

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF SALES PIMENTA V. BRAZIL

JUDGMENT OF JUNE 30, 2022

(Preliminary objections, merits, reparations, and costs)

In the case of *Sales Pimenta v. Brazil*, the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:

Ricardo C. Pérez Manrique, President,
Humberto Antonio Sierra Porto, Vice President,
Eduardo Ferrer Mac-Gregor Poisot, Judge,
Nancy Hernández López, Judge,
Verónica Gómez, Judge, and
Patricia Pérez Goldberg, Judge,

also present:

Pablo Saavedra Alessandri, Registrar,
Romina I. Sijniensky, Assistant Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and Articles 31, 32, 42, 65, and 67 of the Rules of Procedure of the Court (hereinafter also “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment structured as follows:

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I INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* On December 4, 2020, the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of “Gabriel Sales Pimenta” against the Federative Republic of Brazil (hereinafter “the State” or “Brazil”). According to the Commission, the dispute concerns whether Brazil bears international responsibility for an alleged situation of impunity regarding the death of Gabriel Sales Pimenta, attorney for the Marabá Rural Workers Union. Due to the nature of his work, the alleged victim had received several death threats, which prompted him to seek state protection on multiple occasions at the Department of Public Security in Belém, in the state of Pará. He was ultimately killed on July 18, 1982. According to the Commission, the death occurred in the context of violence related to demands for land and agrarian reform in Brazil. The Commission concluded that the investigation into the death of Gabriel Sales Pimenta, which ended in 2006 with a decision that the statute of limitations had expired, was hobbled by failures of the State. The Commission established that the authorities did not act with due diligence or within a reasonable time frame. It also concluded that Brazil violated the right to personal integrity of Gabriel Sales Pimenta’s family. The Commission therefore found the State responsible for violating the rights to personal integrity, judicial guarantees, and judicial protection established in Articles 5(1), 8(1), and 25(1) of the American Convention, in conjunction with the obligations contained in Article 1(1), to the detriment of the family members of Gabriel Sales Pimenta specified in Merits Report No. 144/19 (hereinafter “Merits Report” or “Report No. 144/19”).

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

- a) *Petition.* On November 9, 2006, the Pastoral Land Commission and the Center for Justice and International Law submitted the initial petition before the Commission.
- b) *Admissibility report.* On October 17, 2008, the Commission approved Admissibility Report No. 73/08, of which the parties were notified on December 15, 2008.
- c) *Merits report.* On September 28, 2019, the Commission approved the Merits Report, in which it detailed a series of conclusions and made certain recommendations to the State.
- d) *Notification to the State.* The State was notified of the Merits Report on December 4, 2019, and given two months to report back on its compliance with recommendations made. The Commission granted the State three extensions. On November 20, 2020, Brazil requested a fourth extension. In assessing that request, the Commission indicated that over the course of almost a year since the notification of the Merits Report, the State had maintained that reopening the criminal investigation would be infeasible and it had still not presented a proposal for specific compensation. Thus, the Commission did not observe any compliance with the recommendations or substantive progress toward compliance.

3. *Submission to the Court.* On December 4, 2020, the Commission submitted to the Court “the events that began or continued after” the date of Brazil’s ratification of the American Convention, “bearing in mind the need to achieve justice and reparations for the [alleged] victims.”¹ This Court notes with concern that over 14 years passed between the presentation of the initial petition to the Commission and the submission of the case to the Court.

¹ The Commission appointed as its delegate to the Court then-President of the Commission, Commissioner Joel Hernández, and it appointed as legal advisors then-Assistant Executive Registrar Marisol Blanchard Vera and current Assistant Executive Registrar Jorge Meza Flores.

4. *The Commission's requests.* The Commission therefore asked the Court to declare the State of Brazil internationally responsible for the violations indicated in the Merits Report that occurred after December 10, 1998 (*supra* para. 1). It also asked the Court to order the State to carry out certain measures of reparation, *infra* chapter IX).

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representatives.* The State² and the representatives of the alleged victims³ (hereinafter "the representatives") were notified of the submission of the case on February 9, 2021.

6. *Brief with pleadings, motions, and evidence.* On April 12, 2021, the representatives presented their brief with pleadings, motions, and evidence (hereinafter "pleadings and motions brief"). They agreed with the content of the Commission's Merits Report and stated they would expand on that report's determinations of fact in order to "clarify or explain" them. In addition, they asked that the State be found internationally responsible for violating the right to the truth to the detriment of the family of Gabriel Sales Pimenta and "Brazilian society as a whole," in accordance with Articles 8, 11, 13, and 25 of the American Convention. The alleged victims also requested, through their representatives, access to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Court's Assistance Fund" or "the Fund").

7. *Preliminary objections and answering brief.* On August 4, 2021, the State presented its answering brief in response to the Merits Report and to the pleadings and motions brief (hereinafter "answering brief"). In that document, Brazil raised three preliminary objections and denied the alleged violations. It also contested the measures of reparation proposed by the representatives and the Commission.

8. *Observations on the preliminary objections.* In documents dated October 25, 2021, the Commission and representatives presented their respective observations on the State's preliminary objections.

9. *Public hearing.* On February 17, 2022, the Court issued an order summoning the parties and the Commission to a public hearing on preliminary and potential objections, as well as merits, reparations, and costs.⁴ The public hearing was held virtually on March 22–23, 2022, during the Court's 147th regular session.⁵

² On March 11, 2021, the State appointed the following agents: Antônio Francisco Da Costa e Silva Neto, Ambassador of Brazil in San José; Minister João Lucas Quental Novaes de Almeida, Director of the Department of Human Rights and Citizenship of the Ministry of Foreign Affairs (hereinafter "MFA"); Minister Marcelo Ramos Araújo, Chief of the Division of Human Rights of the MFA; Ricardo Edgard Rolf Lima Bernhard, Deputy Chief of the Division of Human Rights of the MFA; Registrar Daniel Leão Sousa, Advisor in the Division of Human Rights of the MFA; Registrar Débora Antônia Lobato Cândido, Advisor in the Division of Human Rights of the MFA; Registrar Lucas dos Santos Furquim Ribeiro, Chief of the Human Rights Section of the Embassy of Brazil in San José; Homero Andretta Junior, Tonny Teixeira de Lima, Beatriz Figueiredo Campos da Nóbrega, Dickson Argenta de Souza, and Taiz Marrão Batista da Costa, Public Attorneys; Milton Nunes Toledo Junior, Chief of the Special Office of International Affairs of the Ministry of Women, Family and Human Rights (hereinafter "MMFDH" for the Spanish); Bruna Nowak, Coordinator of International Human Rights Disputes in the Special Office of International Affairs of the MMFDH, and João Pedro Ribeiro Sampaio de Arruda Câmara, Director of the Office of Agrarian Conflict Resolution of the National Institute of Agrarian Reform (INCRA for the Spanish).

³ The representatives of the alleged victims are the Pastoral Land Commission and the Center for Justice and International Law.

⁴ *Cf. Case of Sales Pimenta v. Brazil. Call for a hearing.* February 17, 2022, Order of the President of the Inter-American Court of Human Rights. Available in Spanish at: https://www.corteidh.or.cr/docs/asuntos/sales_pimenta_17_02_22_spa.pdf.

