio Pereira de Lima,<sup>107</sup> who had known the alleged victim since November 1997.<sup>108</sup> According to his own statement and to testimonial evidence, Mr. Aécio Pereira de Lima had in his possession

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<sup>96</sup> Cf. Final report of the police department for crimes against the person of August 27, 1998 (evidence file folios 5 to 8).

<sup>97</sup> Cf. Final report of the police department for crimes against the person, *supra*.

<sup>98</sup> Cf. Final report of the police department for crimes against the person, *supra*.

<sup>99</sup> Cf. Final report of the police department for crimes against the person, *supra*, and statement of M.S.C., *supra*.

<sup>100</sup> Cf. Statement of Antonio Lopes de Brito, made on June 25, 1998 in the Homicide Division of João Pessoa (evidence file, folios 51 and 52), and complaint of the Public Prosecutor's Office against Deputy Aécio Pereira of October 8, 1998 (evidence file, folios 10 to 16).

<sup>101</sup> Cf. Statement of Márcia Maria Gabarra Pires, made on June 22, 1998 at the Homicide Division of João Pessoa (evidence file, folios 3880 and 3881), and complaint of the Public Prosecutor's Office against Deputy Aécio Pereira, of October 8, 1998 (evidence file, folios 10 to 16).

<sup>102</sup> Cf. Statement of Antonio Lopes de Brito, of June 25, 1998 at the Homicide Division of João Pessoa (evidence file, folios 51 and 52); Complaint of the Public Prosecutor's Office against the Deputy Aécio Pereira, *supra*, and Final report of the police department for crimes against the person of August 27, 1998 (evidence file folios 5 to 8).

<sup>103</sup> Cf. Medical-legal autopsy report, carried out on June 18, 1998 (evidence file, folios 35 and 36); statement of the medical-legal expert before the Attorney General's Office of Paraíba, carried out on October 2, 1998 (evidence file, folios 48 and 49), and complaint of the Public Prosecutor's Office against Deputy Aécio Pereira, *supra*.

<sup>104</sup> Cf. Final report of the police department for crimes against the person, *supra*.

<sup>105</sup> Cf. Statement of the medical-legal expert before the Attorney General's Office of Paraíba, *supra* (evidence file, folio 49).

<sup>106</sup> The Brazilian Criminal Code, in Article 121.2, contemplates some circumstances that make the crime of homicide more serious and, therefore, increase the penalty. A murder that takes place under any of these circumstances is classified as "aggravated homicide."

<sup>107</sup> Cf. Complaint of the Public Prosecutor's Office against the Deputy Aécio Pereira, of October 8, 1998 (evidence file, folios 10 to 16).

<sup>108</sup> Cf. Final report of the police department for crimes against the person, *supra*, and statement of M.S.C., *supra*.

the vehicle<sup>109</sup> used to conceal the body of the victim.<sup>110</sup> Four other persons - D.D.P.M., L.B.S., A.G.A.M. and M.D.M. - were also included in the investigations as suspects of having participated in the crime.<sup>111</sup>

#### **D. Domestic proceedings**

70. On June 19, 1998, police investigation No. 18/98 regarding the death of Márcia Barbosa de Souza was formally opened.<sup>112</sup> After the collection of testimonial and expert evidence, the Police Commissioner in charge of the investigation, on July 21, 1998, issued a report in which he stated that all the evidence indicated the direct participation of the then deputy Aécio Pereira de Lima in the crime. However, he noted that it was difficult to take the statement of the then deputy by virtue of his prerogatives related to parliamentary immunity. The Commissioner also concluded that there were indications of the participation of four other persons in the crime: D.D.P.M., L.B.S., A.G.A.M. and M.D.M.<sup>113</sup>

71. In the course of the investigations, the police authorities questioned different witnesses about the personality, social conduct and sexuality of Ms. Barbosa de Souza.<sup>114</sup> Likewise, during the criminal proceedings against Aécio Pereira de Lima, to which reference will be made below, at the request of his attorney, more than 150 pages of newspaper articles referring to the alleged prostitution, overdose and alleged suicide of Márcia Barbosa de Souza were incorporated into the case file.<sup>115</sup>

72. On July 23, 1998, the police sent the investigation report to the Public Prosecutor's Office,<sup>116</sup> which asked the competent judge, some days later, for additional inquiries to be conducted by the police authorities.<sup>117</sup> On July 28, 1998, the judge authorized said inquiries and assigned a term of 20 days for the police to carry them out.<sup>118</sup>

73. On August 19, 1998, the Police Commissioner and the Prosecutor requested the presence of the then deputy to hear his testimony.<sup>119</sup> On August 24, 1998, the then deputy indicated that the request should be made to the Legislative Assembly of the state of Paraíba due to his parliamentary prerogatives.<sup>120</sup>

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<sup>109</sup> Cf. Statement of the then deputy Aécio Pereira de Lima, rendered on September 24, 1998, before the Attorney General's Office of Paraíba (evidence file, folios 79 to 83).

<sup>110</sup> Cf. Final report of the police department for crimes against the person, *supra*.

<sup>111</sup> Cf. Request for authorization of further inquiries, presented by the Public Prosecutor's Office to the judge, on July 27, 1998 (evidence file, folios 54 to 57).

<sup>112</sup> Cf. Cover page of the police investigation file (evidence file, folios 3844).

<sup>113</sup> Cf. Report of the Police Commissioner of the department of crimes against the person of João Pessoa, of July 21, 1998 (evidence file folios 3931 to 3934).

<sup>114</sup> For example, in response to the questions asked, U.M.S. made significant references to Márcia Barbosa's sexuality and to aspects of her personal life. During his testimony, on May 20, 2003, he confirmed that his wife "expressed concern about Márcia's excessive drug use, when she had it easy; that Márcia, the victim, was a novice addict [...]; that when questioned by the judge, he stated that Márcia Barbosa met Aécio "smelling" but at the deponent's house. Similarly, on September 26, 2007, in his statement before the Jury Court, M.S.C. stated that Márcia Barbosa had gone to the Trevo Motel to "prostitute herself", since "you don't go [to a motel] to pray." Cf. Provisional decision of July 27, 2005 (evidence file, folios 576 to 577), and Statement of M.S.C, made on September 27, 2007 before the First Jury Court (evidence file, folio 3166).

<sup>115</sup> Cf. Expert opinion rendered by Soraia da Rosa Mendes, *supra* (merits file, folio 10445).

<sup>116</sup> Cf. Note of the prosecutor in the police investigation file of July 23, 1998 (evidence file, folios 3942).

<sup>117</sup> Cf. Request for authorization of further inquiries, presented by the Public Prosecutor's Office to the Judge, on July 27, 1998 (evidence file, folios 54 to 57).

<sup>118</sup> Cf. Decision of the judge of July 28, 1998 (evidence file, folio 59).

<sup>119</sup> Cf. Official letter No. 005/98, to Aécio Pereira de Lima of August 19, 1998 (evidence file, folios 62).

<sup>120</sup> Cf. Response of Aécio Pereira de Lima, presented on August 24, 1998 (evidence file, folios 64 and 65).

74. On August 27, 1998, the Police Commissioner prepared a new report ratifying the terms of the previous report.<sup>121</sup> On September 4, 1998, the Prosecutor requested that the file of the police investigation be sent to the Attorney General of Justice, who was competent to file the criminal action against the then deputy Aécio Pereira de Lima, since he enjoyed privileged immunity.<sup>122</sup> On September 15, 1998, the case was received by the Attorney General's Office.<sup>123</sup> (*infra* paras. 75 to 81). At the same time, the investigations related to the other accused, who did not have such privilege of jurisdiction, continued to be conducted by the police<sup>124</sup> (*infra* paras. 82 to 87). An account of these two proceedings is given below:

*D.1 The investigations conducted by the Attorney General's Office of the state of Paraíba regarding Aécio Pereira de Lima*

75. Owing to the parliamentary immunity enjoyed by the then state deputy Aécio Pereira de Lima, the Attorney General of Justice filed the criminal action before the Court of Justice of the state of Paraíba, on October 8, 1998, with the proviso that it could only be initiated if the Legislative Assembly allowed it.<sup>125</sup> On October 14, 1998, the relevant authorization was requested from the Legislative Assembly,<sup>126</sup> which rejected it on December 17, 1998, by means of Resolution No. 614/98.<sup>127</sup> On March 31, 1999, the Judiciary reiterated its request to the Legislative Assembly,<sup>128</sup> which was also denied on September 29, 1999.<sup>129</sup>

76. On April 12, 2002, the Judicial Coordination of the Court of Justice of the state of Paraíba informed the Presidency of the Court about Constitutional Amendment 35/2001 (*infra* paras. 58-64).<sup>130</sup> Thus, on April 16, 2002, the magistrate of the Court of Justice in charge of the case file sent it to the Attorney General's Office for its opinion.<sup>131</sup> The Attorney General of Justice submitted his written opinion, on October 21, 2002, arguing that, due to the amendments introduced by EC 35/2001, the Judiciary should continue with the case.<sup>132</sup>

77. On February 3, 2003, the reporting magistrate of the case ordered that the Regional Electoral Court of Paraíba (hereinafter "TRE/PB") be consulted as to whether Mr. Aécio Pereira de Lima had been elected to any office in the October 2002 elections so that it could decide whether the Court of Justice had jurisdiction to prosecute him.<sup>133</sup> On February 11, 2003, the TRE/PB informed the magistrate that Mr. Pereira de Lima had not been elected to any office.<sup>134</sup> Therefore, the magistrate sent the case to the Court of First Instance of João Pessoa, given

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<sup>121</sup> Cf. Police report of August 27, 1998 (evidence file, folios 67 to 70).

<sup>122</sup> Cf. Request of the Public Prosecutor's Office of September 4, 1998 (evidence file, folios 72 to 74).

<sup>123</sup> Cf. Acknowledgement of receipt from the Attorney General's Office (evidence file, folio 75).

<sup>124</sup> Cf. Letter from the Attorney General's Office of September 14, 1998 (evidence file, folios 4132 and 4133).

<sup>125</sup> Cf. Complaint of the Public Prosecutor's Office against Deputy Aécio Pereira of October 8, 1998 (evidence file, folios 10 to 16).

<sup>126</sup> Cf. Letter requesting authorization to open criminal proceedings against Deputy Aécio Pereira de Lima, of October 14, 1998 (evidence file, folios 25).

<sup>127</sup> Cf. Resolution of the Legislative Assembly of Paraíba denying the request for authorization to criminally prosecute then Deputy Aécio Pereira de Lima, published on December 18, 1998 (evidence file, folios 27 to 30).

<sup>128</sup> Cf. New letter requesting authorization to open criminal proceedings against then Deputy Aécio Pereira de Lima, of March 31, 1999 (evidence file, folio 32).

<sup>129</sup> Cf. Letter Nº 0008/GP from the President of the Legislative Assembly of Paraíba to the President of the Court of Justice, dated February 9, 2000 (evidence file, folio 101).

<sup>130</sup> Cf. Communication of April 12, 2002 (evidence file, folios 103 and 104).

<sup>131</sup> Cf. Order to send the case file to the Attorney General's Office of April 16, 2002 (evidence file, folio 108).

<sup>132</sup> Cf. Written opinion of the Attorney General of October 21, 2002 (evidence file, folios 111 to 114).

<sup>133</sup> Cf. Order of the reporting magistrate of February 3, 2003 (evidence file, folio 118).

<sup>134</sup> Cf. Letter Nº 24/2003/SJ of February 14, 2003 (evidence file, folio 120).

that Mr. Pereira de Lima no longer had the prerogative of privilege.<sup>135</sup>

78. Criminal proceedings formally began on March 14, 2003.<sup>136</sup> On April 7, 2003, the first preliminary hearing took place, in which Mr. Pereira de Lima denied all the charges.<sup>137</sup> Between April 7, 2003 and July 27, 2005, five hearings were held.<sup>138</sup> In the hearing of July 27, 2005, the decision to arraign (*sentença de pronuncia*) was delivered, that is, it was decided that Mr. Pereira de Lima should be referred to a Jury Court because there was sufficient evidence to establish the crimes of aggravated homicide, perpetrated for futile reasons by asphyxiation, and concealment of a corpse.<sup>139</sup>

79. On August 3, 2005, Mr. Pereira de Lima's defense filed an appeal against the aforementioned ruling.<sup>140</sup> However, on November 1, 2005, the lower court confirmed the decision,<sup>141</sup> and on January 31, 2006, the Criminal Chamber of the Court rejected the appeal.<sup>142</sup> On February 15, 2006, Mr. Pereira de Lima's defense filed a special appeal against this decision,<sup>143</sup> which was submitted to the Superior Court of Justice on January 19, 2007.<sup>144</sup> On June 25, 2007, the Jury held its first session, but the trial was adjourned due to the absence of Mr. Pereira de Lima's attorney<sup>145</sup> and resumed on September 26, 2007.<sup>146</sup> On September 26, 2007, the First Jury Court of João Pessoa sentenced Mr. Pereira de Lima to 16 years imprisonment for the crimes of murder and concealment of the body of Márcia Barbosa de Souza.<sup>147</sup> Mr. Pereira de Lima appealed the judgment on September 27, 2007.<sup>148</sup>

80. Before his appeal could be considered, Mr. Pereira de Lima died from a heart attack on February 12, 2008.<sup>149</sup> Therefore, the criminal liability was extinguished and the case was archived.<sup>150</sup>

81. Mr. Pereira de Lima's body was laid to rest in the *Salón Noble* of the state Legislative Assembly of Paraíba.<sup>151</sup> The Assembly, by order of its President, cancelled the legislative session and sent an official communication to all the deputies. Official mourning was decreed for three days and the wake was attended by several politicians, among them the then Governor of the State of Paraíba.<sup>152</sup>

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<sup>135</sup> Cf. Order of the reporting magistrate of February 24, 2003 (evidence file, folio 122).

<sup>136</sup> Cf. Decision of the presiding judge of the Jury Court of March 14, 2003 (evidence file, folio 4242).

<sup>137</sup> Cf. Report on interrogation and minutes of the hearing of April 7, 2003 (evidence file, folios 124 to 127).

<sup>138</sup> Cf. Minutes of the hearings (evidence file, folios 129 to 144).

<sup>139</sup> Cf. Decision to arraign, issued on July 27, 2005 (evidence file, folios 4431 to 4439).

<sup>140</sup> Cf. "Reasons for the Appeal in the Strict Sense" of August 25, 2005 (evidence file, folios 174 to 185).

<sup>141</sup> Cf. Decision of November 1, 2005 (evidence file, folio 187).

<sup>142</sup> Cf. Decision of the Court of Justice of Paraíba of January 31, 2006 (evidence file, folios 197 to 202).

<sup>143</sup> Cf. Special appeal filed by the defense on February 15, 2006 (evidence file, folios 204 to 212).

<sup>144</sup> Cf. Order of January 19, 2007 (evidence file, folio 224).

<sup>145</sup> Cf. Minutes of the session of the First Jury Court of June 25, 2007 (evidence file, folios 233 to 235).

<sup>146</sup> Cf. Minutes of the session of the First Jury Court of September 26, 2007 (evidence file, folios 237 to 240).

<sup>147</sup> Cf. Judgment of First instance of September 26, 2007 (evidence file, folios 242 to 245).

<sup>148</sup> Cf. Appeal against the judgment of first instance and admission of appeal by the Judge (evidence file, folios 247 to 249).

<sup>149</sup> Cf. Death certificate of Mr. Aécio Pereira de Lima (evidence file, folio 9732).

<sup>150</sup> Cf. Procedural consultation on the website of the Court of Justice of Paraíba (evidence file, folio 251).

<sup>151</sup> Cf. FERREIRA, Lilla. "Aécio's body is laid to rest in the AL; the burial will be today at 10am." February 12, 2008. In "Portal de Notícias da Paraíba": Click PB. Available at: <https://www.clickpb.com.br/paraiba/corpo-de-aecio-e-velado-na-al-enterro-sera-hoje-as-10h-29339.html>.

<sup>152</sup> Cf. FERNANDES, Hélder. "O Bê-a-Bá Do Sertão. Autoridades prestigiam velório de Aécio Pereira." February 12, 2008. Available at: <https://obeabadosertao.com.br/portal/2008/02/12/Autoridades-prestigiam-velorio-de-Aecio-Pereira/>.