⁵ Present at this hearing were: (a) for the Commission: Julissa Mantilla Falcón, President; Marisol Blanchard, then-Assistant Executive Registrar; Jorge Meza Flores, current Assistant Executive Registrar, and Analía Banfi Vique, advisor; (b) for the representatives: Andréia Aparecida Silvério dos Santos and José Batista Gonçalves Afonso of the Pastoral Land Commission, and Viviana Kristicevic, Gisela de León, Helena Rocha, and Lucas Arnaud of the Center for Justice and

10. *Amicus brief.* The Court received eight amicus briefs from: (1) the Inter-American Human Rights Clinic of the Federal University of Rio de Janeiro and the Fundamental Rights and Transparency Clinic of the Federal University of Juiz de Fora;⁶ (2) the Amazon Human Rights Clinic of the Federal University of Pará and the Public Defender's Office of the State of Pará;⁷ (3) the Federal Council of the Order of Attorneys of Brazil and the Research Center on Human Rights Systems at the Federal University of Paraná;⁸ (4) the Order of Attorneys of Brazil, Minas Gerais Section;⁹ (5) the Union of Attorneys of the State of Minas Gerais (SINAD MG);¹⁰ (6) the Human Rights and Environmental Law Clinic of the University of the State of Amazonas;¹¹ (7) the "Gabriel Pimenta" Brazilian Association of People's Attorneys;¹² and (8) the Human Rights Clinic of the Federal University of Bahia.¹³

International Law, and (c) for the State: Antônio Francisco Da Costa e Silva Neto, Ambassador of Brazil in Costa Rica and Chief of delegation; João Lucas Quental Novaes de Almeida, Director of the Department of Human Rights and Citizenship of the MFA; José Armando Zema de Resende, Minister of the Embassy of Brazil in San José; Bruna Vieira de Paula, Chief of the Division of Human Rights of the MFA; Débora Antônia Lobato Cândido, Advisor of the Division of Human Rights of the MFA; Lucas dos Santos Furquim Ribeiro, Registrar of the Embassy of Brazil in San José; Viviane Ruffeil Teixeira Pereira, Attorney of the State of Pará; Tonny Teixeira de Lima and Taiz Marrão Batista da Costa, Public Attorneys; Milton Nunes Toledo Junior, Chief of the Special Office of International Affairs of the Ministry of Women, Family and Human Rights (MMFDH); Tatiana Leite Lopes Romani, Advisor of the Special Office of International Affairs of the MMFDH; Bruna Nowak, Coordinator of International Human Rights Disputes in the Special Office of International Affairs of the MMFDH; Aline Albuquerque Sant' Anna de Oliveira, Coordinator of International Affairs of the Legal Office of the MMFDH, and João Pedro Ribeiro Sampaio de Arruda, Director of the Office of Agrarian Conflict Resolution of the National Institute of Agrarian Reform (INCRA).

⁶ The brief was signed by Siddharta Legale, Thainá Mamede, Bruno Stigert, Carolina Cyrillo, Danilo Sardinha, Giovanna Barbastefano, Isadora Merli, Vanessa Guimarães dos Santos, Thiago Castro, Júlia Oliveira Pessoa, Maria Eduarda Gualberto Vieira, Letícia Gabriella Costa Corrêa, Gabriel Angelo Costa Corrêa, Gabrielley Custodia Alves Mascarenhas, Iris Campos Nogueira, Rebecca Ferreira Arbex, Nina Morena Teixeira Pacheco, and Yuri Ernandes Rodrigues de Carvalho. The brief describes theoretical perspectives on the American Convention as an "Inter-American Constitution" and the Inter-American Court as a "Transnational Constitutional Court," as well as on "inter-American trade union freedom." It also argues for practical applications concerning access to justice, the Human Rights Defenders Protection Program, the "social function of property and the need for the Court to broaden the debate about Article 21 of the Convention," and a duty to grant reparations to the alleged victims.

⁷ The brief was signed by Andreia Macedo Barreto, Anna Izabel e Silva Santos, Bia Albuquerque Tiradentes, Carlos Eduardo Barros da Silva, Edgar Moreira Alamar, Guilherme Israel Kochi Silva, Juliana Andrea Oliveira, Kassandra Campos Pinto Lopes Gomes, Vladimir Augusto de Carvalho Lobo e Avelino Koenig, Cristina Figueiredo Terezo Ribeiro, Amanda Pereira Reis, Daniela Bastos da Silva, and Sarah Morhy Pereira. The brief details alleged land conflicts in the State of Pará and allegedly harmful actions taken in that state, as well as the alleged vulnerability of human rights defenders and the "possibility" of the Inter-American Court "making progress" on safeguarding rights in indigenous lands.

⁸ The brief was signed by José Alberto Ribeiro Simonetti Cabral, Sílvia Virgínia Silva de Souza, Melina Girardi Fachin, Cristina Paiva, José Maria Vieira, Álvaro Quintão, Anderson Ferreira, and Caupolican Padilha Junior. The brief describes the alleged legal situation of the human rights defenders and the alleged state obligations and related rights, in accordance with certain standards, as well as standard provisional measures and measures of reparation.

⁹ The brief was signed by Sérgio Rodrigues Leonardo, William dos Santos, and Cristina Paiva Matos Fontes. The brief primarily describes the recommended measures of reparation.

¹⁰ The brief was signed by Roberto Williams Moysés Auad and Julia Pereira Reis. The brief makes certain arguments of law and fact in support of the adoption of measures that "enable democratic progress in Brazil."

¹¹ The brief was signed by Sílvia Maria da Silveira Loureiro, Jamilly Izabela de Brito Silva, Lucas Schneider Veríssimo de Aquino, João Lucas Bastos de Lima Sousa, Yasmin de Almeida Bayma, Izabelly Sabriny Oliveira Nascimento, Gabriel Henrique Pinheiro Andion, Claudevan Barros Bentes Filho, Valena Jacob Chaves Mesquita, Girolamo D. Treccani, Luana Nunes Bandeira Soares, Danielle Anne Pamplona, Júlia Coimbra Braga, and Eduardo Pitrez de Aguiar Correa. The brief primarily provides an analysis of the context of the case and makes legal arguments against the expiration of the statute of limitations for the alleged "crime" committed against Gabriel Sales Pimenta. It also details the measures of reparation they consider appropriate.

¹² The brief was signed by Henrique Júdice Magalhães. The brief makes observations concerning the *ratio temporis* jurisdiction of the Inter-American Court and the context of the case, as well as suggested measures of reparation.

¹³ The brief was signed by Marina Muniz Pinto de Carvalho Matos, Tatiana Emília Dias Gomes, Emmanuelle Diana Santos Neves, Carlos Eduardo Soares de Freitas, Caio César Pereira dos Reis, Christian Lopes Oliveira Alves, Cristiane de Almeida Santa Rosa, Rebeca Ananias Pinto, Rebeca das Neves dos Santos, and Udma Uldiery Oliveira Silva. The brief describes the context of the case, the deaths of human rights defenders in Brazil (and the alleged systematic nature of those deaths), the Brazilian Human Rights Defenders Protection Program, and suggested guarantees of non-repetition.

11. *Final written arguments and observations.* On April 20 and 22, 2022, the State, the representatives, and the Commission submitted their respective final written arguments and final written observations.

12. *Observations on the annexes to the final arguments.* On May 23, 2022, the State commented on the annexes presented by the representatives. On May 25, 2022, the Commission stated that it did not have comments on the annexes to the parties' final written arguments, and the representatives presented observations on the annexes to the State's final written arguments.

13. *Victims' Legal Assistance Fund.* On April 22, 2022, with their final written arguments, the representatives informed the Court that they would not present documentation for expenses to be paid for by the Court's Assistance Fund, as those expenses had not been significant. As such, the Court understands that the representatives have ceased use of said Fund, and it hereby closes the corresponding expense file.

14. The Court deliberated this judgment on June 25, 27, and 30, 2022.

III JURISDICTION

15. The Inter-American Court has jurisdiction to hear this case pursuant to Article 62(3) of the American Convention because Brazil has been a State Party to the American Convention since September 25, 1992, and accepted the contentious jurisdiction of this Court on December 10, 1998.

IV PRELIMINARY OBJECTIONS

16. In the *sub judice* case, the State lodged three preliminary objections, which are detailed below.

A. Lack of *ratione temporis* jurisdiction with respect to events that occurred prior to the date of recognition of the Court's jurisdiction

A.1. Arguments of the parties and the Commission

17. The **State** asked the Court to declare its lack of *ratione temporis* jurisdiction with respect to alleged human rights violations that occurred or began prior to December 10, 1998. It stated that the Commission submitted to the Court events that occurred between September 25, 1992,¹⁴ and December 10, 1998, and that those events are outside the jurisdiction of the Court. It argued that the Court has jurisdiction to analyze possible violations, in the terms submitted by the Commission, only if the events are proven or deduced to have begun after December 10, 1998, and if the violations constitute specific, discrete denials of justice. Finally, it stated that neither the Commission nor the representatives identified the specific independent events that occurred after December of 1998 that would constitute a violation of the Convention, and that for this reason the case should be dismissed.