*D.2 Investigations conducted by the Civil Police in relation to D.D.P.M., M.D.M., L.B.S. and A.G.A.M.*

82. On October 1, 1998, the Public Prosecutor's Office advised the supervising judge in charge of the investigations related to the involvement of D.D.P.M., L.B.S., A.G.A.M. and M.D.M., in the homicide of Márcia Barbosa de Souza, of the need to extend the term of the investigations to clarify individual aspects of the conduct of each suspect in relation to her death and concealment of her body, as well as all the facts, and made a series of specific requests.<sup>153</sup> On the same day, the judge authorized the inquiries requested by the Prosecutor, on the understanding that the required evidence was essential, and ordered the investigation files to be sent to the police authority to comply with those procedures.<sup>154</sup>

83. On December 14, 1998, the Prosecutor again requested that certain tests be conducted by the police, which in his opinion had not been carried out, without specifying what these would be.<sup>155</sup> During 1999, there was no significant progress in the investigations, due mainly to the substitution of three prosecutors in charge of the investigation, two of whom alleged impediment for personal reasons.<sup>156</sup>

84. On June 19, 2000, the forensic medical report requested by the Prosecutor in October 1998, was sent to the judge.<sup>157</sup> On August 8, 2000, the Prosecutor asked the judge to order the police authority to conclude the investigations.<sup>158</sup> The judge complied with this request on August 14 of that same year.<sup>159</sup> On December 26, 2000, the new Commissioner of the police station investigating the case requested an extension of the deadline for the completion of the required investigative procedures and the preparation of the final report.<sup>160</sup>

85. In the absence of news, on March of 2001, the Public Prosecutor's Office again requested that the police carry out certain procedures.<sup>161</sup> On April 2, the Police Commissioner

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<sup>153</sup> The prosecutor requested the opinion of a forensic medical expert to determine whether the information contained in the autopsy report would suggest that Marcia did not die by strangulation, but by asphyxiation caused by an overdose, given some testimonies claiming that she was a drug addict. Also, in view of the possible contact between the victim and the then deputy Aécio on the night of her death, he requested the list of vehicle entries and exits on the date of the event from several motels, including the Trevo Motel. He also requested statements from the owners and managers of the Trevo Motel, as well as the doorman and other employees who had worked in the early hours on the day of Marcia's death. In addition, he requested that handwriting tests be carried out on the notes found in Márcia's pockets and belongings, which recorded the telephone numbers used by Aécio Pereira de Lima and others to clarify whether these notes had been written by Ms. Barbosa de Souza or by a third party. *Cf.* Written opinion of the Public Prosecutor's Office of October 1, 1998 (evidence file, folios 269 to 274).

<sup>154</sup> *Cf.* Decision of the judge of October 1, 1998 (evidence file, folio 5478).

<sup>155</sup> *Cf.* Statement of the Public Prosecutor's Office of December 14, 1998 (evidence file, folios 254 and 255).

<sup>156</sup> *Cf.* Statements of August 6 and September 20, 1999 (evidence file, folios 5546, 5554 and 5555).

<sup>157</sup> *Cf.* Official letter Nº. 278/2000 of June 19, 2000 (evidence file, folios 5568 and 5569).

<sup>158</sup> *Cf.* Statement of the Public Prosecutor's Office of August 8, 2000 (evidence file, folio 256).

<sup>159</sup> *Cf.* Decision of the Judge of August 14, 2000 (evidence file, folio 257).

<sup>160</sup> *Cf.* Note of the Commissioner of December 26, 2000 (evidence file, folio 5575).

<sup>161</sup> On this occasion, the Public Prosecutor's Office asked the owner of the Trevo Motel to hand over the complete list of vehicles that entered and left the Trevo Motel between June 17 and 18, 1998; that the person in charge of the computer department of the motel be questioned so that he could report who had changed or not submitted the complete list of vehicles previously requested, since the list that had been sent contained numbers that were strangely below the average number of clients per day; the search for and return to the records of a cassette tape that had disappeared; that the witness who had seen Márcia's body thrown from a car on the morning of June 18, 1998, A.L.B., be heard again to ask him how many people were present in that vehicle; the cross-examination of D.M., owner of the car that was on loan to Deputy Aécio, to know the details of the return of the vehicle; further questioning of M.D.M. to find out whether Aécio Pereira de Lima's advisor, "Carlos", had gone to wash the vehicle before returning it or picking it up elsewhere; the cross-examination of C.A.O. to clarify the reasons that led him to omit M.D.M.'s statement that he was in possession of the vehicle used in the disposal of Márcia's body; the questioning of the son

indicated that he had already taken sufficient steps, expressly stating that he could not carry out all the procedures requested by the Public Prosecutor's Office.<sup>162</sup> Subsequently, in April 2001, the Public Prosecutor's Office left a note in the investigation file to the Commissioner in charge of the case, warning him that he could be committing the crime of disobedience if he did not fully comply, within 30 days, with the procedures previously requested.<sup>163</sup> In June<sup>164</sup> and August<sup>165</sup> 2001, the Public Prosecutor's Office again asked the police authority to comply fully with the inquiries ordered previously.

86. In September of 2001, the Commissioner in charge of the investigations reported that, due to the backlog of work, he had not completed the procedures required by the Public Prosecutor's Office.<sup>166</sup> Thus, in December 2001, the Public Prosecutor's Office again requested the aforementioned procedures.<sup>167</sup> In March 2002, the Commissioner again reported that it was not possible to proceed with the actions required due to the backlog of work caused by lack of personnel and the lack of vehicles in working order.<sup>168</sup> Likewise, in December 2002, the Commissioner stated that he had been unable to complete the procedures ordered.<sup>169</sup>

87. In March 2003, the Public Prosecutor's Office recommended the dismissal of the case due to insufficient evidence,<sup>170</sup> which was ordered by the judge.<sup>171</sup>

## VIII MERITS

88. The case *sub judice* concerns the murder of Márcia Barbosa de Souza, of which the then state deputy Aécio Pereira de Lima was accused, and the alleged international responsibility of Brazil for the violation of the right of access to justice of the mother and father of Márcia Barbosa de Souza, as well as the obligation to investigate this crime with the required strict due diligence and within a reasonable time. Although the facts related to the homicide are not within the Court's temporal jurisdiction, the Court finds that it is plausible that the homicide of Ms. Barbosa de Souza was committed for gender reasons, especially because of the asymmetrical situation of economic and political power with respect to her male aggressor, as well as the way in which her body was found<sup>172</sup> - in a vacant lot - with traces of sand, which indicated that she had possibly been dragged, with signs of having been beaten, abrasions on her forehead, nose and lips, bruises distributed on her face and her back and with marks showing that she had been subjected to a compressive action on her neck (*supra* para. 68).

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of Deputy Aécio Pereira de Lima and M.C.C.S. to clarify the large number of calls that both made to the congressman between June 17 and 18; and the cross-examination of U.M.S. to see if he had additional information on the people who had helped the then deputy to remove Márcia's body from inside the Trevo Motel. Cf. Statement of the Public Prosecutor's Office of March 8, 2001, (evidence file, folios 258 to 260).

<sup>162</sup> Cf. Statement of the Police Commissioner of April 2, 2001 (evidence file, folios 5594 to 5595).

<sup>163</sup> Cf. Statement of the Public Prosecutor's Office of April 23, 2001 (evidence file, folio 262).

<sup>164</sup> Cf. Statement of the Public Prosecutor's Office of June 28, 2001 (evidence file, folio 263).

<sup>165</sup> Cf. Statement of the Public Prosecutor's Office of August 22, 2001 (evidence file, folio 264).

<sup>166</sup> Cf. Statement of the Police Commissioner of September 27, 2001 (evidence file, folio 265).

<sup>167</sup> Cf. Statement of the Public Prosecutor's Office of December 28, 2001 (evidence file, folio 266).

<sup>168</sup> Cf. Statement of the Police Commissioner of March 11, 2002 (evidence file, folio 5805).

<sup>169</sup> Cf. Statement of the Police Commissioner of December 12, 2002 (evidence file, folio 5808).

<sup>170</sup> Cf. Written opinion of the Public Prosecutor's Office of March 12, 2003 (evidence file, folios 279 to 280).

<sup>171</sup> Cf. Decision of the judge issued on March 18, 2003 (evidence file, folios 5825 and 5826). According to Article 18 of the Brazilian Code of Criminal Procedure, "[a]fter the judicial authority orders the dismissal of the investigation, [...] the police authority may conduct further investigations, if it learns of other evidence".

<sup>172</sup> Cf. *Case of Véliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 178.

89. The Court considers it pertinent to recall that, as stated previously, it has jurisdiction to examine separate acts that took place within the investigations and criminal proceedings initiated for the murder of Márcia Barbosa de Souza, after December 10, 1998. Therefore, the decision adopted by the Legislative Assembly of the State of Paraíba on December 17, 1998 (*supra* para. 75), which denied the authorization to criminally prosecute Mr. Pereira de Lima, on the one hand, and, on the other, the request for evidentiary procedures by the prosecutor in charge of the investigations against the other suspects, dated December 14, 1998 (*supra* para. 83), as well as the acts that were subsequently carried out, are within the Court's jurisdiction, as they are closely related to them.

90. Taking into consideration the arguments of the Commission, the representatives and the State, the Court will now proceed to examine the merits of this case in the following order: a) rights to judicial guarantees, judicial protection and equality before the law, in relation to the obligations to respect and guarantee, the duty to adopt provisions of domestic law and the obligations set forth in Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter "Convention of Belém do Pará") and b) right to personal integrity of the next of kin of Márcia Barbosa de Souza.

#### VIII-1

### **RIGHTS TO JUDICIAL GUARANTEES,<sup>173</sup> EQUALITY BEFORE THE LAW<sup>174</sup> AND JUDICIAL PROTECTION,<sup>175</sup> IN RELATION TO THE OBLIGATIONS OF RESPECT AND GUARANTEE,<sup>176</sup> THE DUTY TO ADOPT PROVISIONS OF DOMESTIC LAW<sup>177</sup> AND THE OBLIGATIONS SET FORTH IN ARTICLE 7 OF THE BELÉM DO PARÁ CONVENTION <sup>178</sup>**

#### **A. Arguments of the parties and of the Commission**

91. Regarding parliamentary immunity, the **Commission** indicated that, despite the fact that, from the beginning of the police investigation, responsibility for the death of Márcia Barbosa de Souza had been attributed to Mr. Pereira de Lima, it was not possible to begin criminal proceedings because the Legislative Assembly had denied, without justification, the request to lift his parliamentary immunity. It added that it was only possible to begin the proceedings against Mr. Pereira de Lima in March 2003, since he was not reelected as a deputy. It pointed out that parliamentary immunity was provided for in the Brazilian Constitution in very broad terms; therefore, since it did not comply with the parameters of objectivity and reasonableness, the rule was disproportionate and discriminatory. Furthermore, it considered that the lack of justification by the Legislative Assembly for rejecting the requests for authorization to initiate judicial proceedings showed that these were arbitrary decisions. It considered that the new wording of Article 53 of the Constitution, modified by Constitutional Amendment N° 35/2001, continued to allow proceedings to be suspended or paralyzed by the will of the deputies, so that the fundamental flaw of the broad and indeterminate nature of parliamentary immunity would not have been completely remedied, and would perpetuate the discrimination. Thus, it concluded that parliamentary immunity, applied to the specific case, would constitute a violation of the right to judicial guarantees, the principle of equality and non-discrimination and the right to judicial protection.

92. With respect to reasonable time, the Commission considered that the case was not of

<sup>173</sup> Article 8 of the American Convention.

<sup>174</sup> Article 24 of the American Convention.

<sup>175</sup> Article 25 of the American Convention.

<sup>176</sup> Article 1(1) of the American Convention.

<sup>177</sup> Article 2 of the American Convention.

<sup>178</sup> Article 7 of the Belém do Pará Convention.

great complexity, given that based on the police investigation, there was sufficient evidence to initiate the process. It indicated that parliamentary immunity was the main cause of the delay, but that other delays caused by the State authorities also contributed. Thus, it concluded that the State violated the guarantee of reasonable time.

93. With regard to due diligence in the investigation of other possible perpetrators, the Commission noted that the police report of July 21, 1998, did not specify the acts that constituted the crimes of the then state deputy and the four other suspects. It alleged that not all the evidence was examined - without any justification in this regard- in order to determine responsibility, and that the investigation was closed through lack of evidence. Thus, it concluded that the State failed in its duty to investigate with due diligence.

94. In addition, the Commission determined the separate violation of Article 7 of the Belém do Pará Convention. It considered that the impunity of the then state deputy was an act of tolerance on the part of the State and argued that this was not reflected exclusively in this case, but rather in a systematic manner. It added that "it is a tolerance of the entire system, which only perpetuates the roots and the psychological, social and historical factors that perpetuate and feed violence against women."<sup>179</sup> It concluded that the State failed in its obligation to prevent, investigate and punish violence against women.

95. The **representatives** alleged that, after the recognition of the Court's contentious jurisdiction, the State carried out certain actions and omissions that violated the rights of Márcia Barbosa de Souza and her next of kin. They specified that the State violated the rights to judicial guarantees and judicial protection by a) preventing the investigation of Mr. Pereira de Lima's responsibility through the mechanism of parliamentary immunity, which resulted in a delay in the criminal proceedings, which meant that the then deputy was never punished for the facts; b) failing to investigate all the suspects, even though there were indications of their involvement; and c) unjustifiably delaying the processing of the investigations. They also pointed out that parliamentary immunity in this case did not respect the principles of reasonableness and proportionality and its application ended up violating the rights of access to justice and judicial guarantees of the alleged victims. They argued that, despite multiple indications of the involvement of the then deputy Aécio Pereira de Lima in the murder of Márcia Barbosa de Souza, and despite the absence of political motivation behind the accusation, parliamentary immunity was applied to acts of the utmost gravity, without respecting due process and without providing grounds for that decision. They emphasized that, taking into account that the crime in this case is femicide, no exclusion of responsibility should be applicable. They also pointed out that the procedure established in Brazilian law for authorizing the prosecution of the then deputy was not respected.

96. The representatives also alleged the violation of Article 7 of the Convention of Belém do Pará in relation to Articles 8 and 25 of the American Convention. In this regard, they argued that, taking into account that the case *sub judice* concerns the murder of a young woman and involves the participation of a high-ranking State official, the authorities should have acted with special diligence and that this duty was further reinforced by the special obligations deriving from the Convention of Belém do Pará.

97. The **State** denied any violation of Articles 8 and 25 of the American Convention and Article 7 of the Convention of Belém do Pará, since it considered that it had provided adequate and effective remedies for the protection of the rights allegedly violated, regarding which the regular procedure was followed in the domestic jurisdiction. It emphasized that there were no State acts intended to prevent access to these remedies or any undue delay in their processing.

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<sup>179</sup> IACHR. Merits Report No. 54/01, *supra*, para. 55.

It added that the police investigation was carried out quickly and efficiently, using legal means to determine the conduct of the suspects. The State argued that it had offered an effective judicial response to the facts considered to be violations of the rights of Márcia Barbosa's next of kin, inasmuch as the then deputy Aécio Pereira de Lima was convicted in September 2007, but did not serve his sentence only due to his death in February of 2008, which was an event beyond its control. As for the other defendants, it alleged that there was a diligent investigation, but that the prosecutor in charge of the case understood that there was insufficient evidence of their participation, so he requested that the police investigation file be closed due to lack of evidence. It affirmed that the mechanism of parliamentary immunity was not used in order to unreasonably obstruct or delay the investigation. It indicated that the amendment of the constitutional provision in 2001, related to parliamentary immunity, is fully consistent with Article 2 of the American Convention and, therefore, the State adapted its domestic laws on this matter within a reasonable time. It explained that procedural parliamentary immunity merely implies the suspension of the determination of responsibility for a possible crime until the conclusion of the electoral mandate or the granting of authorization by the corresponding Parliamentary Chamber, and that, during that period, the statute of limitations of the crime is also suspended. Regarding the matter of reasonable time, it pointed out that the judicial procedure for intentional crimes against life is more complex and therefore takes a little longer. In this regard, it argued that, in the present case, said procedure was duly observed and that all procedural guarantees were respected. Thus, the criminal action followed its regular course within a reasonable period. It further argued that there is no information to the effect that the representatives or the alleged victims have questioned the legitimacy of the criminal proceedings before the domestic judicial or administrative courts.

## **B. Considerations of the Court**

98. Taking into consideration the arguments presented by the parties and the Commission, as well as the facts of the case and the evidence in the case file, the Court will now refer to: 1) the alleged wrongful application of parliamentary immunity; 2) the alleged lack of due diligence in the investigation of the other suspects; 3) the alleged violation of the guarantee of reasonable time; 4) the alleged use of gender stereotypes in the investigations; and 5) conclusion.

### ***B.1 The alleged wrongful application of parliamentary immunity***

99. Bearing in mind that this is the first time that this Court will analyze the application of parliamentary immunity within the framework of the right of access to justice and the reinforced obligation to investigate with due diligence, it is pertinent to make some general observations on the aforementioned mechanism and then examine its application in this specific case.