18. The **Commission** emphasized that its submission of the case referred exclusively to events that began or continued after December 10, 1998—primarily the alleged failure to exercise due diligence in the investigation and the factors that it argues led to a denial of justice. It also recalled that the Court has already established that it “can examine acts or facts that have taken place after the date of the said acceptance and that have generated instantaneous and continuing or permanent human rights violations.”

¹⁴ Brazil has been a State Party to the American Convention since September 25, 1992.

19. The **representatives** rejected the State's position that the Court can examine only those possible violations of Articles 5(1), 8(1), and 25(1) of the American Convention that began or must have begun after December 10, 1998, because, as they argued, (i) the Court has jurisdiction to hear facts that began prior to that date and (ii) both the Commission and the representatives identified specific, independent violations of Articles 8 and 25 of the American Convention that took place after the date of Brazil's recognition of the Court's jurisdiction.

A.2. Considerations of the Court

20. The Court has reiterated that by virtue of the principle of non-retroactivity, it cannot exercise its contentious jurisdiction to apply the American Convention to events that occurred prior to the State's recognition of its jurisdiction.¹⁵ However, this Court has found that it does have jurisdiction over continuous or ongoing human rights violations that began prior to the date of the State's recognition of the Court's contentious jurisdiction and that continue after that date.¹⁶ It has also established that it has jurisdiction to hear violations that took place in the context of a trial or legal investigation, even if that trial or investigation began prior to the date of recognition of the Court's jurisdiction, if those violations derived from independent events that occurred after the date of recognition.¹⁷

21. On this point, the Court has established in its settled case law that it can hear and rule on alleged violations involving acts or decisions that occurred after the date of recognition of the Court's contentious jurisdiction, even if legal proceedings began prior to that date of recognition.¹⁸

22. In its analysis of the case, the Court finds that specific independent events were identified, both in the Merits Report and in the pleadings and motions brief, that allegedly occurred in the context of the criminal and civil proceedings after December 10, 1998, the date of recognition of the Court's contentious jurisdiction. As it has temporal jurisdiction to rule on the aforementioned facts, the Court rejects this preliminary objection.

B. Preliminary objection regarding the failure to exhaust domestic remedies

B.1. Arguments of the parties and the Commission

¹⁵ Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations, and costs*. Judgment of September 7, 2004. Series C No. 114, para. 61 to 62; *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations, and costs*. Judgment of August 12, 2008. Series C No. 186, para. 23 to 24; *Case of Garibaldi, Preliminary objections, merits, reparations, and costs*. Judgment of September 23, 2009. Series C No. 203, para. 20; *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 Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations, and costs*. Judgment of January 27, 2020. Series C No. 398, para. 18, and *Case of the Massacre of the Village of Los Josefinos v. Guatemala. Preliminary objection, merits, reparations, and costs*. Judgment of November 3, 2021. Series C No. 442, para. 16.

¹⁶ In this regard, the Court has maintained that even if the initiating action took place before the date of recognition of the Court's jurisdiction, if those violations persist after that recognition, that means they are still being committed and the Court thus has jurisdiction to hear them. Cf. *Case of the Serrano-Cruz Sisters v. El Salvador. Preliminary objections*. Judgment of November 23, 2004. Series C No. 118, para. 65; *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations, and costs*. Judgment of November 20, 2014. Series C No. 288, para. 25; *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations, and costs*. Judgment of November 30, 2016. Series C No. 328, para. 20, and *Case of the Massacre of the Village of Los Josefinos v. Guatemala, supra*, para. 16.

¹⁷ Cf. *Case of the Serrano-Cruz Sisters v. El Salvador, supra*, para. 84; *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations, and costs*. Judgment of February 16, 2017. Series C No. 333, para. 49 to 50; *Case of Herzog et al. v. Brazil. Preliminary objections, merits, reparations, and costs*. Judgment of March 15, 2018. Series C No. 353, para. 28, and *Case of Barbosa de Souza et al. v. Brazil. Preliminary objections, merits, reparations, and costs*. Judgment of September 7, 2021. Series C No. 435, para. 21.

¹⁸ Cf. *Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations, and costs*. Judgment of November 20, 2007. Series C No. 168, para. 44 and 45, and *Case of Barbosa de Souza et al. v. Brazil, supra*, para. 21.

23. The **State** argued that there is “irrefutable” evidence that the representatives brought their case before the inter-American system without having exhausted domestic remedies. It stated that in November of 2006, this case was sent to the Commission; in 2007, the alleged victims made use of domestic measures before the National Council of Justice to seek the State’s administrative and civil liability; and in 2008, the mother of Gabriel Sales Pimenta sought compensation for pain and suffering. Moreover, it declared that the State did not hinder or unduly delay the use of remedies for determining state liability with respect to its obligation to investigate and punish those responsible for the death of Mr. Sales Pimenta.

24. The **Commission** recalled that the American Convention directly accords it responsibility for decisions on matters of admissibility and that, in accordance with the rules of the Convention and the Commission’s Rules of Procedure, the analysis of admissibility must not be subject to review. It pointed out that the requirement to exhaust domestic remedies had been met by virtue of a final criminal judgment. It also recalls that with respect to alleged violations of the right to life, domestic remedies that are relevant for admissibility are those related to criminal investigation and the possible punishment of responsible parties. Finally, it noted that the State did not present its objection regarding a failure to exhaust domestic remedies at the proper procedural occasion.

25. The **representatives** noted that the State, in its initial statements before the Commission, made no mention of a failure to exhaust domestic remedies, and they argued that this constitutes a tacit choice not to present such a preliminary objection. They also indicated that the domestic remedies specified by the State were not appropriate to remedy the alleged violations and that they have now been exhausted. They argued that the State failed to demonstrate why the administrative remedy before the National Council of Justice and the compensatory action were appropriate remedies.

B.2. Considerations of the Court

26. The Court recalls that Article 46(1)(a) of the American Convention establishes that for determining the admissibility of a petition or communication submitted to the Inter-American Commission under the terms of either Article 44 or Article 45 of the Convention, “remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.”

27. On several occasions, the Court has specified that the proper procedural time for a State to bring any objections related to a failure to exhaust domestic remedies is during the admissibility proceedings before the Inter-American Commission.¹⁹ If such an objection is not presented at the proper time, the State loses the ability to make use of that defense before this Court.²⁰

28. From its analysis of the record before the Inter-American Commission, the Court confirms that on January 31, 2007, the Commission notified the State of the complaint presented by the petitioners, and Brazil made statements on three separate occasions prior to the October 17, 2008, Admissibility Report: in its June 4, 2007, answering brief; in its August 29, 2007, brief with observations on the additional information presented by the petitioners; and in its January 3, 2008, brief with additional observations on admissibility. The Court notes that because not one of the aforementioned communications contains a State allegation of a failure to exhaust domestic remedies, it concludes that the State did not allege a failure to exhaust domestic remedies at the proper procedural occasion, that is, during the admissibility stage of the case before the Commission.

¹⁹ Cf. *Case of Velásquez-Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 88, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary objections, merits, and reparations*. Judgment of February 1, 2022. Series C No. 448, para. 26.

²⁰ Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations, and costs*. Judgment of June 30, 2009. Series C No. 197, para. 21.

Therefore, in accordance with the Court's established precedent, the Court rejects this preliminary objection.

C. Lack of *ratione materiae* jurisdiction over the violation of the principle of subsidiarity (fourth instance objection)

C.1. Arguments of the parties and the Commission

29. The **State** argued that the Court's analysis of the facts and conclusions reached in criminal trial No. 028.1986.2.00004-9 and compensatory action No. 007348.91.2007.814.0028 contravenes the principle of subsidiarity of the inter-American system. The State argued that—through proper domestic authorities and appropriate, legitimate investigative remedies—it has applied criminal procedural law and constitutional and legal safeguards.

30. The **Commission** emphasized that the Merits Report was focused on determining whether domestic processes had violated the rights to judicial guarantees and to judicial protection of the alleged victims, not on reviewing the decisions of the national authorities.

31. The **representatives** declared that because the State's arguments challenge the representatives' allegations, they concern the merits of the case and should thus be analyzed.

C.2. Considerations of the Court

32. This Court has noted that in its effort to determine whether the actions of legal bodies constitute a violation of a State's international obligations, it may need to examine the respective domestic proceedings in order to assess their compatibility with the American Convention.²¹ Accordingly, this Court is not a fourth instance appeals court, as it examines whether domestic legal decisions are compatible with the American Convention, not whether they are in agreement with domestic law.²²

33. The Court notes that both the Commission and the representatives have alleged that the State committed violations of rights enshrined in the American Convention—rights directly connected to domestic proceedings. Accordingly, the Court rejects this preliminary objection.

**V
PRELIMINARY CONSIDERATIONS**

34. In its answering brief, the **State** argued it was impossible for the Court to hear the alleged violation of the right to the truth to the detriment of the family of Gabriel Sales Pimenta and Brazilian society as a whole because this is beyond the scope of analysis set by the Commission in its Merits Report.

35. The **Court** reiterates that the alleged victims and their representatives can invoke the violation of rights not contained in the Merits Report as long as they fall within the factual framework established by the Commission, as the alleged victims are the ones who hold all the rights enshrined in the American Convention. In these cases, it is the Court's responsibility to decide on the

²¹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of Digna Ochoa and family members v. Mexico. Preliminary objections, merits, reparations, and costs*. Judgment of November 25, 2021. Series C No. 447, para. 38.

²² Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 222, para. 32, and *Case of Digna Ochoa and family members v. Mexico, supra*, para. 38.

admissibility of allegations related to the factual framework, to ensure procedural equity for the parties.²³

36. The Court notes here that even though the Commission did not conclude in its Merits Report that there was a specific violation of the right to the truth, the representatives' arguments concerning that violation are not based on new facts but rather on facts that are part of the factual framework established in that report. The Court therefore has the authority to analyze the alleged violation; for this reason, it rejects the State's argument.

VI EVIDENCE

A. Admissibility of the documentary evidence

37. The Court received various documents presented as evidence by the Commission, the representatives, and the State with their main briefs (*supra* paras. 3, 6, and 7). In this case, as in others, the Court admits documents presented by the parties and the Commission at the appropriate time (Article 57 of the Rules of Procedure)²⁴ whose admissibility was not contested or opposed and whose authenticity was not in question.²⁵

38. The Court notes that the representatives included three annexes with their March 21, 2022, brief.²⁶ Neither the State nor the Commission challenged the presentation of those documents. Moreover, the Court notes that because those documents contain information related to facts subsequent to the presentation of the pleadings and motions brief, they are admissible in accordance with Article 57(2) of the Rules of Procedure of the Inter-American Court.

39. The Court also received documents attached to the final written arguments presented by the State²⁷ and the *representatives*.²⁸ In this regard, the Commission indicated that it had no comments on the documents presented as annexes to the final written arguments of the parties.

²³ Cf. *Case of Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations, and costs*. Judgment of November 25, 2013. Series C No. 272, para. 22, and *Case of Digna Ochoa and family members v. Mexico, supra*, para. 33.

²⁴ Documentary evidence can be presented—in general and in accordance with Article 57(2) of the Rules of Procedure—with the submission briefs for the case, with pleadings and motions briefs, or with answering briefs, as appropriate. Evidence submitted outside those appropriate procedural occasions is not admissible, except in the cases established in Article 57(2) of the Rules of Procedure (*force majeure* or serious impediment), or if it concerns a supervening fact, i.e., one that took place after the referenced procedural occasions. Cf. *Case of Barrios Family v. Venezuela. Merits, reparations, and costs*. Judgment of November 24, 2011. Series C No. 237, para. 17 and 18, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru, supra*, footnote 33.

²⁵ Cf. *Case of Velásquez-Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Pavez Pavez v. Chile. Merits, reparations, and costs*. Judgment of February 4, 2022. Series C No. 449, para. 14.

²⁶ Those documents are the following: "Front Line Defenders, Global Analysis 2021," of February 23, 2022 (Annex 1); Reporters Without Borders. "At risk: How to overcome weaknesses in protection programs for Latin American journalists," from February 2022 (Annex 2), by Justiça Global and Terra de Direitos. "Começo do fim? O pior momento do Programa de Proteção aos Defensores de Direitos Humanos, Comunicadores e Ambientalistas," from December 2021 (Annex 3).

²⁷ Those documents are the following: Decision of the First Division of the Superior Court of Justice in the "statement attachments" related to Special Remedy No. 1303755 (Annex 1); Procedural step of "Grievance" in Special Remedy No. 1303755 (Annex 2); Decree No. 10.815/2021 (Annex 3); Order No. 201 of November 4, 2019, of the National Council of the Public Prosecutor's Office (Annex 4); Law 12.403 of May 4, 2011 (Annex 5); Order No. 251/2018 of the National Council of Justice (Annex 6); and Order No. 417/2021 of the National Council of Justice (Annex 7).

²⁸ Those documents are the following: Pastoral Land Commission. "Agrarian Reform in Brazil," from 2022 (Annex 1); Pastoral Land Commission. "Rural Conflicts, Brazil 2021," from April 2022 (Annex 2); Pastoral Land Commission. "Press release: Violence in 2021: 75% increase in murders, over 1,000% increase in conflict-related deaths, and two massacres," from April 2022 (Annex 3); Superior Court of Justice. Rejection of AREsp remedy 1.303.755/PA, of August 17, 2021 (Annex 4); Certification of res judicata of action for damages for pain and suffering No. 0007348-91.2007.8.14.0028, of September 13, 2021 (Annex 5); expense receipts for the Pastoral Land Commission (Annex 6); and expense receipts for CEJIL (Annex 7).

40. For its part, the *State* presented various comments on the annexes to the final arguments of the representatives. However, those observations concern the probative value of the documents, not their admissibility. The Court hereby admits the aforementioned documents because Annexes 1–3 refer to events subsequent to the pleadings and motions brief and concern the alleged context of violence related to land conflicts in Brazil; Annexes 4 and 5 address facts related to the civil compensation proceedings subsequent to that brief; and Annexes 6 and 7 are documents provided as evidence of legal expenses incurred by the representatives in this case. Brazil’s observations will be taken into consideration in the examination of the evidence.

41. The representatives, for their part, objected to Annex 4 of the State’s final arguments, alleging that the document was presented late, as it was published in 2019 and does not address a question posed by a judge during the public hearing of this case. The Court notes that, indeed, the aforementioned annex refers to a 2019 order of the National Council of the Prosecutor General whose purpose is to allow the participation of victims of crimes or their families in investigations carried out by the Public Prosecutor's Office, which means that it neither concerns this case nor addresses any question the judges posed to the State during the hearing. In view of the above, and as the document is dated prior to the presentation of the answering brief by the State, it is inadmissible due to untimeliness under the terms of Article 57(2) of the Court's Rules of Procedure.

B. Admissibility of the testimonial and expert evidence

42. This Court finds it appropriate to admit the statements provided by affidavit²⁹ and during the public hearing³⁰ insofar as they are in keeping with the purpose defined by the President in the order requiring them and the purpose of this case.³¹

VII FACTS

43. In this chapter, the Court will establish the facts considered proven in this case, based on the body of evidence that has been admitted and on the factual framework described in the Merits Report. In addition, it will include those facts presented by the parties that serve to explain, clarify, or refute this factual framework. This chapter includes three parts. The first addresses the context of violence and impunity related to land struggles in Brazil. The second includes analysis of the facts prior to the State’s recognition of the Court’s contentious jurisdiction; the Court will treat them exclusively as background information for the case and will not use them as a basis for any legal determinations. The third part consists of facts subsequent to the aforementioned date of recognition of jurisdiction (*supra* para. 15).