#### *a. Concept and regulation of parliamentary immunity*

100. Parliamentary immunity is a mechanism designed to guarantee the independence of

the legislative body as a whole<sup>180</sup> and of its members,<sup>181</sup> and cannot be conceived as the personal privilege of a parliamentarian. To this extent, it would fulfil the role of an institutional guarantee of democracy.<sup>182</sup> However, under no circumstances can parliamentary immunity be transformed into a mechanism for impunity; if this were to occur, it would erode the rule of law, would contravene the principle of equality before the law and would make access to justice illusory for those affected.<sup>183</sup>

101. In Brazil, as mentioned previously (*supra* paras. 58 to 64), at the time of the facts, the Constitution established that “deputies and senators are inviolable on account of their opinions, words and votes,” and that from the “date of issuance of their certificate of electoral victory, members of the National Congress may not be arrested, except in *flagrante delicto* of an unbailable crime, nor may they be criminally prosecuted without prior authorization by the respective Chamber.”<sup>184</sup> According to Article 27, paragraph 1 of the Constitution,<sup>185</sup> the provision regarding parliamentary immunity also applied to state deputies. Likewise, the Constitution of the state of Paraíba contained an identical rule.<sup>186</sup> Currently, since the approval of Constitutional Amendment 35/2001,<sup>187</sup> prior authorization from the legislature is not required to criminally prosecute a parliamentarian; rather, the National Congress, and also the state legislative assemblies, have the prerogative to suspend criminal proceedings initiated against one of their members.

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<sup>180</sup> The Supreme Federal Court of Brazil has expressed this same position in its decision regarding the Direct Action of Unconstitutionality No. 5526 of October 11, 2017, stating that “[...] the immunities of the Legislative Branch, as well as the guarantees of the Executive, Judicial [branches] and of the Public Prosecutor’s Office, are provisions that protect the Powers and Institutions of the State against influences, pressures, coercion and from internal and external interference and must be assured for the equilibrium of Republican and Democratic Government. [...] [T]he immunities are not related to the figure of the parliamentarian, but to his powers, with the purpose of preserving the Legislative Branch from eventual excesses or abuses by the Executive or Judicial [branches] being enshrined as a guarantee of its independence before the other constitutional powers and maintaining its popular representation.” Cf. Expert opinion of Edvaldo Fernandes da Silva rendered by affidavit on January 13, 2021 (evidence file, folio 10061).

<sup>181</sup> See, for example, Article 5 of the Internal Rules of the European Parliament. Available at: [https://www.europarl.europa.eu/doceo/document/RULES-9-2020-02-03\\_ES.pdf](https://www.europarl.europa.eu/doceo/document/RULES-9-2020-02-03_ES.pdf).

<sup>182</sup> Cf. Expert opinion of Edvaldo Fernandes da Silva, rendered by affidavit *supra* (evidence file, folio 10062). The European Court of Human Rights has also stated that the varying degrees of parliamentary immunity conferred by the States: “pursue the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary. Different forms of parliamentary immunity may indeed serve to protect the effective political democracy that constitutes one of the cornerstones of the Convention system, particularly where they protect the autonomy of the legislature and the parliamentary opposition. The guarantees offered by both types of parliamentary immunity (non-liability and inviolability) serve to ensure the independence of Parliament in the performance of its task. Inviolability helps to achieve the full independence of Parliament by preventing any possibility of politically motivated criminal proceedings (*fumus persecutionis*) and thereby protecting the opposition from pressure or abuse on the part of the majority [...]. The protection afforded to free speech in Parliament serves to protect the interests of Parliament as a whole and should not be understood as protection afforded solely to individual parliamentarians. Cf. ECHR. Case of *Karácsony et al. v. Hungary* [GS], No. 42461/13 and 44357/13, Judgment of May 17, 2016, paras. 138 and 146.

<sup>183</sup> Parliamentary immunity was historically conceived for the purpose of protecting legislators against the “possible use of criminal proceedings with the intention of disturbing the functioning of the Chambers or altering the composition granted them by the will of the people.” However, as the expert witness Javier García emphasized, the meaning and scope of parliamentary immunities have changed with the profound constitutional transformations both in Europe, after the Second World War, and in Latin America, since the 1980s. Cf. Expert opinion rendered by affidavit by Javier Hernández García, *supra* (evidence file, folios 10361 and 10362). On the other hand, it is true that the higher the degree of development of the system of checks and balances and of institutional tools of equilibrium in the exercise of constitutional powers, the lower the presumption of politically motivated criminal prosecution (*fumus persecutionis*) in relation to judicial or procedural actions initiated against a parliamentarian. Cf. Expert opinion rendered before a notary public by Javier Hernández García, *supra* (evidence file, folio 10362).

<sup>184</sup> Cf. Original text of Article 53 of the Constitution of the Federative Republic of Brazil, *supra*.

<sup>185</sup> Cf. Constitution of the Federative Republic of Brazil, *supra*, Article 27, paragraph 1.

<sup>186</sup> Cf. Constitution of the state of Paraíba, *supra*.

<sup>187</sup> Cf. Constitutional Amendment N. 35, *supra*.

102. As is the case in several countries, parliamentary immunity guaranteed by the Brazilian Constitution is divided into two categories: (i) material or “non-liability” immunity, which means exemption from liability of the parliamentarian for his or her ideas, votes and opinions expressed in the exercise of the office, even when they may potentially harm the rights of third parties, and (ii) formal or procedural immunity (“inviolability”), which prevents, to a greater or lesser extent, the preventive arrest of a parliamentarian and may condition the initiation or continuation of criminal proceedings against him or her, without the consent of the chamber to which they belong.<sup>188</sup>

103. The Court notes that the present case concerns only formal or procedural parliamentary immunity, given that the initiation of criminal proceedings against the then state deputy Aécio Pereira de Lima, accused of the murder of Márcia Barbosa de Souza, was postponed due to the application of parliamentary immunity by the Legislative Assembly of the state of Paraíba, in accordance with the constitutional regime in force at the time. Therefore, the Court’s analysis of the application of parliamentary immunity in this case will focus on this type of immunity.

104. In various countries of the region, as well as in most European constitutional and parliamentary systems, members of the respective legislative bodies enjoy different levels of protection against legal proceedings during their term of office.<sup>189</sup>

105. Regarding the regulation of parliamentary immunity in the States Parties to the Convention, the expert witness Javier García pointed out that many countries have different formulas for material immunity and several others have different mechanisms for procedural immunity, especially in relation to the possible arrest of a congressman.<sup>190</sup>

106. In examining the legal system of some States Parties to the Convention with respect to parliamentary immunity, the Court has found that the Constitution of Argentina<sup>191</sup> recognizes “immunity of opinion” and “immunity from arrest.”<sup>192</sup> Similarly, the Constitution of Costa Rica recognizes parliamentary immunity in paragraph 110,<sup>193</sup> which exempts deputies from liability for opinions expressed in the Assembly and prohibits their deprivation of liberty, except in

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<sup>188</sup> Cf. Expert opinion rendered by Melina Fachin, *supra*; Expert opinion of Daniel Sarmento rendered by affidavit, *supra*; Expert opinion of Javier Hernández García, rendered by affidavit *supra* and Expert opinion of Edvaldo Fernandes da Silva, rendered by affidavit *supra*. Article 53 of the Brazilian Constitution also provides for the so-called “privilege by prerogative of office”, whereby a federal deputy or senator must be tried directly before the Federal Supreme Court as soon as they begin to exercise elective office.

<sup>189</sup> Cf. Expert opinion of Javier Hernández García, rendered by affidavit, *supra* (evidence file, folio 10368). According to the Venice Commission, nearly all democratic countries in the world have rules on material immunity for members of the legislative body. This type of immunity is generally absolute and cannot be waived. On the other hand, several countries have rules on procedural immunity, although they are “usually more narrowly construed and easier to waive or lift, usually by parliament itself.” Although, according to the Venice Commission, the latter type of immunity is more complex and controversial, and “there is a great variety both as to what they [members of the legislative body] are protected against and as to what kind of crimes this protection covers.” Cf. European Commission for Democracy through Law. *Report on the scope and lifting of parliamentary immunities* (Study No. 714/2013), paras. 12, 14 175, 176, Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)011-e).

<sup>190</sup> Expert opinion of Javier Hernández García rendered by affidavit, *supra* (evidence file, folio 10368).

<sup>191</sup> Cf. Constitution of the Argentine Republic: Law N° 24.430 of January 3, 1995. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/Annexs/0-4999/804/norma.htm>.

<sup>192</sup> Immunity of opinion is regulated in Article 68 of the Constitution, which establishes that: “No member of Congress shall be accused, judicially examined, or disturbed for opinions expressed or speeches delivered by him while holding office as legislator.” In addition, immunity from arrest is contemplated in Article 69, which states that: “No senator or deputy shall be arrested as from the day of his election until the expiration of his term, except when flagrantly surprised committing a crime deserving capital punishment or other infamous or serious punishment [...]”

<sup>193</sup> Cf. Constitution of the Republic of Costa Rica of November 7, 1949. Available at: [https://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?nValor1=1&nValor2=871](https://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=871).

certain cases.<sup>194</sup> In Mexico, parliamentary immunity is protected mainly in the Constitution,<sup>195</sup> in the Organic Law of the General Congress<sup>196</sup> and in the Rules of Procedure of the Senate.<sup>197</sup> The Mexican legal system provides for the inviolability of deputies and senators for their opinions in the performance of their duties,<sup>198</sup> as well as formal immunity, both in relation to imprisonment and criminal prosecution of parliamentarians.<sup>199</sup> Similarly, the Constitution of the Republic of Guatemala enshrines the prerogatives related to parliamentary immunity.<sup>200</sup> In Uruguay, parliamentary immunity is regulated in a similar way.<sup>201</sup> However, Chile has slightly different regulations regarding formal immunity, since the Court of Appeals is the body in

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<sup>194</sup> Article 110 of the Constitution of the Republic of Costa Rica establishes that: "A Representative is not liable for any opinions expressed in the Assembly. During legislative sessions, he cannot be arrested on civil grounds, except with the authorization of the Assembly or with his consent. From the time a person is declared elected as Representative or as an alternate Representative, until his legal term in office expires, he may not be deprived of his liberty on criminal grounds, unless he has been previously suspended by the Assembly. Such immunity does not apply in cases of flagrante delicto or when the Representative waives it. Nevertheless, a Representative who has been arrested in flagrante delicto shall be released if the Assembly so orders."

<sup>195</sup> Cf. Constitution of the United Mexican States of February 5, 1917. Available at: [http://www.deputies.gob.mx/LawesBiblio/pdf/1\\_280521.pdf](http://www.deputies.gob.mx/LawesBiblio/pdf/1_280521.pdf).

<sup>196</sup> Cf. Organic Law of the General Congress of the United Mexican States of September 3, 1999. Available at: [http://www.deputies.gob.mx/LawesBiblio/pdf/168\\_080519.pdf](http://www.deputies.gob.mx/LawesBiblio/pdf/168_080519.pdf).

<sup>197</sup> Cf. Rules of Procedure of the Senate of March 5, 2013 Available at: <https://www.Senate.gob.mx/comisiones/cogati/docs/RSR.pdf>.

<sup>198</sup> Article 61 of the Constitution of the United Mexican States establishes: "Article 61. Representatives and senators shall be above criticism related to their opinions in the performance of their duties; they may never be questioned for such opinions. The speaker of each House shall be responsible for enforcing respect to House members' constitutional immunity and to the inviolability of the place where the House of Representatives meets." For its part, Article 11(2) of Organic Law of the Congress of the United Mexican States establishes that: "deputies and senators are inviolable on account of the opinions they express in the performance of their duties and may never be challenged or prosecuted for them." Likewise, Article 6(1) of the Rules of Procedure of the Senate of the Republic of Mexico provides that: "[d]uring the exercise of their office, senators have the immunity established by the Constitution of the United Mexican States and the laws. Said immunity begins once they take the oath indicated in Article 128 of the Constitution and concludes on the last day of their term of office."

<sup>199</sup> Cf. Article 11(3) of the Organic Law of the Congress of the United Mexican States: "deputies and senators are responsible for the crimes they commit during their term of office and for the crimes, misdemeanors or omissions in which they incur in the exercise of the same office, but they may not be detained or prosecuted until the constitutional procedure is followed and a decision is made to remove them from office and subject them to the action of the ordinary courts." Article 6(2) of the Rules of Procedure of the Senate of the Republic of Mexico provides that "[s]enators are responsible for the crimes they commit during the time they hold office. In order for criminal proceedings to be brought against them, the requirements, formalities and procedures set forth in the Constitution and the applicable regulations must be observed." In turn, Article 7(1) of the same legal code establishes that "[o]nce the arrest of a senator or any other action by a judicial or administrative authority that hinders or impedes the performance of his office is known, the President shall immediately take the necessary actions to safeguard constitutional immunity."

<sup>200</sup> Article 161 of the Constitution of Guatemala states: "Article 161. Prerogatives of the deputies. The deputies are representatives of the people and dignitaries of the Nation; as a guarantee for the exercise of their functions they will enjoy, from the day they are declared elected, the following prerogatives: a) Personal immunity from arrest or prosecution if the Supreme Court of Justice does not previously declare that there is probable cause, after examining the report of the investigating judge who will be named for this purpose. The case of flagrante delicto is excepted for which the deputy shall be immediately placed at the disposal of the Directive Board or the Permanent Commission of the Congress for the purpose of the corresponding preliminary hearing. b) They may not be held responsible for their opinions, for their initiatives and for the manner of handling public business, in the performance of their duties. [...]" Constitution of the Republic of Guatemala of May 31, 1985. Available at: [https://www.congreso.gob.gt/assets/uploads/congreso/marco\\_legal/ab811-cprg.pdf](https://www.congreso.gob.gt/assets/uploads/congreso/marco_legal/ab811-cprg.pdf).

<sup>201</sup> The Constitution of the Republic of Uruguay establishes that: "Article 112. Senators and Representatives shall never be held liable for the votes they cast or opinions they express in the discharge of their duties. Article 113. No Senator or Representative, from the day of his election until that of his termination, may be arrested except in case of flagrante delicto and then notice shall immediately be given to the respective Chamber, with a summary report of the case. Article 114. No Senator or Representative, from the day of his election until that of his termination, may be indicted on a criminal charge, or even for common offenses which are not specified in Article 93, except before his own Chamber, which, by two-thirds of the votes of its full membership, shall decide whether or not there are grounds for prosecution and if so, shall declare him suspended from office, and he shall be placed at the disposition of a competent Court." Constitution of the Republic of Uruguay of February 2, 1967 Available at: <https://parlament.gub.uy/documentos/Lawes/constitucion>.

charge of authorizing the prosecution of a parliamentarian.<sup>202</sup> By contrast, Bolivia<sup>203</sup> prohibits the application of procedural immunity to members of the Legislative Branch, although it guarantees their inviolability, while Colombia does not contemplate normative provisions alluding to parliamentary immunity, but only in relation to the prerogative of privilege.<sup>204</sup>

*b. The application of parliamentary procedural immunity in relation to the criminal proceedings for the homicide of Márcia Barbosa de Souza*

107. The Court considers that the application of parliamentary immunity can only be analyzed in relation to a specific case in order to prevent the adoption of an arbitrary decision by the respective legislative body, in such a way that it favors impunity. The legislative chamber must, therefore, focus on examining whether there are clear elements of arbitrariness in the exercise of the criminal action directed against a parliamentarian that may compromise the legislator's autonomy. To this end, it is necessary to carefully weigh the guarantee of the exercise of the mandate for which the parliamentarian was democratically elected, on the one hand, and the right of access to justice, on the other.

108. However, in light of the purpose of procedural immunity- the preservation of parliamentary order - the examination of *fumus persecutionis* presupposes an assessment of the seriousness, nature and circumstances of the alleged facts, since the response to a request for a waiver of parliamentary immunity cannot derive from an arbitrary action of the legislative chamber, which ignores the nature of the conflict and the need to protect the interests and rights at stake.<sup>205</sup>

109. The Court recalls that the duty to state reasons is required of any public authority,

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<sup>202</sup> Article 61 of the Constitution of the Republic of Chile establishes that "Representatives and Senators are only inviolable for the opinions they express and the votes they cast in the performance of their duties, in House or commission sessions. No Representative or Senator, from the day of his election or from his oath, according to the case, may be accused or deprived of his liberty, except in the case of a flagrant crime, if the Court of Appeals of the respective jurisdiction, in plenary, has not previously authorized the accusation declaring that there is cause for legal proceedings. This decision may be appealed to the Supreme Court. In event that a Representative or Senator is arrested for a flagrant crime, he shall be immediately placed at the disposal of the respective Court of Appeals, with corresponding summary information. The Court will then proceed, in accordance with the provisions of the preceding paragraph. From the moment that it is declared, through a final resolution, that there is cause for legal proceedings, the accused Representative or Senator shall be suspended from his office and subject to the competent judge." Constitution of the Republic of Chile of 24 October 1980. Available at: <https://www.Senate.cl/capitulo-v-congreso-national/Senate/2012-01-16/100638.html>.

<sup>203</sup> Articles 151 and 152 of the Constitution of the Plurinational State of Bolivia regulate matters pertaining to immunity of assembly members in the following terms: "Article 151. I. Members of the Assembly shall enjoy personal privilege during their term of office, and afterwards they may not be criminally processed for their opinions, communications, representations, requests, questions, denunciations, proposals, expressions or any legislative act or act of reporting or control, which they formulate or undertake while performing their functions. II. The domicile, residence or home of members of the Assembly may not be violated, and they shall not be searched under any circumstance. This provision shall be applied to the vehicles of their personal or official use and to their legislative offices. Article 152. Members of the Assembly do not enjoy immunity. Preventive detention shall not be applied to them in criminal processes during their term of office, except in cases of flagrant crimes." Constitution of the Plurinational State of Bolivia, February 7, 2009. Available at: <https://web.Senate.gob.bo/Senate/marco-normativo>.

<sup>204</sup> In this regard, Article 186 of the Constitution of the Republic of Colombia, states: "Article 186. For the offenses that members of Congress may commit, the Supreme Court of Justice is the sole authority that may order their detention. In case of *flagrante delicto*, members of Congress must be apprehended and placed immediately at the disposal of said court. The Special Investigation Chamber of the Criminal Chamber of the Supreme Court of Justice shall be responsible for investigating and charging members of Congress before the Special Trial Chamber of the same Criminal Chamber for the crimes committed. An appeal may be filed against rulings issued by the Special Trial Chamber of the Criminal Chamber of the Supreme Court of Justice. It shall be heard by the Criminal Cassation Chamber of the Supreme Court of Justice [...]." Constitution of the Republic of Colombia of July 20, 1991. Available at: [http://www.secretariaSenate.gov.co/Senate/basedoc/constitucion\\_politica\\_1991\\_pr006.html#186](http://www.secretariaSenate.gov.co/Senate/basedoc/constitucion_politica_1991_pr006.html#186).

<sup>205</sup> Cf. Expert opinion rendered by Javier Hernández García, *supra* (evidence file, folios 10363 and 10364).

whether administrative, legislative or judicial, whose decisions may affect the rights of individuals, and that such decisions must be adopted with full respect for the guarantees of due process of law.<sup>206</sup> In this regard, Article 8 of the Convention enshrines the guidelines of due process of law, which consists of a set of requirements that must be observed in the procedural instances, so that individuals are in a position to adequately defend their rights before any type of act by the State that could affect them.<sup>207</sup>

110. Thus, in order to avoid an arbitrary decision, the Court considers that the legislative body must give reasons for its decision on whether or not to lift procedural immunity. This is so, because the decision will necessarily impact both the rights of the parliamentarian in relation to the exercise of his functions, as well as the right of access to justice of the victims of the alleged criminal offenses attributed to this same parliamentarian. Obviously, since it is a legislative body, it cannot be required to provide the grounds for a judicial decision. As observed in Brazil and other States Parties to the Convention, the final decision of the legislative chamber involves a vote on a written opinion or report of a technical committee of that chamber on the request for a waiver of parliamentary immunity. Consequently, the technical report must contain the reasons for the decision adopted.<sup>208</sup>

111. In view of the foregoing, the Court considers that the decision on the application or waiver of parliamentary procedural immunity by the parliamentary body, in a specific case, must: i) follow an expeditious procedure, provided for by law or in the rules of procedure of the legislative body, with clear rules and respecting the guarantees of due process; ii) include a strict proportionality test, whereby the accusation made against the parliamentarian must be analyzed taking into account the impact on the right of access to justice of the persons who may be affected and the consequences of preventing the prosecution of a criminal act, and iii) be substantiated and have reasons linked to the identification and justification of the existence or not of a *fumus persecutionis* in the exercise of the criminal action directed against the parliamentarian.

112. In the instant case, according to the Brazilian legislation in force at the time of the facts of the case, in order for a federal or state parliamentarian to be criminally prosecuted, prior authorization was required from the legislative chamber to which he or she belonged (*supra* para. 58). Therefore, the authorization of the corresponding parliamentary body was a pre-requisite for any criminal action to be brought against one of its members.

113. In this regard, the Court agrees with the view expressed by the expert witnesses in this case that the legal framework at the time of the facts made the possibility of lifting parliamentary immunity illusory and allowed for arbitrary and corporatist decisions by the legislative body.<sup>209</sup> According to the expert Melina Fachin, parliamentary immunity as it was

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<sup>206</sup> Cf. *Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 71, para. 71, and *Case of Casa Nina v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2020. Series C No. 419, para. 88.

<sup>207</sup> Cf. *Case of the Constitutional Court v. Peru, supra*, para. 69, and *Case of Casa Nina v. Peru, supra*, para. 88.

<sup>208</sup> The European Court of Human Rights stated that: "*The effect of this lack of reasoning, combined with the lack of clearly defined objective criteria as regards the conditions for lifting immunity, was to deprive the applicant of the means of defending his rights and of the possibility of knowing on what basis the National Assembly, the body ultimately responsible for deciding whether to lift parliamentary immunity, would adopt its decision.*" ECHR, Concurring Opinion of Judge Malinverni regarding the *Case of Kart v. Turkey* [GS], No. 8917/05. Judgment of December 3, 2009.

<sup>209</sup> The expert witness Fachin mentioned a survey published by the newspaper "*Folha of São Paulo*" which indicated that, between 1991 and 1999, at the federal level, of the 151 requests for prior authorization presented by the Supreme Federal Court to the Chamber of Deputies, 2 were granted, 62 were denied and 87 were not analyzed prior to the conclusion of the terms of office of the parliamentarians or their resignation. Similarly, a survey carried out by the newspaper "*Correio da Paraíba*" found that between 1992 and 1999, the Legislative Assembly of the state of Paraíba denied more than 15 requests for authorization to criminally prosecute state deputies. Cf. Written version

regulated at the federal level and in the state of Paraíba, prior to EC 35/2001, “implied impunity.”<sup>210</sup> Similarly, the expert witness Edvaldo Fernandes da Silva stated that, “the parliamentary immunity designed in the 1988 Constitution needed to be reformed,” since it entailed risks of impunity.<sup>211</sup> Moreover, Brazil did not dispute the assertion of the Commission and the representatives that the federal constitutional provision in force at the time of the facts, which was reflected in the Constitution of Paraíba, was inadequate and would have hindered the progress of the investigations into the murder of Márcia Barbosa. It even mentioned in its answering brief that “the Brazilian State undertook significant efforts [...] to adapt the regulatory framework on this issue, improving the constitutional provision on parliamentary immunity, in light of the precepts of the [American Convention].”<sup>212</sup>

114. In addition, and taking into consideration the evidence in the case file, the Court finds that there was a procedure provided for in the Internal Rules of Procedure and in the Code of Ethics of the Legislative Assembly of the state of Paraíba for processing a request to lift the parliamentary immunity of a deputy. However, these rules did not clearly establish whether the competent body to issue a written opinion on the request was the Constitutional Committee or the Ethics Council. It should also be noted that neither the constitutional provisions, nor the Internal Rules of Procedure of the Assembly of Paraíba,<sup>213</sup> established the criteria to be evaluated in a decision to grant the aforementioned prior authorization. Therefore, the Court considers that there was no procedure with clear rules to be followed for deciding on the application or lifting of parliamentary immunity.

115. In view of the foregoing considerations, the Court understands that the way in which parliamentary immunity was regulated at the time of the facts of this case, both at the federal level and in the state of Paraíba, was contrary to the right of access to justice and to the duty to adopt provisions of domestic law.

116. Regarding the reasons for the decisions of the Legislative Assembly of Paraíba, the Court deems it pertinent to transcribe them below in order to carry out the corresponding analysis. Thus, on December 17, 1998,<sup>214</sup> the Legislative Assembly rejected the request of the Court of Justice of Paraíba to initiate criminal proceedings against the then state deputy Aécio Pereira de Lima, through Resolution No. 614/98, which determined, *in verbis*:

The Committee of the Legislative Assembly of the State of Paraíba, based on art. 219, paragraph 3, III, “b”, of Resolution no. 469 (Internal Rules of Procedure of the Assembly), and art. 42, IV, of Resolution no. 599 (Code of Ethics and Parliamentary Decorum) hereby makes known that the Plenary, in the Extraordinary Session held on December 17, 1998, approved and hereby enacts the following: [...] Art. 1 The request by the State Court of Justice for leave to criminally prosecute state Deputy Aécio Pereira de Lima, the subject of the file, is denied [...] Art. 2 This Resolution enters into force on the date of its publication [...]<sup>215</sup>

117. Subsequently, on March 31, 1999, after the beginning of a new legislature and taking into account the reelection of Mr. Pereira de Lima to the post of state deputy, the Paraíba Court

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of the expert opinion presented by Melina Fachin of January 15, 2021 (evidence file, folio 10558).

<sup>210</sup> Cf. Expert opinion rendered by Melina Fachin at the public hearing held on February 3 and 4, 2021.

<sup>211</sup> Cf. Expert opinion rendered by affidavit by Edvaldo Fernandes da Silva, *supra* (evidence file, folios 10070 and 10078).

<sup>212</sup> Answering brief of the State, February 17, 2020, para. 197 (merits file, folio 264 and 265).

<sup>213</sup> Cf. Internal Rules of Procedure of the Legislative Assembly of the state of Paraíba, *supra* (evidence file, folios 5993 to 6090).

<sup>214</sup> The Court considers it pertinent to clarify that this decision of the Legislative Assembly of Paraíba is the first fact of the case that is within the Court’s temporal jurisdiction.

<sup>215</sup> Decision of the Legislative Assembly of Paraíba denying the request for authorization to criminally prosecute Deputy Aécio Pereira de Lima, *supra*.

of Justice submitted to the Legislative Assembly a new request to authorize the criminal prosecution of the then deputy,<sup>216</sup> which was also denied. In fact, by means of an official letter sent by the President of the Legislative Assembly to the President of the Court of Justice in February 2000, the decision of the legislative body was reported in the following terms:

[...] the Council of Ethics and Parliamentary Decorum, in a meeting held on September 29, 1999, decided to accept the defense's opinion to archive the request for renewal of authorization for the initiation of the criminal action against Deputy Aécio Pereira, due to the fact that the Plenary of this Chamber has denied an identical request under Resolution No. 614/98 [...].<sup>217</sup>

118. As is evident from the text of both decisions cited above, the Court notes that the Legislative Assembly of Paraíba did not state any reasons, and therefore it is presumed that no analysis was carried out of a possible *fumus persecutionis* of the criminal action for which authorization was being sought.

119. Furthermore, the Court finds that the procedure followed after the second request for authorization had a series of irregularities - in addition to the lack of justification for the final decision- particularly the failure to observe the procedure established in the Internal Rules of Procedure of the Legislative Assembly as to which body of the Assembly should prepare the written opinion ("parecer") on the request, as well as the absence of a vote by the Plenary.<sup>218</sup> In addition, according to the witness Valquíria Alencar, the opinion of the deputy rapporteur was not considered; one of the absent deputies could not be replaced by her substitute; and two female deputies were prevented from speaking.<sup>219</sup>

120. The Court notes that, since this is a case involving the violent death of a woman (*supra* para. 88), a matter that is clearly not related to the exercise of a deputy's functions, the possibility of the political use of the criminal action should have been analyzed with even greater care and caution, taking into account the duty of strict due diligence in the investigation and punishment of acts of violence against women, as required by the Convention.<sup>220</sup> On the contrary, the Court notes that both decisions taken by the Legislative Assembly of Paraíba demonstrate that the legislative body did not analyze or weigh the possibility of a *fumus persecutionis* in the prosecution of the Public Prosecutor's Office on the one hand, and, on the other, the right of access to justice of the next of kin of Márcia Barbosa de Souza and the requirement to investigate with strict due diligence acts of violence against women.

121. In view of the foregoing, the Court concludes that, at the time of the facts, the Paraíba constitutional and regulatory legal framework in Brazil arbitrarily hindered the access to justice of the next of kin of Márcia Barbosa Souza by not providing the criteria to be taken into account in the analysis of the request for prior authorization and the need to provide grounds for the decision or the deadline for the final resolution. Moreover, the lack of reasoning for the two decisions adopted by the Legislative Assembly of Paraíba indicates that a rigorous proportionality test was not carried out, which would have taken into account the impact on the right of access to justice of the persons who could be affected by such decisions.

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<sup>216</sup> Cf. New letter requesting authorization to initiate criminal proceedings against Deputy Aécio Pereira de Lima, *supra*.

<sup>217</sup> Cf. Official letter Nº 0008/GP from the President of the Legislative Assembly of Paraíba to the President of the Court of Justice, sent on February 9, 2000 (evidence file, folio 101).

<sup>218</sup> Cf. Written version of the expert opinion of Melina Fachin, *supra* (evidence file, folio 10520 to 10570).

<sup>219</sup> Cf. Statement of the witness Valquíria Alencar at the public hearing held on February 3 and 4, 2021.

<sup>220</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 258, and *Case of Vicky Hernández et al. v. Honduras. Merits, reparations and costs.* Judgment of March 26, 2021. Series C No. 422, para. 134.

122. The Court concludes that the Legislative Assembly's refusal to lift the parliamentary immunity of the then congressman Aécio Pereira de Lima was an arbitrary act, which transformed it into a mechanism that favored his impunity for the murder of Ms. Barbosa de Souza, making illusory the effective access to justice of her next of kin in the instant case.

123. Therefore, the Court considers that the application of parliamentary immunity in the case *sub judice* violated the right of access to justice of Mrs. M.B.S. and Mr. S.R.S., in relation to the obligations of respect and guarantee and the duty to adopt provisions of domestic law.

### **B.2 The alleged lack of due diligence in the investigation of the other suspects**

124. With regard to the alleged lack of due diligence in the investigation of the other suspects, the Court deems it pertinent to recall the nature of the murder of Márcia Barbosa de Souza, since this has consequences for the present analysis, even though the facts related to the homicide are not within the Court's temporal jurisdiction. In fact, the Court finds it plausible that the homicide of Ms. Barbosa de Souza was committed for gender reasons (*supra* para. 88) and that, despite the strong indications that Márcia Barbosa de Souza's violent death was the result of gender-based violence, the State did not conduct any evidentiary procedures to establish this.

125. The Court recalls that when there are specific indications or suspicions of gender-based violence, the authorities' failure to investigate the possible discriminatory motives behind an act of violence against women may in itself constitute a form of gender discrimination.<sup>221</sup> The ineffectiveness of the courts in individual cases of violence against women fosters an environment of impunity that facilitates and promotes the repetition of such acts of violence and sends a message that violence against women can be tolerated and accepted, which encourages its perpetuation and society's acceptance of the phenomenon, the perception and sensation of insecurity for women, and also their continued lack of confidence in the system for the administration of justice.<sup>222</sup> This ineffectiveness or indifference constitutes, in itself, discrimination against women in their access to justice.<sup>223</sup>

126. It should also be emphasized that due diligence in the investigation of the violent death of a woman also implies the need to investigate from a gender perspective.<sup>224</sup>

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<sup>221</sup> Cf. *Case of Véliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 208, and *Case of Vicky Hernández et al. v. Honduras, supra*, para. 107.

<sup>222</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico, supra*, paras. 388 and 400, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 223.

<sup>223</sup> Cf. *Case of Véliz Franco et al. v. Guatemala, supra*, para. 208, and *Case of López Soto et al. v. Venezuela, supra*, para. 223.

<sup>224</sup> According to the Latin American Model Protocol for the investigation of gender-related killings of women (femicide), investigating the killing of a woman from a gender perspective serves to: "[e]xamine the act as a hate crime, [...]; address the killing of women not as a circumstantial or coincidental act but as a systematic crime [...]; [go] beyond lines of inquiry that are based on individual factors, and which tend to be pathologized to present the aggressors as "crazy," "out of control," or "jealous," or to conceive of these killings as the result of "crimes of passion," "lovers quarrels" or "sex scandals;" [d]ifferentiate femicides from the deaths of women taking place in other contexts [...]; [a]void value judgments about the victim's prior conduct or behavior and break away from the social and cultural patterns that blame the victim for what happened to her ("she must have done something," "she was looking for trouble," "maybe she provoked him") [...]; [b]ring power asymmetries to light, as well as the way in which gender inequalities permeate differences in the roles, norms, practices, and cultural conceptions of men and women [... and] [s]eek legislative alternatives in terms of preventing gender-related killings of women, recognizing that historically women have been discriminated against and excluded from the full and autonomous exercise of their rights." (Cf. OHCHR and UN Women. *Latin American Model Protocol for the investigation of gender-related killings of women, supra*, para. 102.) The Latin American Model Protocol for the investigation of gender-related killings of women was drafted in 2014 by the Central America Regional Office of the United Nations High Commissioner for Human Rights (OHCHR),

127. The Court has held that due diligence will be demonstrated in criminal proceedings if the State succeeds in proving that it has made every effort, within a reasonable time, to enable the determination of the truth and to identify and punish all those responsible, whether private individuals or State officials.<sup>225</sup>

128. Likewise, the Court has consistently pointed out that the duty to investigate is an obligation of means and not of results, which must be assumed by the State as its own legal obligation and not as a mere formality preordained to be ineffective, or as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.<sup>226</sup> In addition, the investigation must be serious, objective and effective, and be aimed at determining the truth and seeking the prosecution, capture and eventual trial and punishment of the perpetrators of the crimes.<sup>227</sup>

129. It should be recalled that, in cases of violence against women, the general obligations provided for in Articles 8 and 25 of the American Convention are complemented and reinforced by the obligations under the Convention of Belém do Pará.<sup>228</sup> Article 7(b) of said convention specifically obliges States Parties to ensure due diligence to “prevent, punish and eradicate violence against women.”<sup>229</sup> Thus, when faced with an act of violence against a woman, it is particularly important that the authorities in charge of the investigation carry it out with determination and efficiency, taking into account society’s duty to reject violence against women and the State’s obligations to eradicate it and to provide victims with confidence in the State institutions for their protection.<sup>230</sup>

130. The Court has also indicated that the duty to investigate has additional implications when it concerns a woman who suffers death, mistreatment or impairment of her personal liberty within a general context of violence against women.<sup>231</sup> It is often difficult to prove in practice that a murder or an act of violence against a woman has been perpetrated because of her gender. This difficulty sometimes stems from the absence of a thorough and effective

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with the support of the Americas and Caribbean Regional Office of the United Nations Entity for Gender and the Empowerment of Women (UN Women), in the context of the United Nations Secretary General’s “UNITE” Campaign to End Violence Against Women. Available at: [https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2014/moof\\_theo%20de%20protocolo.ashx?la=es](https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2014/moof_theo%20de%20protocolo.ashx?la=es).