A. Context of violence and impunity related to land struggles in Brazil

44. Brazil possesses a vast territory with a great capacity for both production and social settlement, and it has been characterized by an unequal distribution of property since colonial

²⁹ Statements by affidavit were received from Sérgio Sales Pimenta, Marcos Sales Pimenta, André Sales Pimenta, Daniel Sales Pimenta, Darci Frigo, José Batista Gonçalves Afonso, Deborah Macedo Duprat de Britto Pereira, Cristina Mair Barros Mauer, Fernando Michelotti, Carlos Eduardo Gaio, Laurel Emilie Fletcher, and Maria Adelina Guglioti Braglia (proposed by the representatives); a statement was also received from Guilherme Brenner Lucchesi (proposed by the State).

³⁰ Statements were received from Rafael Sales Pimenta and Rui Carlo Dissenha (proposed by the representatives), Douglas Sampaio Franco (proposed by the State), and Renan Bernardi Kalil (proposed by the Commission).

³¹ The purposes of the statements are set forth in the February 17, 2022, Order of the President of the Court. Available in Spanish at: https://www.corteidh.or.cr/docs/asuntos/sales_pimenta_17_02_22_spa.pdf.

times.³² In the year 1980, rural settlements of more than 1,000 hectares—considered to be large settlements—represented 0.93% of all rural settlements and but comprised 45.1% of the total rural land area of Brazil.³³ Settlements of less than 10 hectares represented 50.35% of all rural settlements but comprised only 2.47% of the total rural land area of Brazil.³⁴ Land concentration in Brazil has remained stable since 1980.³⁵ Existing agrarian conflicts in the various regions of Brazil³⁶ stem at least partly from that severe concentration of land in the hands of the few landowners.³⁷

45. In response to this concentration of land, as well as to the practice of land-grabbing (“*grilagem*”)³⁸ and the modernization and liberalization of agriculture,³⁹ certain social movements emerged in Brazil during the 19th and 20th centuries, especially during the 1964–1985 military dictatorship.⁴⁰

46. During the years of military rule, rural, labor, and other organizations that sought agrarian reform suffered political and social repression that aimed to break them up, and they were labeled “communist” or “subversive.”⁴¹ Rural repression increased between 1979 and 1985: that was one of the periods with the highest numbers of deaths and disappearances of rural workers and defenders of their rights.⁴²

³² Cf. UN, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mr. Miloön Kothari. Addendum. Mission to Brazil*. Doc. E/CN.4/2005/48/Add.3, February 18, 2004, para. 37; OAS, IACHR, *Report on the Situation of Human Rights in Brazil, Chapter VII: Land Ownership and the Rights of Rural Workers*, OEA/Ser.L/V/II.97, September 29, 1997, para. 1; and Oxfam Brazil, *Terrenos da Desigualdade: Terra, agricultura e desigualdades no Brasil rural*, 2016, p. 3. Available in Portuguese at: <https://rdstation-static.s3.amazonaws.com/cms/files/115321/1596831720relatorio-terrenos-desigualdade-brasil-0-2.pdf>. See also Expert opinion by Deborah Macedo Duprat de Britto Pereira from March 9, 2022 (evidence file, folios 7183–7184).

³³ Cf. Automatic Retrieval System (SIDRA) of the Brazilian Institute of Geography and Statistics. Farming census, Table 263: Number of settlements and rural areas by total area groups. Available in Portuguese at: <https://sidra.ibge.gov.br/tabela/263>.

³⁴ Cf. Automatic Retrieval System (SIDRA) of the Brazilian Institute of Geography and Statistics. Farming census, Table 263: Number of settlements and rural areas by total area groups. Available in Portuguese at: <https://sidra.ibge.gov.br/tabela/263#resultado>.

³⁵ Cf. Oxfam Brazil, *Terrenos da Desigualdade: Terra, agricultura e desigualdades no Brasil rural*, *supra*, p. 6.

³⁶ Expert witness Michelotti noted the lack of official and systematized data on the magnitude of rural violence in Brazil. Cf. Expert opinion of Fernando Michelotti on March 7, 2022 (evidence file, folio 7215). In fact, expert witness Gaio emphasized that government agencies themselves sometimes use data compiled by the Pastoral Land Commission. Cf. Expert opinion of Carlos Eduardo Gaio on March 11, 2022 (evidence file, folios 7287–7288).

³⁷ Cf. Human Rights Watch, *The Struggle for Land in Brazil: Rural Violence Continues*, 1992, p. 6. Available at: <https://www.hrw.org/sites/default/files/reports/braz926full.pdf>.

³⁸ The term “*grilagem*” can be understood as illegal actions taken to transfer public lands to third parties. Cf. Oxfam Brazil, *Terrenos da Desigualdade: Terra, agricultura e desigualdades no Brasil rural*, 2016, *supra*, p. 3.

³⁹ During the modernization of agriculture in Brazil, large settlements received tax incentives and had access to government loans, research, and technical assistance aimed at supporting agribusiness and production for the export market. Moreover, the modernization process “caused the displacement of millions of families, primarily from the northeast and south of the country toward the cities and regions of the central-west and north.” Cf. Oxfam Brazil, *Terrenos da Desigualdade: Terra, agricultura e desigualdades no Brasil rural*, 2016, *supra*, pp. 4–5.

⁴⁰ Cf. UN, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mr. Miloön Kothari. Addendum. Mission to Brazil*, *supra*, paras. 37, 39, and 40.

⁴¹ Cf. Secretariat of Human Rights of the Presidency of the Republic, Brazil, *Camponeses Mortos e Desaparecidos: Excluídos da Justiça de Transição*, 1st Edition: Brasília, DF, 2013, p. 6. Available in Portuguese at: http://www.biblioteca.presidencia.gov.br/publicacoes-oficiais/catalogo/dilma/sdh_direito-a-memoria-e-a-verdade-camponeses-mortos-e-desaparecidos_2013.pdf, and Ministry of Agrarian Development, Brazil, *Retrato da Repressão Política no Campo—Brasil 1962–1985: Camponeses torturados, mortos e desaparecidos*, 2nd Edition: Brasília, DF, 2011, p. 17, 2426. Available in Portuguese at: <https://repositorio.ica.int/handle/11324/20158>.

⁴² Cf. Secretariat of Human Rights of the Presidency of the Republic, Brazil, *Camponeses Mortos e Desaparecidos: Excluídos da Justiça de Transição*, *supra*, p. 20.

47. Specifically, it is known that between 1961–1988 in Brazil, 75 union members, 14 attorneys, seven religious workers, and 463 leaders of collective struggles were killed, among others.⁴³ According to a government report from 2013, “[b]eing an attorney for peasants during the military dictatorship was a high-risk profession [...], [r]isk of death.”⁴⁴ From 1961–1988, the state of Pará saw the most deaths and disappearances,⁴⁵ with 528 homicides between 1980–1993 and 772 between 1971–2004, of which 239 and 574 respectively took place in the south of the state.⁴⁶ A number of international bodies and organizations have called attention to Pará’s recurring violent conflicts related to land struggles, which have resulted in the deaths of hundreds of rural workers, union leaders, attorneys, human rights defenders, and others.⁴⁷

48. A study carried out by a government agency concluded that during the years of the military dictatorship, which is the time period of the events that gave rise to this case:

violence was committed by private actors with the protection and encouragement of the state, on the basis of class commitments that brought large landowners, rural businesspeople, and the military government together as allies. This violent lawlessness served the interests of the regime as a check on the increasing organization of rural workers.⁴⁸

49. The Secretariat of Human Rights of the Presidency of the Republic also acknowledged the collusion of state actors in the persecution and homicide of rural workers and those defending their rights.⁴⁹ Similar statements have been made by the Special Rapporteur of the United Nations on extrajudicial, summary, or arbitrary killings and the Special Representative of the Secretary-General on the situation of human rights defenders.⁵⁰

50. Various reports on the situation of violence against human rights defenders specifically in the context of rural conflicts document high numbers of threats and homicides.⁵¹ The organization Global

⁴³ Cf. Secretariat of Human Rights of the Presidency of the Republic, Brazil. *Camponeses Mortos e Desaparecidos: Excluídos da Justiça de Transição*, *supra*, p. 28, and Ministry of Agrarian Development, Brazil. *Retrato da Repressão Política no Campo—Brasil 1962–1985: Camponeses torturados, mortos e desaparecidos*, 1st Edition: Brasília, DF, 2010, pp. 326–330. Available in Portuguese at: <https://www.gov.br/mdh/pt-br/centrais-de-conteudo/memoria-e-verdade/retrato-da-repressao-politica-no-campo-2013-brasil-1962-1985-camponeses-torturados-mortos-e-desaparecidos/view>.

⁴⁴ Cf. Secretariat of Human Rights of the Presidency of the Republic, Brazil. *Camponeses Mortos e Desaparecidos: Excluídos da Justiça de Transição*, *supra*, p. 82. Similarly, Darci Frigo declared that “defending human rights is dangerous.” Cf. Expert opinion of Darci Frigo on March 8, 2022 (evidence file, folio 6723).

⁴⁵ Cf. Secretariat of Human Rights of the Presidency of the Republic, Brazil. *Camponeses Mortos e Desaparecidos: Excluídos da Justiça de Transição*, *supra*, p. 25.

⁴⁶ Cf. Ailton dos Reis Pereira. *Conflitos de Terra e Violência no sul do Pará (1975–1990)*, presented at the Tenth National Meeting of Oral History. *Testemunhos: História e Política*, Federal University of Pernambuco, Recife, April 26–30, 2010, p. 11. Available in Portuguese at: https://www.encontro2010.historiaoral.org.br/resources/anais/2/1268332455_ARQUIVO_ConflitosdeterraeViolencianoSuldoPara_1975-1990.pdf, and Pastoral Land Commission et al. *Human Rights Violations in the Amazon: Conflict and Violence in the State of Pará*, 2005, p. 33. Available at: <https://www.fdcl.org/wp-content/uploads/2005/11/relatorioparaingles.pdf>.

⁴⁷ Cf. UN, *Report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Mission to Brazil*. Doc. A/HRC/4/37/Add.2, December 19, 2006, paras. 16, 17, 19, and 20; UN, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston*. Doc. A/HRC/11/2/Add.2, March 23, 2009, para. 40; Human Rights Watch. *Rural Violence in Brazil*, 1991, pp. 21–23 and 57–66. Available at: <https://www.hrw.org/reports/pdfs/b/brazil/brazil.912/braz912full.pdf>; Human Rights Watch. *The Struggle for Land in Brazil: Rural Violence Continues*, *supra*, pp. 6–10; and Amnesty International, *Corumbiara and Eldorado de Carajás: Rural violence, political brutality and impunity*, 1998, pp. 4–6. Available at: <https://www.amnesty.org/en/documents/amr19/001/1998/en/>.

⁴⁸ Cf. Ministry of Agrarian Development, Brazil. *Retrato da Repressão Política no Campo—Brasil 1962–1985: Camponeses torturados, mortos e desaparecidos*, 2nd Edition, *supra*, p. 26.

⁴⁹ Cf. Secretariat of Human Rights of the Presidency of the Republic, Brazil. *Camponeses Mortos e Desaparecidos: Excluídos da Justiça de Transição*, *supra*, p. 23.

⁵⁰ Cf. UN, *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur, Asma Jahangir. Addendum: Mission to Brazil*. Doc. E/CN.4/2004/7/Add.3, p. 18, and UN, *Report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Mission to Brazil*, *supra*, para. 18.

⁵¹ Cf. Justiça Global and Front Line Defenders. *Na Linha de Frente: Defensores de Direitos Humanos no Brasil, Resumo Executivo*. Available in Portuguese at: http://www.dhnet.org.br/dados/relatorios/dh/br/jglobal/jglobal_frontend/01_resumoexecutivo.htm; International Federation

Witness, in a study carried out between 2002–2013 in several countries of the world, indicated that Brazil is the most dangerous country for defending human rights related to land and the environment, with 488 of the world's 908 cases.⁵² Moreover, in 1982, 30 rural workers were killed in addition to Gabriel Sales Pimenta. The majority of these crimes were committed in the state of Pará. In fact, in the last twenty years, 35% of homicides of rural workers and their defenders in Brazil took place in the state of Pará.⁵³

51. We can also observe data on judicial responses to those cases of rural workers killed between 1964–2013 in the state of Pará. Between 1964–1998,⁵⁴ out of the 703 murders of rural workers, 5.26% of the cases were prosecuted. In only 183 cases was an investigation initiated, of which 113 led to criminal trials.⁵⁵ Between 1985 and March of 2001, out of 1,207 cases, 85 defendants received a final judgment, so on average 95% of cases received “no judicial response.” In the south and southeast of the state of Pará, out of 340 murders of rural workers over the same period (1985 to March of 2001), two defendants received final judgments, so on average 99.4% of homicides “received no judicial response of any kind, neither conviction nor acquittal.”⁵⁶ Furthermore, from 1985–2013, there were 428 cases, with a total of 644 homicides related to land conflicts. Of these, 21 cases were brought to court, resulting in the conviction of 12 conspirators and 17 perpetrators.⁵⁷ In the municipality of Marabá in the state of Pará, where the death of Gabriel Sales Pimenta occurred (*infra* para. 56), the rate of impunity was 100% from 1975–2005.⁵⁸

B. Background information

B.1. Gabriel Sales Pimenta

52. Gabriel Sales Pimenta was 27 at the time of his death, and he was from the municipality of Juiz de Fora in the state of Minas Gerais. He received a law degree from the Federal University of that municipality. In 1980, he became an attorney for the Union of Rural Workers of Marabá (hereinafter “STR” for the Portuguese), located in the state of Pará. Mr. Sales Pimenta was one of

for Human Rights. *Brasil: Graves violações de direitos humanos na zona rural*, 2000, p. 14. Available in Portuguese at: http://www.dhnet.org.br/dados/relatorios/nacionais/r_fidh_brasil.pdf; Brazilian Committee of Human Rights Defenders. *Vidas em Luta: Criminalização e violência contra defensoras e defensores de direitos humanos no Brasil em 2017*, pp. 70–73. Available in Portuguese at: https://terradedireitos.org.br/uploads/arquivos/CBDDDH---DOSSIE-2017_011118_web.pdf; Front Line Defenders. *Global Analysis 2020*, pp. 4–5. Available at: https://www.frontlinedefenders.org/sites/default/files/flid_global_analysis_2020.pdf, and Global Witness. *Defending Tomorrow: The climate crisis and threats against land and environmental defenders*, 2020, p. 10 Available at: <https://www.globalwitness.org/documents/19939/Defending Tomorrow EN low res - July 2020.pdf> According to expert witness Michelotti, “murders linked to land conflicts, especially of the human rights defenders who lead social movements or unions or who advise labor organizations, are also an attempt to silence the struggle for rights.” Expert opinion of Fernando Michelotti on March 7, 2022 (evidence file, folio 7245).

⁵² Cf. Amicus brief presented by the Order of Attorneys of Brazil, Minas Gerais section (evidence file, folio 7725).

⁵³ Cf. Expert opinion of Carlos Eduardo Gaio, *supra* (evidence file, folio 7293).

⁵⁴ In the 1996 massacre of Eldorado dos Carajás, two officers in charge, accused of executing 19 landless rural workers “who had been peacefully demonstrating to demand their land rights, were sentenced to 228 and 158 years respectively.” They were never arrested, however, and they appealed their judgments while remaining at liberty. A third officer in charge who was accused in the case was acquitted. In addition, “the court acquitted nine police sergeants as well as 126 agents of the military police, stating that they only ‘fired their weapons into the air’ and not against the rural workers.” Finally, the government officials with presumed responsibility for the massacre—the governor of Pará and the general commander of the military police at the time—never faced charges. Cf. UN, *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur, Asma Jahangir. Addendum: Mission to Brazil, supra*, p. 18.

⁵⁵ Cf. Report of the *Sociedade Paraense de Defesa dos Direitos Humanos – SDDH*, 2005. Belém, 2005, p. 5 (evidence file, folio 844).