<sup>225</sup> Cf. *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil*, *supra*, para. 221.

<sup>226</sup> Cf. *Case of Velásquez Rodríguez v. Honduras*. Merits, *supra*, para. 177, and *Case of Garzón Guzmán et al. v. Ecuador*. Merits, reparations and costs. Judgment of September 1, 2021. Series C No. 434, para. 67.

<sup>227</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras*. Preliminary objection, merits, reparations and costs. Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of Garzón Guzmán et al. v. Ecuador*, *supra*, para. 67.

<sup>228</sup> With regard to the investigation of acts committed against women, the application of the Belém do Pará Convention does not depend on an absolute degree of certainty as to whether or not the act to be investigated constituted violence against women under the terms of the Convention. In this sense, it should be emphasized that it is through compliance with the duty to investigate established in Article 7 of the Convention of Belém do Pará that, in several cases, it will be possible to arrive at certainty as to whether or not the act under investigation constituted violence against women. Compliance with this duty cannot, therefore, be made dependent on such certainty. In order to trigger the obligation to investigate under the terms of the Convention of Belém do Pará, it is sufficient that the act in question, in its materiality, presents characteristics that, if reasonably assessed, indicate the possibility that it is an act of violence against women. Cf. *Case of Véliz Franco et al. v. Guatemala*, *supra*, footnote 254, and *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, footnote 293.

<sup>229</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*. Preliminary objection, merits, reparations and costs. Judgment of August 30, 2010. Series C No. 215, para. 193, and *Case of Guzmán Albarracín et al. v. Ecuador*. Merits, reparations and costs. Judgment of June 24, 2020. Series C No. 405, para. 177.

<sup>230</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 193, and *Case of Guzmán Albarracín et al. v. Ecuador*, *supra*, para. 177.

<sup>231</sup> Cf. *Case of González et al. (“Cotton Field”)*, *supra*, para. 293, and *Case of Velásquez Paiz et al. v. Guatemala*, Preliminary objections, merits, reparations and costs. Judgment of November 19, 2015. Series C No. 307, para. 146.

investigation by the authorities into the violent incident and its causes. For this reason, State authorities have the obligation to investigate *ex officio* the possible gender-related discriminatory connotations of an act of violence perpetrated against a woman, especially when there are concrete indications of sexual violence, or evidence of cruelty to the woman's body (for example, mutilation), or when the act is part of a wider context of violence against women in a given country or region.<sup>232</sup> Furthermore, the criminal investigation must include a gender perspective and be carried out by officials trained in such cases and in dealing with victims of discrimination and gender-based violence.<sup>233</sup>

131. At the same time, the Court has indicated in its case law that a State may be responsible for failing to "order, practice or evaluate evidence that would have been of great importance for the full clarification of the murders."<sup>234</sup>

132. Upon examining the body of evidence in the instant case, the Court finds that, although there were indications that pointed to the possible participation of other persons in the murder of Márcia Barbosa de Souza,<sup>235</sup> a series of relevant investigations were not carried out by the Civil Police of Paraíba (*supra* paras. 83 to 86). Indeed, the prosecutor in charge of the case, making use of his legal powers, requested, on several occasions, from the Police Commissioner in charge of the investigations, the following: the opinion of a forensic medical expert to determine whether the information contained in autopsy report would suggest that Márcia had not died by strangulation, but by asphyxiation caused by an overdose; the list of entries and exits of vehicles on the date of the event from various motels, including the Trevo Motel; the statements of the owners and managers of the Trevo Motel, as well as those of the doorman and other employees who worked in the early hours of the morning of Márcia's death, and the handwriting tests on the notes found in Márcia's pockets and belongings, which recorded the telephone numbers used by Aércio Pereira de Lima and others to determine whether these notes had been written by Ms. Barbosa de Souza or by a third party. The Police Commissioner repeatedly failed to comply with these requests, using the justification of a "backlog" of work. Furthermore, after a series of requests for complementary inquiries by the prosecutor in charge of the case, he finally accepted the inaction of the Commissioner of the Civil Police of Paraíba and called for the dismissal of the investigation due to lack of evidence, which was granted by the judge in charge of the case.

133. Therefore, the Court concludes that the State did not comply with its obligation to act with due diligence and to seriously and fully investigate the possible participation of all the suspects in the homicide of Márcia Barbosa.

### **B.3 The alleged violation of the guarantee of reasonable time**

134. The Court has indicated that the right of access to justice in cases of human rights violations must ensure, within a reasonable time, the right of the alleged victims or their next of kin to learn the truth of what happened and for those responsible to be investigated, prosecuted and punished.<sup>236</sup> Moreover, a prolonged delay in the process may in itself constitute a violation of judicial guarantees.<sup>237</sup>

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<sup>232</sup> Cf. *Case of Véliz Franco et al. v. Guatemala*, *supra*, para. 187. *Case of Velásquez Paiz*, *supra*, para.146.

<sup>233</sup> Cf. *Case of González et al. ("Cotton Field")*, *supra*, para. 455, and *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 350, footnote 195.

<sup>234</sup> *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 230, and *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, para. 152.

<sup>235</sup> Cf. Final report of the police department for crimes against the person, *supra*.

<sup>236</sup> Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Coc Max et al. (Massacre of Xamán) v. Guatemala*, *supra*, para. 79.

<sup>237</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Merits, reparations and costs.

135. In the instant case, the Court does not find it necessary to analyze the guarantee of reasonable time in light of the elements established in its jurisprudence.<sup>238</sup> Indeed, the Court notes that the delay in the process was due mainly to the nearly five years during which the criminal action could not be initiated, owing to the arbitrary refusal by the Legislative Assembly of Paraíba to grant prior authorization for the criminal prosecution of the then deputy Aécio Pereira de Lima, in application of parliamentary immunity.

136. The Court considers that the arbitrary application of parliamentary immunity, the excessive delay and the sense of impunity generated by the lack of a judicial response aggravated the situation of Márcia Barbosa's next of kin, especially given the asymmetry of economic and political power existing between the accused and the next of kin.

137. Therefore, taking into account the foregoing considerations and given that almost 10 years elapsed from the facts of this case until the criminal conviction in the court of first instance, the Court concludes that Brazil violated the guarantee of reasonable time in the investigation and criminal proceedings related to the homicide of Márcia Barbosa de Souza.

#### **B.4 The alleged use of gender stereotypes in the investigations**

138. Regarding the principle of equality before the law and non-discrimination, the Court has indicated that the notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. Thus it is incompatible with any situation in which a specific group is considered superior and is given privileged treatment; or, to the contrary, that it is considered inferior and is treated with hostility or otherwise subjected to discrimination in the enjoyment of rights which are accorded to others not so classified.<sup>239</sup> At the current stage of evolution of international law, the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens*, and the juridical framework of the entire legal system rests on it. Consequently, States must refrain from carrying out actions that, in any way, directly or indirectly, create situations of discrimination *de jure* or *de facto*.<sup>240</sup>

139. The Court has also indicated that, while the general obligation under Article 1(1) of the American Convention refers to the obligation of the State to respect and to ensure "without discrimination" the rights contained in that treaty, Article 24 protects the right to "equal

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Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil*, *supra*, para. 222.

<sup>238</sup> The Court has established that the concept of reasonable time should be analyzed in each specific case, in relation to the total duration of the process, which could also include the execution of the final judgment. Thus, it has considered four elements to determine whether the guarantee of reasonable time was met, namely: a) the complexity of the matter; b) the procedural activity of the interested party; c) the conduct of the judicial authorities, and d) the impact on the legal situation of the alleged victim or victims. The Court recalls that it is up to the State to demonstrate the reasons why a proceeding or several proceedings have lasted more than a reasonable time. Otherwise, the Court has broad powers to make its own analysis of this matter. The Court also reiterates that it is necessary to consider the total duration of the process, from the first procedural act until the final judgment is handed down, including any possible remedies that may be pursued. *Cf. Case of Suárez Rosero v. Ecuador. Merits. Judgment of November 12, 1997. Series C No. 35, paras. 71 and 72; Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 156, and Case of Ríos Avalos et al. v. Paraguay, supra, para. 166 and 167.*

<sup>239</sup> *Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 55, and Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil, supra, para. 82.*

<sup>240</sup> *Cf. Juridical condition and rights of undocumented migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A. No. 18, paras. 101, 103 and 104, and Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil, supra, para. 182.*

protection of the law.”<sup>241</sup> Thus, Article 24 of the American Convention prohibits discrimination *de iure* or *de facto*, not only with regard to the rights embodied therein, but also with respect to all the laws adopted by the State and their application. In other words, this article does not merely reiterate the provisions of Article 1(1) of the Convention concerning the obligation of States to respect and ensure, without discrimination, the rights recognized therein, but, in addition, establishes a right that also entails obligations for the State to respect and ensure the principle of equality and non-discrimination in safeguarding other rights and in all the domestic laws that it adopts.<sup>242</sup> Finally, the Court has affirmed that, if a State discriminates with regard to the respect and guarantee of a conventional right, it would be in breach of its obligation under Article 1(1) and the substantive right in question. If, on the contrary, the discrimination refers to an unequal protection by domestic law or its application, the fact must be examined in light of Article 24 of the American Convention.<sup>243</sup>

140. According to the Court’s case law, Article 24 of the Convention also contains a mandate aimed at ensuring material equality. Thus, the right to equality established in said provision has a formal dimension, which protects equality before the law, and a material or substantial dimension, which requires “the adoption of positive measures in favor of groups that have historically been discriminated against or marginalized due to the factors referred to in Article 1(1) of the American Convention.”<sup>244</sup>

141. The Convention on the Elimination of All Forms of Discrimination against Women establishes the obligation of States Parties to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>245</sup> On this point, the CEDAW Committee has stated that the presence of gender stereotypes in the judicial system severely impacts the full enjoyment of women’s human rights, given that these “impede women’s access to justice in all areas of law, and may particularly impact women victims and survivors of violence.”<sup>246</sup>

142. In the inter-American sphere, the preamble of the Belém do Pará Convention states that violence against women is “a manifestation of the historically unequal relations of power between women and men” and, in addition, it recognizes that the right of every woman to a life free of violence includes the right to be free from all forms of discrimination.<sup>247</sup>

143. In the case of *Velásquez Paiz et al. v. Guatemala*, the Court reiterated that gender stereotypes refer to a preconception of the respective attributes, conducts, characteristics or roles that are, or should be, played by men and women,<sup>248</sup> and that it is possible to associate

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<sup>241</sup> Cf. Advisory Opinion OC-4/84, *supra*, para. 53 and 54, and *Case of Vicky Hernández et al. v. Honduras*, *supra*, para. 65.

<sup>242</sup> Cf. *Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of June 23, 2005. Series C No. 127, para. 186, and *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 217.

<sup>243</sup> Cf. *Case of Apitz Barbera et al. (“First Contentious Administrative Court”) v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 182, para. 209, and *Case of Vicky Hernández et al. v. Honduras*, *supra*, para. 65.

<sup>244</sup> *Case of Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil*, *supra*, para. 199. See also *Case of Vicky Hernández et al. v. Honduras*, *supra*, para. 66.

<sup>245</sup> CEDAW, Article 5(a).

<sup>246</sup> Cf. UN, CEDAW Committee, *General Recommendation No. 33 on Women’s Access to Justice*, August 3, 2015, CEDAW/C/GC/33, para. 26.

<sup>247</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico*, *supra*, para. 394, citing the Belém do Pará Convention, preamble and Article 6.

<sup>248</sup> Cf. *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, para. 180.

the subordination of women to practices based on socially-dominant and socially-persistent gender stereotypes. In this regard, their conception and use becomes one of the causes and consequences of gender-based violence against women, conditions that are exacerbated when they are reflected, implicitly or explicitly, in policies and practices, and particularly in the reasoning and language of the State authorities.<sup>249</sup>

144. In particular, the Court has recognized that personal prejudices and gender stereotypes affect the objectivity of State officials in charge of investigating complaints submitted to them, influencing their perception in determining whether or not an act of violence occurred, and their assessment of the credibility of witnesses and of the victim herself. Such stereotyping “distorts perceptions and results in decisions based on preconceived beliefs and myths, rather than relevant facts,” which in turn may give rise to the denial of justice, and the revictimization of the complainants.<sup>250</sup>

145. The Court has already expressed its position on the importance of recognizing, making visible and rejecting gender stereotypes which, in cases of violence against women, often result in the victims being associated with the profile of a gang member and/or a prostitute or a “whore”, and are not considered important enough to be investigated, making the woman responsible or deserving of having been attacked. In this regard, it has rejected any State practice that justifies violence against women and blames them for it, since assessments of this nature show a discretionary and discriminatory criterion based on the origin, condition and/or behavior of the victim simply because she is a woman. Consequently, the Court has considered that these harmful or prejudicial gender stereotypes are incompatible with international human rights law and that measures must be taken to eradicate them wherever they occur.<sup>251</sup>

146. In the case *sub judice*, the Court finds that there was an intention to devalue the victim by neutralizing her value. Indeed, throughout the investigation and criminal proceedings, the behavior and sexuality of Márcia Barbosa became a subject of special attention, resulting in the construction of an image of Márcia as causing or deserving what happened and shifting the focus of the investigations through stereotypes related to aspects of Márcia Barbosa's personal life, which in turn were used as relevant facts in the trial itself.<sup>252</sup> The fact that she was a woman was a facilitating factor in that “the significance of the facts was based on general cultural stereotypes, rather than focusing on the context of what happened and the objective results of the investigation.”<sup>253</sup>

147. In fact, in the various witness statements taken in the course of the police investigation and the criminal proceedings, the reiteration of questions about Márcia Barbosa's sexuality was evident. Similarly, questions about her alleged drug and alcohol consumption were raised, even though the chemical toxicological tests carried out in the first days of the investigations, parallel to the autopsy, had found only an insignificant amount of substances in her blood that would allow Mrs. Barbosa de Souza to preserve her normal reflex faculties.<sup>254</sup> In this regard, the

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<sup>249</sup> Cf. *Mutatis mutandis*, *Case of González et al. (“Cotton Field”) v. Mexico*, *supra*, para. 401.

<sup>250</sup> Cf. *Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 24, 2017. Series C No. 339, para. 173, and *Case of Guzmán Albarracín et al. v. Ecuador*, *supra*, para. 189. See also, U.N. CEDAW Committee, *General Recommendation No. 33 on Women’s Access to Justice*, *supra*, para. 26.

<sup>251</sup> Cf. *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, para. 183.

<sup>252</sup> Cf. Expert opinion rendered by Soraia da Rosa Mendes, *supra* (evidence file, folio 10402).

<sup>253</sup> Cf. OHCHR UN Women. *Latin American Model Protocol for the investigation of gender-related killings of women*, p. 24.