⁵⁶ Cf. UN, *Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy*. Doc. E/CN.4/2005/60/Add.3, February 22, 2005, para. 35.

⁵⁷ Cf. Pastoral Land Commission. *Rural Conflicts: Brazil* 2013, p. 116. Available at: <https://cptnacional.org.br/download?task=download.send&id=344&catid=41&m=0>.

⁵⁸ Cf. Pastoral Land Commission et al. *Human Rights Violations in the Amazon: Conflict and Violence in the State of Pará, supra*, p. 45.

the first attorneys to reside in Marabá. In addition, he was a representative of the Pastoral Land Commission (through which he provided legal advice to rural workers), he founded the National Association of Attorneys of Agricultural Workers, and he participated in social movements in the region and in other areas. In his work as an attorney for STR, he defended the rights of rural workers in the region of Pau Seco (*infra* para. 53).⁵⁹

B.2. Eviction of rural workers of Pau Seco and suit brought by Gabriel Sales Pimenta

53. Since at least 1973, parts of Pau Seco⁶⁰ that had been made public lands⁶¹ were inhabited and farmed by “occupying” rural workers and their families.⁶² In 1980, M.C.N.⁶³ and J.P.N. stated that they had acquired possession of Pau Seco, where they began to harvest timber, triggering a conflict with those rural workers.⁶⁴ Subsequently, in October of 1981, in response to the action for restitution of possession initiated by M.C.N. and J.P.N., a provisional order was issued in their favor. The military police then proceeded to evict the rural workers.⁶⁵ In response to that eviction, on November 20, 1981, Gabriel Sales Pimenta, acting in his capacity as attorney for the Union of Rural Workers of Marabá, filed a *mandado de segurança*⁶⁶ before the Court of Justice of the state of Pará and requested the reversal of the provisional ruling of restitution of possession that had triggered the eviction of the rural workers.⁶⁷ That *mandado de segurança* was granted, and on December 21,

⁵⁹ Cf. Record No. ANATAG/15/82 issued by the National Association of Attorneys of Rural Workers on July 21, 1982 (evidence file, folios 2202–2203); Pará Society for the Defense of Human Rights et al. “Report presented to Hina Jilani, UN Special Rapporteur for Human Rights Defenders,” on December 7, 2005 (evidence file, folios 544–545); Statement of Emmanuel Wambergue, recorded at the March 24, 2011, instruction and trial hearing (evidence file, folio 1338); and Record No. 1595/2018-GP issued by the president of the Court of Justice of the state of Pará (evidence file, folio 1509).

⁶⁰ The rural area known as “Pau Seco” is located four kilometers from the PA-70 highway in the municipality of Marabá in the south of the state of Pará, in the northern region of Brazil. Cf. Government report of 2020, presented to the Inter-American Commission on Human Rights in the context of Case 12.675 (evidence file, folio 1862); Ministry of Women, Family, and Human Rights. Tentative agenda for the December 2020 mission to Pará (evidence file, folio 1935); Civil damages suit for pain and suffering filed by Maria da Glória Sales Pimenta and received on November 22, 2007 (evidence file, folios 2712–2716); Volume 5 of the file of the civil damages suit for pain and suffering (evidence file, folio 4248); and Request for pretrial detention signed by the Commissioner of the Crimes against Persons Division on July 22, 1982 (evidence file, folio 2215).

⁶¹ Cf. Civil damages suit for pain and suffering brought by Maria da Glória Sales Pimenta, *supra* (evidence file, folios 2712–2713).

⁶² Cf. Antonio Francisco da Silva, then president of the Union of Rural Workers, stated that he had lived in Pau Seco since 1974 and that there were already other families living there when he moved there. Cf. Statement by Antonio Francisco da Silva on September 17, 2008 (evidence file, folio 4494) and Final arguments submitted by the public defenders of M.C.N. on June 28, 1997 in the proceedings of criminal trial No. 077/89 (evidence file, folio 281). In addition, Onésia Tome de Souza, farmer, and Francisco Veloso, settler, indicated that they had lived in Pau Seco since 1973. Cf. Newspaper article titled “O povo de Pau Seco não se esquece de Gabriel Pimenta” included in the file of the November 19, 2007, civil damages suit for pain and suffering (evidence file, folio 4936).

⁶³ M.C.N. was the brother of the ex-governor of the state of Minas Gerais, Newton Cardoso. Cf. Newspaper article in *A Nova Democracia* titled “Justiça premia assassino” from April 30, 2006 (evidence file, folio 459).

⁶⁴ Cf. Statement by Antonio Francisco da Silva on September 19, 1988 (evidence file, folio 196); Judgment issued by the Third Civil Court of Marabá on October 5, 2011, in the proceedings of trial No. 0007348-91.2007.814.0028 (evidence file, folio 1367); Complaint lodged by Rafael Sales Pimenta before the National Council of Justice on June 18, 2007 (evidence file, folio 5298); Civil damages suit for pain and suffering brought by Maria da Glória Sales Pimenta, *supra* (evidence file, folios 2712–2714); and Statement by José Ribamar Nonato de Souza on October 24, 1981 (evidence file, folio 3730).

⁶⁵ Cf. Provisional decision of Judge Ruth Nazare Couto Gurjão on October 9, 1981 (evidence file, folio 2189); *Mandado de segurança* brought by Gabriel Sales Pimenta on November 20, 1981 (evidence file, folios 2191–2193); and Statement by Antonio Francisco da Silva, *supra* (evidence file, folio 196).

⁶⁶ This consists of an action provided for in the Constitution of the Federative Republic of Brazil (hereinafter “the Brazilian Constitution”), whose purpose is to protect a certain right that has been violated through an illegal or abusive act by a public official or an agent of a legal entity on behalf of the authorities. Cf. Article 5, LXIX, of the Brazilian Constitution. Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm.

⁶⁷ Cf. *Mandado de segurança* brought by Gabriel Sales Pimenta, *supra* (evidence file, folios 2191–2193) and Newspaper article titled “A causa do assassinato” (evidence file, folio 3699).

1981, the officer of the court was ordered to go to the region of the conflict “to safeguard the continued presence” of the occupying rural workers.⁶⁸

B.3. Threats against rural workers and Gabriel Sales Pimenta

54. The statements allege that in 1982 Gabriel Sales Pimenta filed complaints on three occasions about threats against and murders of rural workers in Pau Seco before the National Public Security Secretariat in Belém, capital of the state of Pará. The most recent complaint was made in June of 1982.⁶⁹

55. Moreover, the threats⁷⁰ against Gabriel Sales Pimenta had begun at least by December of 1981, after his success in reversing the eviction of the rural workers from the Pau Seco area.⁷¹

B.4. Death of Gabriel Sales Pimenta and police investigation

56. On July 18, 1982, Gabriel Sales Pimenta went to the bar known as “Bacaba” in the city of Marabá along with some acquaintances. At approximately 10:30 p.m., Gabriel Sales Pimenta, Edson Rodrigues Guimarães,⁷² and Neuzila Cerqueira Guimarães left the bar together. After the three of them had gone 30-35 meters toward the vehicle of their friend Rosa Almeida—who had lent it to them so they could drop Ms. Cerqueira off at her home—they passed by a beige, almost white, Volkswagen Beetle that was parked. A man got out of that vehicle⁷³ and shot Mr. Sales Pimenta three times. Mr. Sales Pimenta died instantly.⁷⁴ The man then allegedly fled in the same vehicle. According to the statement of Edson Rodrigues, there were two other men in the vehicle.⁷⁵

57. The police investigation began the next day.⁷⁶ On July 22, 1982, the Commissioner of the Crimes against Persons Division,⁷⁷ who was in charge of the police investigation, identified M.C.N.

⁶⁸ Cf. Order issued by the judge of law in the Judicial District of Marabá December 21, 1981 (evidence file, folio 4956).

⁶⁹ Cf. Statement of Risomar Daniel Castro from the instruction and trial hearing on March 24, 2011 (evidence file, folio 2011).