<sup>254</sup> Cf. Statement of Lúcia de Fátima Vasconcelos Dias, included in the decision of July 27, 2005 (evidence file, folio 2300 and 2301).

expert witness Soraia Mendes pointed out that, of the 12 witnesses who testified, seven knew Ms. Barbosa de Souza, all of them were asked about her possible use of drugs, and two were asked about her sexuality.<sup>255</sup>

148. According to the expert witness Soraia Mendes, the repetition of testimonial evidence sought to construct an image of Márcia Barbosa in order to cast doubt on the criminal responsibility of the then deputy for her homicide.<sup>256</sup> Mendes stressed that not only were the witnesses questioned about the facts, but also about the social behavior, personality and sexuality of Márcia Barbosa, which would indicate an “investigation of the victim, her behavior, her reputation. This is something that fills the pages of the newspapers and is projected even more forcefully in the case file.”<sup>257</sup>

149. Similarly, during the criminal proceedings against Aécio Pereira de Lima before the Jury Court, the defense attorney requested the inclusion in the case file of more than 150 pages of newspaper articles referring to prostitution, drug overdoses and alleged suicide (*supra* para. 71), in order to link them to Márcia Barbosa with the intention of affecting her image. In addition, during the proceedings the defense attorney made various references to the victim’s sexual orientation, alleged drug addiction, suicidal behavior and depression.<sup>258</sup> He also described Márcia as a “prostitute” and Aécio as “a family man and father” who was “seduced by the charms of a young woman” and who, in a moment of rage, had “made a mistake.”<sup>259</sup>

150. Therefore, the Court concludes that the investigation and the criminal proceedings for the events related to the homicide of Márcia Barbosa de Souza had a gender-discriminatory character and were not conducted with a gender perspective in accordance with the special obligations established by the Convention of Belém do Pará. The State did not adopt measures aimed at ensuring material equality in the right of access to justice with respect to cases related to violence against women, to the detriment of the next of kin of Márcia Barbosa de Souza. This situation implies that, in the instant case, the right of access to justice without discrimination was not guaranteed, along with the right to equality.

### **B.5 Conclusion**

151. By virtue of what has been stated throughout this chapter, the Court finds that the State of Brazil violated the rights to judicial guarantees, to equality before the law and to judicial protection established in Articles 8(1), 24 and 25 of the American Convention, in relation to Articles 1(1) and 2 of said treaty, as well as the obligations set forth in Article 7(b) of the Convention of Belem do Para, to the detriment of Mrs. M.B.S. and Mr. S.R.S.

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<sup>255</sup> Cf. Expert opinion of Soraia da Rosa Mendes, *supra* (evidence file, folio 10428).

<sup>256</sup> Cf. Expert opinion of Soraia da Rosa Mendes, *supra* (evidence file, folio 10422 and 10424).

<sup>257</sup> Expert opinion of Soraia da Rosa Mendes, *supra* (evidence file, folio 10444).

<sup>258</sup> Cf. *Amicus curiae* brief presented by the Human Rights and Environmental Law Clinic of the University of the State of Amazonas, *supra* (evidence file, folios 675 and 676).

<sup>259</sup> Cf. *Amicus curiae* brief presented by the Human Rights and Environmental Law Clinic of the University of the State of Amazonas, *supra* (evidence file, folio 676).

**VIII-2**  
**RIGHT TO PERSONAL INTEGRITY OF THE NEXT OF KIN OF MÁRCIA BARBOSA DE SOUZA**<sup>260</sup>

**A. Arguments of the parties and of the Commission**

152. The **Commission** considered that the right to psychological and moral integrity of the alleged victim's next of kin was violated due to the following factors: i) the murder of the alleged victim; ii) the failure to investigate the other suspects; iii) the delay in opening the case against the then deputy; iv) the impunity in which the then deputy allegedly lived, and v) the duration of nearly ten years of the criminal proceedings.

153. The **representatives** agreed with the Commission that the State violated the right to personal integrity of Márcia Barbosa de Souza's next of kin owing to the suffering caused by the impunity of the facts of the case. They emphasized the statements made by her parents, who stated: "I only believe in God's justice, because I've never seen important people arrested for killing poor people" and "it's the rich people against the poor people [...]." Therefore, they alleged that the asymmetry of powers in this case would have aggravated the suffering of the alleged victim's family.

154. The **State** argued that the criminal prosecution was conducted in accordance with due process and with the corresponding procedural guarantees, as established in the American Convention and the Constitution of Brazil. It further argued that all phases were characterized by respect for the principles of adversarial proceedings and broad defense. However, it indicated that, owing to the complexity of the judicial procedures established for crimes of homicide, the processing of the case took longer, but that this did not imply impunity for the accused. It considered that the conduct of the police and judicial authorities, from the time of the homicide of the alleged victim until the death of the accused, was entirely satisfactory, and that there were no undue delays or actions that denied justice. It alleged that there is no evidence that the State caused an unjustified delay in the criminal proceedings or that it was negligent in its duty to investigate, prosecute and punish those responsible for the death of the alleged victim. It pointed out that the State offered a judicial response to the facts considered to violate the rights of the next of kin of Márcia Barbosa de Souza, and that the punishment of the perpetrator could not be carried out for reasons beyond the control of the State, namely the death of Mr. Pereira de Lima in February 2008. Finally, it stressed that the State must ensure equal protection of the law to all persons and that it could not have expedited the process if this implied violating the procedural guarantees of the parties.

**B. Considerations of the Court**

155. The Court has repeatedly held that the next of kin of victims of human rights violations may themselves be victims.<sup>261</sup> This Court has considered that the right to psychological and moral integrity of the "next of kin" of victims and of other persons with close ties to the victims, may be declared violated due to the additional suffering they have endured as a result of the particular circumstances of the violations perpetrated against their loved ones, and due to the subsequent actions or omissions by the State authorities in response to these facts,<sup>262</sup> taking

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<sup>260</sup> Article 5(1) of the American Convention.

<sup>261</sup> Cf. *Case of Castillo Páez v. Peru. Merits. Judgment of November 3, 1997*. Series C No. 34, fourth operative paragraph, and *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs. Judgment of March 26, 2021*. Series C No. 423, para. 217.

<sup>262</sup> Cf. *Case of Blake v. Guatemala. Merits. Judgment of January 24, 1998*. Series C No. 36, para. 114, and *Case*

into account, *inter alia*, the steps taken to obtain justice and the existence of close family ties.<sup>263</sup>

156. In fact, the body of evidence in this case confirms that Mrs. M.B.S. and Mr. S.R.S. endured profound suffering and anguish to the detriment of their psychological and moral integrity, due to the murder of their daughter, Márcia Barbosa de Souza, and the actions of the State authorities with respect to the investigation of the facts. In this regard Márcia's mother, M.B.S., stated that:

I [...] really got very sick, I still have health problems, after [...] Márcia's death, I had depression for a time, I still take medication for my blood pressure [...] [I] no longer enjoy life. Since they took my daughter away, since they took her life, I have no desire to live anymore. My life is just suffering<sup>264</sup>.

157. She also stated that the father of Márcia Barbosa de Souza experienced similar feelings, and become ill and died as a result of alcoholism, which began during his search for justice for the death of his daughter.<sup>265</sup>

158. Likewise, Márcia Barbosa de Souza's sister, Mt.B.S., stated that:

My mother [...] is very fragile because of this. [A]fter my sister's death, she became very ill and had to take sedatives to sleep, she developed [high] blood pressure problems [...] [M]y father became an alcoholic [...] he died very early [...] because of his drinking.<sup>266</sup>

159. In addition, the psychosocial opinion rendered by the expert witness Gilberta Santos Soares corroborated the statements made by the mother and sister of Márcia Barbosa de Souza. The expert concluded that:

Psychological distress is the greatest suffering endured by Mrs. M.B.S., who lives with feelings of sadness, fear, anguish, despair, loneliness, feelings of emptiness, fragility, isolation, emotional instability and loss of interest in life. [...]

[...] as for Márcia's father, his addiction to alcohol worsened, with a high level of dependence. As a result, he developed the disease that caused his premature death, at the age of only 50. His death occurred 11 years after Márcia's murder, after the trial was held and the prison sentence defined, followed by the deputy's appeal to remain at liberty and his death. The addiction may have contributed to alleviate his pain and the absence of Márcia, his distress and feelings of impotence and futility, derived from observing the negligence of the institutions towards the family, leading him to a state of lethargy and oblivion.<sup>267</sup>

160. At the same time, the evidence in the case file shows that this case received extensive media coverage, with approximately 320 newspaper articles published over a period of 10 years.<sup>268</sup> In its coverage of the case, the media speculated about Márcia's personal life and

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of *Guachalá Chimbo et al. v. Ecuador*, *supra*, para. 217.

<sup>263</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 163, and *Case of Guachalá Chimbo et al. v. Ecuador*, *supra*, para. 217.

<sup>264</sup> Cf. Statement of M.B.S. rendered by affidavit, *supra* (evidence file, folio 10172).

<sup>265</sup> Cf. Statement of M.B.S. rendered by affidavit, *supra* (evidence file, folio 10173).

<sup>266</sup> Cf. Statement of Mt.B.S. rendered by affidavit, *supra* (evidence file, folios 10180 and 10181).

<sup>267</sup> Cf. Psychosocial expert opinion of Gilberta Santos Soares rendered by affidavit, *supra* (evidence file, folios 10344, 10353 and 10354).

<sup>268</sup> Cf. AZEVÊDO, Sandra Raquew dos Santos. "La Violencia de Genero en las Páginas de los Periódicos" (Gender Violence in the Newspaper Pages" BOCC. On-line Library of: Ciências da Comunicação, v. 1, 2010 (evidence file, folios 5842, 5848 and 5849).

sexuality<sup>269</sup> and reinforced the gender stereotypes<sup>270</sup> contained in the investigations, thus exposing Márcia Barbosa's family to revictimization and causing them additional distress.

161. Finally, the Court recalls that, despite the existence of a first instance conviction against Mr. Pereira de Lima for the murder of Márcia Barbosa de Souza, the Legislative Assembly of the state of Paraíba deemed it appropriate to pay tribute to the former deputy, so that his body was laid to rest in the *Salón Noble* of the Assembly and official mourning was decreed for three days (*supra* para. 81). In this regard, the Court considers that this event also had a serious impact on the personal integrity of Ms. Barbosa de Souza's next of kin, having caused them great suffering.

162. In light of the foregoing considerations, the Court concludes that the State violated the right to personal integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Mrs. M.B.S. and Mr. S.R.S.

## IX REPARATIONS

163. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>271</sup>

164. Reparation for the harm caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the situation prior to the violation. If this is not feasible, as occurs in the majority of cases of human rights violations, the Court may order measures to protect the violated rights and repair the harm caused by the violations.<sup>272</sup> In this regard, the Court has considered the need to provide different types of reparation so as to fully redress the damage; therefore, in addition to pecuniary compensation, other measures such as satisfaction, restitution, rehabilitation, and guarantees of non-repetition have special relevance due to the harm caused.<sup>273</sup>

165. This Court has also established that the reparations must have a causal nexus with the facts of the case, the violations declared, the damage proven, and the measures requested to redress the respective harm. Therefore, the Court must analyze the concurrence of these factors in order to rule appropriately and according to the law.<sup>274</sup> The Court likewise considers that reparations should include an analysis not only of the right of the victims to obtain reparation, but one that also incorporates a gender perspective, both in its formulation and in

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<sup>269</sup> Cf. Psychosocial expert opinion of Gilberta Santos Soares rendered by affidavit, *supra* (evidence file, folio 10342).

<sup>270</sup> The various newspaper articles created an image of Márcia as a young, "poor" "drug addicted" woman from a small town in the interior of Paraíba who wished to "meet influential politicians" and thus became involved with a "rich and powerful man" and met a "tragic end." Cf. Psychosocial expert opinion of Gilberta Santos Soares rendered by affidavit, *supra* (evidence file, folio 10342).

<sup>271</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, paras. 24 and 25, and *Case of Garzón Guzmán et al. v. Ecuador, supra*, para. 95.

<sup>272</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 26, and *Case of Garzón Guzmán et al. v. Ecuador, supra*, para. 95.

<sup>273</sup> Cf. *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Ríos Avalos et al. v. Paraguay, supra*, para. 179.

<sup>274</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Ríos Avalos et al. v. Paraguay, supra*, para. 179.

its implementation.<sup>275</sup>

166. Therefore, taking into account the considerations presented on the merits and the violations of the American Convention and the Convention of Belém do Pará declared in this judgment, the Court will examine the claims presented by the Commission and the representatives of the victims, together with the corresponding observations of the State, in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to make reparation, in order to establish measures aimed at redressing the harm caused.<sup>276</sup>

#### **A. Injured party**

167. Pursuant to Article 63(1) of the Convention, the Court considers that anyone who has been declared a victim of the violation of any right recognized therein is an injured party. Therefore, this Court considers M.B.S. and S.R.S.,<sup>277</sup> the mother and the father of Márcia Barbosa de Souza, as the "injured party" who, as victims of the violations declared in Chapter VIII, shall be the beneficiaries of the reparations ordered by the Court.

#### **B. Obligation to investigate the facts and identify, prosecute and, if appropriate, punish those responsible**

168. The **Commission** requested that the Court order the State to reopen the investigation in a diligent, effective manner and within a reasonable time in order to clarify the facts fully, identify all possible responsibilities in relation to the murder of Márcia Barbosa de Souza and the delays that resulted in impunity, and to adopt the measures necessary to remedy the omissions that occurred in the investigation of the other possible perpetrators. In addition, the Commission emphasized that the State could not invoke the guarantees of *ne bis in idem*, *res judicata* or the statute of limitations to justify its failure to comply with the above-mentioned measures.

169. The **representatives** asked the Court to order the State to investigate, identify and punish "all those responsible" for the death of Márcia Barbosa de Souza. They argued that in this case, the State could not invoke the guarantee of *ne bis in idem*, since fraudulent *res judicata* would have been established.

170. The **State** affirmed that it acted diligently in the instant case, inasmuch as it conducted the pertinent investigations, which even resulted in the conviction of the person responsible for the death of Márcia Barbosa de Souza. As for the suspects who have not been prosecuted, it indicated that the proceedings were not initiated due to a lack of sufficient evidence for the Public Prosecutor's Office to file a complaint. It further argued that, even if the Court considers it pertinent to analyze such domestic proceedings, it would not be possible to determine that the State cannot invoke the guarantee of *ne bis in idem* because the case does not concern serious human rights violations, such as torture or homicides committed in contexts of massive or systematic human rights violations.

171. The **Court** considers that the State is obliged to combat impunity by all available means,

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<sup>275</sup> Cf. *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329, para. 326, and *Case of Guzmán Albarracín et al. v. Ecuador, supra*, para. 215.

<sup>276</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of Moya Solís v. Peru, supra*, para. 113.

<sup>277</sup> Died in 2009. Cf. Psychosocial expert opinion of Gilberta Santos Soares rendered by affidavit, *supra* (evidence file, folio 10337).

since it fosters the chronic repetition of human rights violations.<sup>278</sup> The absence of a complete and effective investigation of the facts constitutes a source of additional suffering and anguish for the victims, who have the right to know the truth of what happened.<sup>279</sup>

172. The Court recalls that in Chapter VIII-1 it declared that the investigations carried out into the murder of Márcia Barbosa de Souza in June 1998, related to the possible participation of four other persons, did not comply with the minimum standards of due diligence by virtue of the failure to carry out a series of essential investigative procedures requested by the Public Prosecutor's Office (*supra* paras. 132 and 133) as well as other actions that should have been carried out in order to establish whether the homicide of Mrs. Barbosa de Souza had been committed because of her gender. In addition, it was determined that the investigations were permeated by gender stereotypes, which not only revictimized Márcia Barbosa de Souza's next of kin, but also reflected the absence of a gender perspective in the investigation.

173. The Court considers that a possible reopening of the investigations into the four possible participants in the homicide of Márcia Barbosa is not appropriate. Nevertheless, the suffering caused by the impunity resulting from the flagrant lack of due diligence in conducting essential investigative actions to ascertain the possible participation of other persons in the serious crime in question, as well as the particularly negative effect of the prolonged impunity on persons in a situation of great vulnerability, such as Márcia's mother, who is an elderly person,<sup>280</sup> will be duly considered in the section on compensation.

### C. Measures of satisfaction

174. The **representatives** requested that the Court order the State to publish the official summary of the judgment in two newspapers with widespread circulation and to publish the judgment in its entirety for a minimum period of one year on the main web sites of the Ministry of Foreign Relations, the Legislative Assembly of the state of Paraíba and the Judiciary. They also requested that the Court order the State to: "hold an act of acknowledgement of responsibility, the terms of which should be agreed with the victims and their representatives"; that "the act should take place respecting the family's right to privacy" and that "in order to have real meaning for the victims, it is essential that said act includes an apology to the relatives of Márcia Barbosa, and in particular to her parents, for all the suffering caused by the multiple omissions and obstacles." Furthermore, they requested that the event be attended by at least one high-ranking authority from the Ministry of Foreign Affairs and the Legislative Assembly of the state of Paraíba, that it be held in the state of Paraíba and that the other details be organized, discussed and agreed upon in advance with the victims and their representatives.

175. The **State** argued that, if the Court finds any violation of the American Convention, "the requirement to publish the official summary of the judgment and its full text on an official Brazilian website, in the manner traditionally adopted by the Court, would already achieve the purpose pursued by the representatives, so that any other request by the representatives in terms of symbolic reparations would not only be unreasonable, but also costly from the point

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<sup>278</sup> Cf. *Velásquez Rodríguez v. Honduras. Merits, supra, para. 174, and Case of Guerrero, Molina et al. v. Venezuela. Merits, reparations and costs. Judgment of June 3, 2021. Series C No. 424, para. 162.*

<sup>279</sup> Cf. *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs. Judgment of August 12, 2008. Series C No. 186, para. 146, and Case of Osorio Rivera and Family, supra, para. 288. Cf. Case of Heliodoro Portugal v. Panama, supra, para. 146, and Case of Valle Jaramillo et al. v. Colombia, supra, para. 102.*

<sup>280</sup> Cf. *Case of Poblete Vilches v. Chile. Merits, reparations and costs. Judgment of March 8, 2018. Series C No 349, para. 127, and Case of Órdenes Guerra et al. v. Chile. Monitoring compliance with the judgment. Order of the Inter-American Court of Human rights of July 21, 2020, para. 15. See also Inter-American Convention on the Protection of the Human Rights of Older Persons.*

of view of the public coffers.”

176. As it has done in other cases,<sup>281</sup> the **Court** orders the State to publish, within six months from notification of this judgment: a) the official summary of this judgment prepared by the Court, once, in the Official Gazette, as well as on the web pages of the Legislative Assembly of the state of Paraíba and the Judiciary of Paraíba, and in a newspaper with widespread national circulation, in a legible font of appropriate size, and b) this judgment in its entirety, available for at least one year, on the official web site of the state of Paraíba and of the Federal Government, in a manner accessible to the public from the home page of the web site. The State shall advise the Court immediately when it has made each of the publications ordered, regardless of the one-year timeframe for presenting its first report, as established in the operative paragraphs of this judgment.

177. Furthermore, in order to repair the damage caused to the victims and to prevent a repetition of the facts of this case, the Court deems it necessary to order the State to carry out an act of acknowledgement of international responsibility in relation to the facts of this case within one year from notification of this judgment. The aforementioned event may even take place in the chamber of the Legislative Assembly of Paraíba, provided that the victims so wish. During this act, reference should be made to all the human rights violations declared in this judgment. The event should also be attended by at least one senior authority of the Ministry of Foreign Affairs and of the Legislative Assembly of the state of Paraíba.<sup>282</sup>

178. The State and the mother of Ms. Barbosa de Souza, and/or her representatives, shall agree on the manner of carrying out the act, as well as details such as the place and date for its realization.<sup>283</sup> In view of the harm caused to the victims by the media coverage of the case of Márcia Barbosa and the consequent request for confidentiality of their identities, the victims or their representatives have a period of one month from the publication of this judgment to inform the Court whether they wish the event in question to be public or private. If this information is not submitted within the term established, the act shall be held privately.

#### **D. Measure of rehabilitation**

179. The **Commission** requested that the Court order the State to provide the physical and mental health care necessary for the rehabilitation of the mother and father of Márcia Barbosa de Souza, if they so wish and with their consent.

180. The **representatives** requested that the Court order Brazil to provide medical and psychological care to the mother and the sister of Márcia Barbosa de Souza.

181. The **State** pointed out that Márcia Barbosa de Souza’s next of kin already receive medical and psychological care provided by the Single Health System, which makes the present measure of reparation inappropriate.

182. The **Court** has determined that the facts of this case caused serious harm to the personal integrity of M.B.S. and S.R.S., in terms of physical, emotional and psychological suffering (*supra* paras. 161 and 162). Therefore, the Court considers it necessary to order a

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<sup>281</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Garzón Guzmán et al. v. Ecuador, supra*, para. 117.

<sup>282</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs, supra*, para. 81, and *Garzón Guzmán et al. v. Ecuador, supra*, para. 120.

<sup>283</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009, *supra*, para. 353, and *Garzón Guzmán et al. v. Ecuador, supra*, para. 120.

measure of reparation that ensures adequate medical, psychological and/or psychiatric care for the mother of Márcia Barbosa de Souza, taking into account her specific needs and background.<sup>284</sup> Consequently, this Court orders the State to pay a sum of money so that Mrs. M.B.S. can cover the cost of any treatment that may be necessary. The amount will be defined in the section on compensation (*infra* para. 212).

#### **E. Guarantees of non-repetition**

183. The **Commission** requested that the Court order the State to adapt its domestic regulatory framework to ensure that the immunity of high-ranking State officials, including parliamentary immunity, is duly regulated and delimited for the purposes sought and that the necessary safeguards are established in the law itself so that it does not become an obstacle to the investigation of human rights violations; ensure that the decisions of the respective bodies regarding the applicability of immunity of high-level officials in specific cases are duly justified; and continue to adopt all necessary measures to fully comply with the Maria da Penha Law and to adopt all legislative, administrative and public policy measures to prevent, investigate and punish violence against women in Brazil.

184. The **representatives** asked the Court to order the State of Brazil to: i) adopt legislative measures to ensure that parliamentary immunity is not an obstacle to the investigation of serious human rights violations and access to justice; ii) adopt measures to address violence against women and, in particular, guarantee the existence of bodies that manage public policies for women with a specific focus on situations related to the cycle of violence, murders of women and femicides, taking into account the disproportionate impact on black and brown women and the social impact of gender-based violence and femicides; iii) implement a gender education program for basic and higher education levels and for public officials responsible for addressing violence and administering justice; iv) ensure that the institutions responsible for investigations, prosecutions and punishment implement international standards such as the case law of the Inter-American Court and the Latin American Model Protocol for the investigation of gender-related killings of women, as well as the national guidelines for the investigation of femicides; v) ensure, with transparency, access to official data on the violent deaths registered as femicides that generated criminal proceedings, so that the data is disaggregated by age, race, social class, profile of the victim, location of the event, profile of the aggressor, relationship with the victim, means and methods used, among other variables, that allow for a quantitative and qualitative analysis, vi) ensure the existence of institutions capable of overseeing the application of these policies with a focus on violence, homicide of women and femicide.

185. The **State** pointed out that it has already adapted its regulatory framework regarding parliamentary immunity, which would have facilitated the processing of the criminal action that culminated in the conviction of the main defendant. Therefore, it argued that there is no regulatory gap that should be corrected. It indicated that, in addition to being inappropriate, an eventual conviction of this nature would imply a judgment of abstract unconstitutionality of Brazilian norms, which would only be appropriate in the exercise of the Court's advisory jurisdiction. With respect to public policies aimed at addressing violence against women, the State pointed out that it has been working on the development of regulatory frameworks on this issue, and therefore the representatives' request would be unnecessary. It added that the State should be guaranteed leeway in the formulation of its public policies, so that political choices are not imposed on it.

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<sup>284</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Guerrero, Molina et al. v. Venezuela, supra*, para. 172.

186. The **Court** recalls that the State must prevent the occurrence of human rights violations such as those described in this case and, therefore, must adopt all pertinent legal, administrative or other types of measures to that effect.<sup>285</sup>

187. The Court positively values the regulatory advances made by the State after the facts of this case. In particular, the aforementioned Maria da Penha Law, which constitutes an important international reference in preventing and combating violence against women, and the Femicide Law, designed to make homicides committed against women because of their gender more visible and to send a message regarding the special gravity of this crime. It is also worth mentioning the amendments to the Brazilian Criminal Code introduced by Law 11.106/2005, which exclude from the legal framework discriminatory terms and expressions in relation to women, among other measures.

188. Likewise, the Court appreciates the fact that there are currently various programs, projects and initiatives in Brazil aimed at combating violence and discrimination against women. In this regard, in 2003, the Special Secretariat of Policies for Women was created, a thematic body linked to the Presidency of the Republic, which is responsible for the coordination, design and implementation of policies for women at the federal level. In addition, in 2006, the National Policy for Combating Violence against Women was introduced, which included comprehensive measures for the prevention, protection and punishment of violence against women. In 2013, the "*Mulher, Viver sem Violência*" ("Women's Program, living without violence") was launched by the Secretariat for Women's Policies, with the aim of consolidating the intersectoral network of specialized services and mainstreaming the national policy.

189. However, according to the limited official and non-official data available (*supra* para. 47), and based on the expert opinions of Wânia Pasinato, Carmen Hein and Soraia Mendes, women in Brazil, especially Afrodescendant and poor women, continue to be immersed in a context of discrimination and structural violence.<sup>286</sup> The Court will take this into account when determining the guarantees of non-repetition in this case.

### *E.1 Statistics on gender violence*

190. Based on the context in which the facts of this case are framed, as early as 2006, the precariousness of national statistical data on violence against women was noted.<sup>287</sup> Fourteen years later, the expert witness Carmen Hein reaffirmed this view when she stated that "there is no national system of records on femicides that is comparable and allows for the analysis and cross-checking of data for a diagnosis of the deaths of women and the development of effective public policies."<sup>288</sup>

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<sup>285</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits*, *supra*, para. 106, *Case of Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil*, *supra*, para. 285.

<sup>286</sup> Cf. Expert opinion of Carmen Hein provided at the public hearing held on February 3 and 4, 2021, before the Court; Expert opinion of Wânia Pasinato rendered by affidavit on January 12, 2021, and expert opinion rendered by Soraia da Rosa Mendes, *supra*.

<sup>287</sup> Cf. PERES, Andréia (Coord.). *O Progresso das Mulheres no Brasil*. (Women's Progress in Brazil) UNIFEM, Ford Foundation, CEPIA: Brasília. 2006, p. 260. Available at: <http://www.mpsp.mp.br/portal/page/portal/Cartilhas/Progresso%20das%20Mulheres%20no%20Brazil.pdf>.

<sup>288</sup> Cf. Expert opinion presented by Carmen Hein in Public hearing held on February 3 and 4, 2021, before the Inter-American Court. In addition, the expert witness Wânia Pasinato stated that: "*the absence of accessible, reliable, national data, disaggregated by sex, race/color and age is an obstacle for the Brazilian State to develop and implement adequate public policies compatible with the seriousness of the violation of women's rights. Obtaining quality data and statistics helps to measure the seriousness of violence in women's lives, but also to measure and evaluate the social and economic costs and their impact on the lives of women, future generations, society and governments.* Cf. Expert opinion of Wânia Pasinato rendered by affidavit, *supra* (evidence file, folio 10320).

191. In addition, in 2012, the CEDAW Committee expressed concern about the lack of accurate and consistent data on violence against women in Brazil.<sup>289</sup> Similarly, the Parliamentary Commission of Inquiry of the Brazilian Federal Senate, created in 2012 to facilitate the implementation of the Maria da Penha Law, also identified, in 2016, the difficulty of collecting data on the situation of violence against women in the country given the existence of different databases: from the police, from different health entities, from the justice sector, and also at different levels.<sup>290</sup>

192. Article 38 of the Maria da Penha Law establishes the requirement to include statistics on domestic and intra-family violence based on data from the bodies of the justice and security systems.<sup>291</sup> From the evidence in the case file, this precept has not been observed. In this regard, the expert Henrique Marques Ribeiro pointed out that this regulatory provision has not been implemented in practice.<sup>292</sup>

193. Taking into account all of the above, the Court considers that it is necessary to collect comprehensive information on the various forms of gender-based violence in order to assess the real magnitude of this phenomenon and, by virtue of this, to formulate the relevant public policies and design strategies to prevent and eradicate further acts of violence and discrimination against women. Therefore, the Court orders the State to design within one year, and implement, within three years, through the relevant federal public agency, a national and centralized system for the collection of data disaggregated by age, race, social class, victim profile, place of occurrence, profile of the aggressor, relationship with the victim, means and methods used, among other variables, that allow for the quantitative and qualitative analysis of acts of violence against women and, in particular, violent deaths of women. In addition, the number of cases that were effectively prosecuted should be specified, identifying the number of indictments, convictions and acquittals. This information should be disseminated annually by the State through the corresponding report and be made accessible to the population in general. The identity of the victims must also be protected. To this end, the State shall submit an annual report to the Court for three years after the implementation of the data collection system, indicating the actions that have been taken in that regard.<sup>293</sup>

## *E.2 Implementation of training and awareness-raising programs*

194. In Chapter VIII of this judgment, the Court concluded that the State did not act with due diligence in the investigation of the other possible participants in the murder of Márcia Barbosa de Souza (*supra* para. 133) and that the investigation and criminal proceedings were discriminatory in nature, due to the use of gender stereotypes, thus violating the right of access to justice of the next of kin of Mrs. Barbosa de Souza (*supra* para. 150).

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<sup>289</sup> Cf. UN, CEDAW Committee. *Concluding observations of the Committee on the Elimination of Discrimination against Women - Brazil*. Doc. CEDAW/C/BRA/CO/7. March 23, 2012, para. 18.

<sup>290</sup> Cf. Expert opinion rendered by Henrique Marques Ribeiro, *supra*. In his statement at the hearing the expert witness Henrique Marques Ribeiro mentioned that the Senate recently approved a draft bill for a national data policy or policies regarding domestic violence, which contemplates the development of a new system to integrate the data and different services for women in situations of violence.

<sup>291</sup> Article 38 of Law N. 11.340 of August 7, 2006. Available at: [http://www.planalto.gov.br/ccivil\\_03/ato2004-2006/2006/lei/l11340.htm](http://www.planalto.gov.br/ccivil_03/ato2004-2006/2006/lei/l11340.htm). Also, the Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) recommends that all States Parties “develop data banks, research, and statistics that enable them to assess the magnitude and problems of femicide in their countries and to monitor State progress and setbacks in this regard.” Cf. OAS, Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), Declaration on Femicide, OAS/Ser.L/II.7.10, MESECVI/CEVI/DEC. 1/08, August 15, 2008 Available at: <https://www.oas.org/es/mesecvi/docs/DeclaracionFemicide-ES.pdf>.

<sup>292</sup> Cf. Expert opinion of Henrique Marques Ribeiro, *supra*.

<sup>293</sup> Cf. *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 12, 2020. Series C No. 402, para. 252, and *Case of Vicky Hernández et al. v. Honduras, supra*, para. 179.

195. In the context of this case, the expert Carmen Hein referred to several problems related to the State's response to the situation of violence against women in Brazil. In this regard, she mentioned the existence of gender stereotypes in the investigations, the significant absence of women in the agencies responsible for investigations, and the lack of specialized knowledge of justice officials in the area of gender violence, among other factors that negatively influence investigations and perpetuate the situation of impunity.

196. This Court appreciates the efforts made by the State to provide training on gender perspective to the personnel involved in the administration of justice.<sup>294</sup> However, it considers it pertinent to order the State to create and implement, within two years, a plan for the training and continuous education and sensitization of police forces in charge of investigations and justice operators in the state of Paraíba, with a gender and race perspective, to ensure that they have the necessary knowledge to identify acts and expressions of gender-based violence against women and to investigate and prosecute the perpetrators, through the provision of tools and training on technical and legal aspects of this type of crime.

197. The Court also considers it pertinent to order the Legislative Assembly of the state of Paraíba to hold a day of reflection and awareness-raising, bearing the name of Márcia Barbosa de Souza, on the impact of femicide, violence against women and the use of parliamentary immunity, taking into account the content of this judgment.

### *E.3 Adoption of a standardized protocol for the investigation of gender-based violent deaths of women*

198. In Chapter VIII of this judgment, the Court concluded that Brazil did not adopt a gender perspective in the investigation and criminal proceedings initiated following the murder of Márcia Barbosa de Souza (*supra* para. 150).

199. At the same time, the Court notes that the Latin American Model Protocol for the investigation of gender-related deaths of women was internalized and adapted by the State through the National Guidelines for the Investigation, Prosecution and Judgment with a Gender Perspective of Violent Deaths of Women.<sup>295</sup> The purpose of this document was to standardize the treatment given to the investigation, prosecution and trial of such cases, with the inclusion of a gender perspective from the initial phase. The Guidelines express the need for the competent authorities to ensure, throughout the investigation of a femicide, the right of access to justice, without the influence of stereotypes and other forms of violence or discrimination against women.

200. Since the National Guidelines are not a public document, it is not possible to affirm that, at present, there is any instrument that uniformly and bindingly regulates the actions of investigators and justice administrators involved in cases of gender-based killings of women in Brazil.

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<sup>294</sup> The State reported that the National Secretariat for Public Security and the Public Security Management and Education Secretariat are implementing courses for public security professionals who are members of the Unified Public Security System on "matters of gender, race or ethnicity." According to the State, among the courses imparted are: "Course on Assistance to Women Victims of Violence", "Course on Combating Harassment against Women," "Basic Course on the National Protocol for the Investigation of Femicides," among others.

<sup>295</sup> United Nations, UN Women Brazil. *National Guidelines for the Investigation, Prosecution and Judgment with a gender perspective of Violent Deaths of Women -Femicides*. Brasilia: UN Women, 2016. Available at: [http://www.onumulheres.org.br/wpcontent/uploads/2016/04/diretrizes\\_femicide.pdf](http://www.onumulheres.org.br/wpcontent/uploads/2016/04/diretrizes_femicide.pdf).

201. Consequently, the Court deems it pertinent to order the State to adopt and implement a national protocol that establishes clear and uniform criteria for the investigation of femicides. This instrument should conform to the guidelines established in the Latin American Model Protocol for the investigation of gender-based violent deaths of women, and to the case law of this Court. The protocol should be aimed at justice administration personnel who, in some way, intervene in the investigation and processing of cases of violent deaths of women. In addition, it should be incorporated into the work of these officials through resolutions and internal rules that require its application by all State officials.

202. The State shall comply with the measure provided for in this section within two years from notification of this judgment.

#### *E.1 Regulation of parliamentary immunity*

203. In Chapter VIII of this judgment, the Court considered that the application of parliamentary immunity by the Legislative Assembly of the state of Paraíba derived from a deficient regulatory framework and an arbitrary decision and resulted in the violation of the right of access to justice of the mother and father of Márcia Barbosa de Souza (*supra* paras. 122 and 123).

204. As mentioned previously, the constitutional provision that provided for parliamentary immunity at the time of the facts was amended through Constitutional Amendment 35 of 2001. Said legislation was not applied in the present case nor was it analyzed in this judgment. Nevertheless, the Court deems it pertinent to recall that the different State authorities are obliged to exercise *ex officio* a control of conventionality between domestic norms and the American Convention, evidently within the framework of their respective competencies and the corresponding procedural regulations. In this task, the domestic authorities must take into account not only the treaty, but also the interpretation made of it by the Inter-American Court as the final interpreter of the Convention. Thus, in the event of a possible dispute on the application of parliamentary immunity, with the consequent suspension of criminal proceedings against a member of a legislative body, under the terms of Article 53 of the Brazilian Constitution, the respective chamber shall ensure that the application and interpretation of domestic law is in accordance with the criteria established in this judgment, in order to safeguard the right of access to justice. This will not be supervised by the Court.

#### *E.2 Other guarantees of non-repetition requested*

205. The Court considers that this judgment, as well as the other measures ordered, are sufficient and adequate to remedy the violations suffered by the victims. Therefore, it does not consider it necessary to order the additional guarantees of non-repetition requested by the representatives.<sup>296</sup>

### **F. Compensation**

#### *F.1 Pecuniary and non-pecuniary damage*

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<sup>296</sup> The other measures requested (*supra* para. 184) were: i) measures to address violence against women, in particular, to ensure the existence of entities to manage public policies for women with a specific focus on situations related to the cycle of violence, killings of women and femicides, taking into account the disproportionate impact on black and brown women and the social impact of gender-based violence and femicides; ii) measures to implement a gender education program for basic and higher education levels, iii) measures to ensure the existence of institutions capable of overseeing the application of public policies for women, with a focus on violence, homicides of women and femicide.

206. In this section the Court will analyze the pecuniary and non-pecuniary damages together.

207. The **Commission** requested that the Court order the State of Brazil to adopt measures of financial compensation and satisfaction for moral damage.

208. The **representatives** requested that the Court order the State to pay the alleged victims an amount for pecuniary damage, determined in equity by the Court. They pointed out that, during the nearly twenty years since the murder of Márcia Barbosa de Souza, her next of kin had incurred various expenses related to travel to the city of João Pessoa to participate in meetings and public hearings before the Legislative Assembly, loss of work days, etc. In addition, they requested that, by virtue of the violations committed, the suffering caused, as well as the other non-pecuniary consequences suffered owing to the lack of justice and denial of the truth, the State pay the alleged victims an amount, to be determined in equity by the Court, for non-pecuniary damages.

209. The **State** argued that, since it has not committed any human rights violation related to the facts of this case, there is no reason for the Court to establish pecuniary and non-pecuniary damages. It further argued that the determination of such payment would be inappropriate since the representatives have not made use of domestic remedies to demand the reparation in question. It indicated that, in the event that the Court determines its international responsibility for violation of Articles 8 and 25 of the American Convention due to an alleged violation of the obligation to investigate, prosecute and punish, the Court's judgment itself should be sufficient to repair the possible damage, so that the State should not be ordered to pay any compensation for non-pecuniary damage. It added that the possible non-pecuniary damage could not be examined superficially, based solely on the representatives' allegations, but according to the evidence actually presented by them.

210. The **Court** has developed the concept of pecuniary damage in its case law and has established that this supposes "the loss of, or detriment to, the victims' income, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal link with the facts of the case."<sup>297</sup>

211. The Court has also developed in its case law the concept of non-pecuniary damage and has established that this "may include both the suffering and afflictions caused to the direct victim and his family by the violation and impairment of values of great significance for the individual, as well as any alteration of a non-pecuniary nature in the living conditions of the victims or their next of kin."<sup>298</sup> Given that it is not possible to allocate a precise monetary equivalent to the non-pecuniary damage, this can only be compensated by payment of a sum of money determined by the Court in application of sound judicial criteria and in equity.<sup>299</sup>

212. The Court notes that the representatives have not requested specific amounts nor have they provided specific elements to assess the damage suffered. Nevertheless, this Court understands that, given the nature of the facts and violations determined in this judgment, the victims have suffered pecuniary and non-pecuniary damage that must be compensated. In

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<sup>297</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Garzón Guzmán et al. v. Ecuador, supra*, para. 130.

<sup>298</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Garzón Guzmán et al. v. Ecuador, supra*, para. 132.

<sup>299</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 53, and *Case of Grijalva Bueno v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 426, para. 191.

view of the criteria established in its constant case law and the circumstances of the present case, the Court deems it pertinent to establish in equity, for pecuniary and non-pecuniary damage, the payment of USD\$ 150,000.00 (one hundred and fifty thousand United States dollars) in favor of each of the victims<sup>300</sup> (*infra* para. 224). This includes the amount of compensation related to the impossibility of reopening the criminal investigation of the other possible participants in the homicide of Ms. Barbosa de Souza, as well as the amount to enable Mrs. M.B.S. to cover the costs of the medical, psychological and/or psychiatric treatment that may be necessary (*supra* para. 182).

213. The Court considers that the amounts determined in equity compensate and form part of the integral reparation to the victims, taking into consideration the anguish and distress they endured.<sup>301</sup>

### G. Costs and Expenses

214. The **representatives** asked the Court to order the State to pay the following amounts for the costs and expenses incurred by the organizations that acted in defense of the alleged victims: i) the sum of USD\$ 20,475.11 (twenty thousand, four hundred and seventy-five United States dollars and eleven cents) to the Center for Justice and International Law (CEJIL) and ii) USD\$ 14,715.73 (fourteen thousand, seven hundred and fifteen United States dollars and seventy-three cents) to the *Gabinete de Assessoria Jurídica às Organizações Populares* (GAJOP). The expenses incurred by CEJIL are divided as follows: i) USD\$ 1,759.78 (one thousand, seven hundred and fifty-nine United States dollars and seventy-eight cents) for travel expenses (airline tickets, lodging, food and *per diems*); ii) USD\$ 852.46 (eight hundred and fifty-two United States dollars and forty-six cents) for photocopies; and iii) USD\$ 17,862.87 (seventeen thousand, eight hundred and sixty-two United States dollars and eighty-seven cents) for fees. In turn, the expenses incurred by GAJOP are divided as follows: i) USD\$ 1,418.47 (one thousand, four hundred and eighteen United States dollars and forty-seven cents) for travel expenses (airline tickets, lodging, food and *per diems*); ii) USD\$ 38.80 (thirty-eight United States dollars and eighty cents) for photocopies; iii) USD\$ 359.83 (three hundred and fifty-nine United States dollars and eighty-three cents) for expenses for file material; and iv) USD\$ 12,898.63 (twelve thousand, eight hundred and ninety-eight United States dollars and sixty-three cents) for fees. Finally, they requested that the Court determine in equity the amount corresponding to costs and expenses due to GAJOP for its various trips to the city of Cajazeiras to gather information on the health of Márcia Barbosa de Souza's next of kin and its various legal actions at the domestic level, including acting as assistant prosecutor in the criminal proceeding against Mr. Aécio Pereira de Lima, given that, due to the passage of time, they do not have receipts for such expenses.

215. The **State** asked the Court to take into account only reasonable and duly proven expenses necessary for the representatives' actions before the Inter-American System, when considering the sum requested, as well as the documentation that proves it and the direct relationship between the amount requested and the circumstances of the case. With regard to the payment of the amounts indicated under the heading of "Fees", in Annexes 7 (GAJOP) and 8 (CEJIL) to the final arguments of the representatives, it argued that these should not be demanded from the State in the event of its eventual conviction by the Court, "under penalty of violating the republican postulates of morality, economy, equality and legality, which guide the expenditure of funds by the public administration. The State indicated that it is up to the

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<sup>300</sup> Considering that Márcia Barbosa de Souza's father died in 2009, the amount of compensation corresponding to him shall be delivered to his heirs, in accordance with Brazilian legislation.

<sup>301</sup> Cf. *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil*, *supra*, para. 306.

Court to set fair fees and salaries, always based on the work actually performed on behalf of the victims in the case. It stated that the request for reimbursement of expenses with fees is based on percentages that are mere estimates, and which have resulted in excessive amounts. Therefore, it requested that the Court, in the absence of precise documentary evidence, establish the amount to be reimbursed based on equity and in accordance with the parameters that are usually applied. Finally, the State argued that the Court should not consider the expenses related to the “translation into Portuguese of a document submitted to the Court”, since the translation into Portuguese is not necessary and is a choice by the representatives that cannot be attributed to the State.

216. The **Court** reiterates that, based on its case law, costs and expenses form part of the concept of reparation, because the efforts made by the victims to obtain justice, both at the national and international levels, entail disbursements that must be compensated when the State’s international responsibility has been declared in a condemnatory judgment. Regarding the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, which includes expenses incurred before the domestic courts and those generated during the proceedings before the Inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of equity, taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.<sup>302</sup>

217. This Court has indicated that “the claims of the victims or their representatives for costs and expenses, and the evidence that supports these, must be presented to the Court at the first procedural opportunity granted to them, that is in the pleadings and motions brief, without prejudice to those claims being updated subsequently, in keeping with the new costs and expenses incurred as a result of the proceedings before this Court.”<sup>303</sup> In addition, the Court reiterates that it is not sufficient merely to forward probative documents; rather the parties are required to include arguments that relate the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established.<sup>304</sup>

218. Taking into account the amounts requested by each of the organizations and the proof of expenses presented, the Court orders the payment in equity of: USD \$20,000.00 (twenty thousand United States dollars) for costs and expenses in favor of CEJIL, and USD \$15,000.00 (fifteen thousand United States dollars) for costs and expenses in favor of GAJOP. These amounts shall be paid directly to those organizations.

219. At the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representatives for reasonable expenses incurred in that procedural stage.<sup>305</sup>

#### **H. Reimbursement of expenses to the Victims’ Legal Assistance Fund**

220. In the instant case, through a note of April 29, 2020, the Presidency of the Court

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<sup>302</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, paras. 42, 46 and 47 and *Case of Garzón Guzmán et al. v. Ecuador, supra*, para. 138.

<sup>303</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Garzón Guzmán et al. v. Ecuador, supra*, para. 139.

<sup>304</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 277, and *Case of Garzón Guzmán et al. v. Ecuador, supra*, para. 139.

<sup>305</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Ríos Avalos et al. v. Paraguay, supra*, para. 244.

admitted the application submitted by the alleged victims, through their representatives, to have access to the Legal Assistance Fund. In the Order of the President of November 27, 2020, the necessary financial assistance was approved to "cover the reasonable costs of preparing and sending four affidavits indicated by the representatives."

221. On July 29, 2021, the report on expenditures was forwarded to the State, in accordance with Article 5 of the Court's Rules of Procedure on the operation of the Fund. Thus, the State had the opportunity to present its observations on the expenditures made in the instant case, which amounted to USD \$1,579.20 (one thousand, five hundred and seventy-nine United States dollars and twenty cents).

222. The **State** pointed out that the amounts indicated in the aforementioned report "correspond to the receipts and invoices presented" and are of "reasonable levels, without discrepancies of calculation."

223. In view of the violations declared in this judgment, the Court orders the State to reimburse the said Fund the amount of USD \$1,579.20 (one thousand five hundred and seventy-nine United States dollars and twenty cents). This sum shall be reimbursed within six months from the notification of this judgment.

#### **I. Method of compliance with the payments ordered**

224. The State shall pay compensation for pecuniary and non-pecuniary damage and to reimburse the costs and expenses established in this judgment, directly to the persons and organizations indicated herein, within one year of notification of this judgment, or it may bring forward full payment, pursuant to the following paragraphs. With respect to the compensation awarded in favor of Mr. S.R.S., the State shall pay this to his heirs, in accordance with the applicable domestic law, within one year of notification of this judgment.

225. If the beneficiaries have died or die before they receive the respective compensation, this shall be paid directly to their heirs in accordance with the applicable domestic law.

226. The State shall fulfill its monetary obligations by payment in United States dollars or the equivalent in national currency, using for the respective calculation the market exchange rate published or calculated by the relevant banking or financial authority, on the date closest to the day of payment.

227. If, for reasons attributable to the beneficiaries of the compensation or to their heirs, it is not possible to pay the compensation established within the time frame indicated, the State shall deposit the amount in an account or certificate of deposit in their favor, in a solvent Brazilian financial institution, in United States dollars or the equivalent in national currency, and on the most favorable financial terms permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the accrued interest.

228. The amounts allocated in this judgment as compensation for damages and as reimbursement of costs and expenses shall be delivered in full to the beneficiaries, without any deductions arising from possible charges or taxes.

229. If the State should fall into arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Federative Republic of Brazil.

**X**  
**OPERATIVE PARAGRAPHS**

230. Therefore,

**THE COURT**

**DECIDES,**

Unanimously:

1. To declare partially admissible the preliminary objection regarding the alleged lack of jurisdiction *ratione temporis* with respect to the facts prior to the date of recognition of the Court's jurisdiction, in accordance with paragraphs 19 to 23 of this judgment.
2. To dismiss the preliminary objection regarding the alleged failure to exhaust domestic remedies, in accordance with paragraphs 27 to 34 of this judgment.

**DECLARES,**

Unanimously, that:

3. The State is responsible for the violation of the rights to judicial guarantees, to equality before the law and to judicial protection, contained in Articles 8(1), 24 and 25 of the American Convention on Human Rights, in relation to the obligations to respect and guarantee rights without discrimination and the duty to adopt provisions of domestic law, established in Articles 1(1) and 2 of the same instrument, and in relation to the obligations set forth in Article 7(b) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, to the detriment of M.B.S. and S.R.S., pursuant to paragraphs 98 to 151 of this judgment.
4. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of M.B.S. and S.R.S., pursuant to paragraphs 155 to 162 of this judgment.

**AND ESTABLISHES,**

Unanimously, that:

5. This judgment constitutes, *per se*, a form of reparation.
6. The State shall issue the publications indicated in paragraph 176 of this judgment, within six months from its notification.
7. The State shall hold an act of acknowledgement of international responsibility, in relation to the facts of this case, in the terms of paragraphs 177 and 178 of this judgment.
8. The State shall design and implement a national and centralized data collection system that allows for the quantitative and qualitative analysis of acts of violence against women and, in particular, violent deaths of women, in the terms of paragraph 193 of this judgment.

9. The State shall create and implement a plan for continuous training, capacity building and awareness-raising for the police forces in charge of investigations and for the justice operators in the state of Paraíba, with a gender and race perspective, pursuant to paragraph 196 of this judgment.

10. The State shall hold a day of reflection and awareness-raising on the impact of femicide, violence against women and the use of parliamentary immunity, pursuant to paragraph 197 of this judgment.

11. The State shall adopt and implement a national protocol for the investigation of femicides, pursuant to paragraphs 201 and 202 of this judgment.

12. The State shall pay the amounts established in paragraphs 212 and 218 of this judgment as compensation for the omissions in the investigations into the homicide of Márcia Barbosa de Souza; for rehabilitation; as compensation for pecuniary and non-pecuniary damages; and for reimbursement of costs and expenses, pursuant to paragraphs 224 to 229 of this judgment.

13. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights for the amount disbursed during the processing of this case, in the terms of paragraphs 223 and 229 of this judgment.

14. The State shall, within one year from notification of this judgment, provide the Court with a report on the measures adopted to comply with it, without prejudice to the provisions of paragraph 176 of this judgment.

15. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfilment of its obligations under the American Convention on Human Rights, and will consider this case closed when the State has fully complied with all its provisions.

DONE, at San José, Costa Rica, in a virtual session held on September 7, 2021, in the Spanish language.

I/A Court HR. *Case of Barbosa de Souza et al. v. Brazil*. Preliminary objections, merits, reparations and costs. Judgment of September 7, 2021. Judgment adopted at San José, Costa Rica, in a virtual session.

Elizabeth Odio Benito  
President

L. Patricio Pazmiño Freire

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri  
Secretary

So ordered,

Elizabeth Odio Benito  
President

Pablo Saavedra Alessandri  
Secretary