⁷⁰ M.C.N. and J.P.N. stated that they would kill Gabriel Sales Pimenta before August 4, 1982—the date set for the hearing for the restitution of possession action mentioned above. In this regard, several declarants said they had seen: (i) gunmen pass in front of the house of Gabriel Sales the day of his death and say “this is the man’s house,” and then go to the house of M.C.N. and enter it; (ii) two alleged gunmen of M.C.N. talking in a bar, with one saying to the other that he needed to “carry out the contract” for M.C.N.; and (iii) certain individuals at the house of M.C.N. who appeared to be gunmen. In addition, Antonio Francisco da Silva stated that Gabriel Sales Pimenta told him that he was being threatened with death by M.C.N. and J.P.N. Cf. Statement by Risomar Daniel Castro on July 21, 1982 (evidence file, folios 2230–2231); Statement by João Martins dos Santos on July 19, 1982 (evidence file, folio 2238); Statement by Etelvina Honorato de Paulo on July 21, 1982 (evidence file, folio 2282); and Statement by Antonio Francisco da Silva, *supra* (evidence file, folio 196).

⁷¹ Cf. Record No. ANATAG/15/82, *supra* (evidence file, folios 2202–2203) and Statement of Rafael Sales Pimenta during the public hearing of this case.

⁷² Then-candidate for councilman for the Brazilian Democratic Movement Party. Cf. Newspaper article from *A Província do Pará* titled “Suspeitos já estão no xadrez” from July 21, 1982 (evidence file, folio 2292).

⁷³ An eyewitness, Luzia Batista da Silva, saw how the same Beetle-type car reappeared at the scene of the crime, parking nearby. According to her, two people came out of that vehicle asking what had happened, one of whom Luzia recognized as the same person who had just been driving the same Beetle-type vehicle and whom she identified as J.P.N. on August 2, 1982. Cf. Statement of Luzia Batista da Silva on July 31, 1982 (evidence file, folios 2226–2227); Annex to the request for pretrial detention signed by Commissioner Luiz Carlos de Carvalho on August 6, 1982 (evidence file, folio 2244); and Record of identification made by Luzia Batista da Silva on August 2, 1982 (evidence file, folios 2273–2274).

⁷⁴ Cf. Request for pretrial detention signed by the Commissioner of the Crimes against Persons Division, *supra* (evidence file, folio 2210); Statement by Edson Rodrigues Guimarães on July 21, 1982 (evidence file, folio 2220); Statement by Risomar Daniel Castro on April 17, 1991 (evidence file, folios 241–242); Order of the judge in criminal trial No. 86200004-0 on August 31, 2000 (evidence file, folio 291); Report by the police superintendent on September 8, 1982 (evidence file, folio 2265); and Statement of Risomar Daniel Castro, *supra* (evidence file, folios 2230–2231).

⁷⁵ Cf. Statement by Edson Rodrigues Guimarães, *supra* (evidence file, folio 2220).

⁷⁶ Cf. Judgment issued by the Third Civil Court of Marabá, *supra* (evidence file, folio 1367).

⁷⁷ According to the news at the time, the commissioner in charge of the investigations observed reticence among the witnesses, which led him to believe that they had been threatened and pressured not to tell the whole truth. It is also known

and J.P.N. as the alleged perpetrators of the murder of Gabriel Sales Pimenta.⁷⁸ Subsequently, in a September 8, 1982, report, he added C.O.S. to the list of individuals accused.⁷⁹

B.5. Criminal proceedings through December 10, 1998

58. On August 19, 1983, the Public Prosecutor's Office charged M.C.N., J.P.N., and C.O.S. with the crime of murder⁸⁰ before the judge of law in the Judicial District of Marabá. The accusation was admitted on August 23, 1983.⁸¹ The hearing set for December 27, 1983, did not take place, as neither M.C.N. nor C.O.S. had been located to be served notice.⁸² It was therefore rescheduled and took place on April 27, 1984.⁸³ Of the three defendants, only J.P.N. appeared for the proceedings.⁸⁴ On June 20, 1984, pretrial detention was ordered for M.C.N. and C.O.S.⁸⁵ because the police investigation had concluded M.C.N. was a conspirator and C.O.S. the perpetrator, and the two had still not been located.⁸⁶

59. A hearing was subsequently set for August 24, 1984, to question M.C.N., but he failed to appear. The hearing was rescheduled at least four times with the same result⁸⁷—M.C.N. failing to appear.⁸⁸

that Edson Rodrigues Guimarães and Neuzila Cerqueira Guimarães, who were with Gabriel Sales Pimenta at the time of his death, remained in hiding out of fear of being killed. The eyewitness in the case, Luzia Batista da Silva, said that after the events, she was afraid to tell about what she had seen. Cf. Article from the newspaper *A Província do Pará*, titled "Pistoleiro esteve na casa do campesino no domingo pela manhã" (no date) (evidence file, folio 2290); Cf. Article from the newspaper *A Província do Pará* titled "Suspeitos já estão no xadrez" *supra* (evidence file, folio 2292); and Cf. Record of new questioning of Luzia Batista da Silva from June 13, 1983 (evidence file, folio 2278).

⁷⁸ Cf. Request for pretrial detention signed by the Commissioner of the Crimes against Persons Division on July 22, 1982 (evidence file, folio 2214).

⁷⁹ Cf. Report issued by the police superintendent, *supra* (evidence file, folio 2267).

⁸⁰ Provided for in Article 121, second paragraph, item IV, of the Brazilian Criminal Code. Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm.

⁸¹ Cf. Accusation by the Public Prosecutor's Office on August 19, 1983 (evidence file, folios 2328–2329).

⁸² Cf. Certificate of the officer of the court from December 22, 1983 (evidence file, folio 2331).

⁸³ Cf. Document signed by the judge of law in the Judicial District of Marabá on April 27, 1984 (evidence file, folio 2334); and Service by publication document for M.C.N. and C.O.S. for the April 27, 1984, hearing (evidence file, folio 2340).

⁸⁴ Cf. Documentation of classification and questioning of J.P.N. from April 27, 1984 (evidence file, folios 2337–2338).

⁸⁵ On July 4, 1984, C.O.S. appeared at the hearing and was questioned. He denied having participated in the murder and explained that he had failed to appear previously because he had not been notified. He stated he was available and did not intend to flee. He also provided his address. Accordingly, the judge of law in the Judicial District of Marabá reversed his order for pretrial detention, finding that it no longer had purpose. Cf. Documentation of classification and questioning of C.O.S. from July 4, 1984 (evidence file, folios 2342–2343) and Order issued by the judge of law in the Judicial District of Marabá on July 18, 1984 (evidence file, folio 2345). The judge of law in the Judicial District of Marabá stated for the record that C.O.S. "provided all the details of his whereabouts and address and stated he would be available [to the] Judge whenever his presence might be required." Order issued by the judge of law in the Judicial District of Marabá on July 18, 1984 (evidence file, folio 2345).

⁸⁶ Cf. Order for pretrial detention for M.C.N. and C.O.S. from June 20, 1984. (evidence file, folios 2318–2319).

⁸⁷ During this time, at least two clerks were removed from the trial: one because his daughter had married J.P.N. and one because he was the uncle of J.P.N.'s wife. Furthermore, J.P.N.'s attorney requested the removal of two registry notaries: one for being the uncle of J.P.N.'s wife and the other for being her cousin. Cf. Statement of clerk on March 13, 1986 (evidence file, folio 2372); Statement of clerk on March 17, 1986 (evidence file, folio 2374); and Letter signed by J.P.N.'s attorney on February 21, 1987 (evidence file, folio 2376).

⁸⁸ On August 24, 1984, the judge scheduled the questioning for September 26, 1984. On November 22, 1984, the same judge issued an order to publish the notice for M.C.N. to appear at a hearing on January 23, 1985. On August 2, 1985, the judge set September 11, 1985, as another date for the questioning. Finally, on March 19, 1986, Judge Marta Ines Autunes Lima issued an order for the defendant to appear at a hearing on May 2, 1986. Cf. Orders issued on August 24 and November 22, 1984 (evidence file, folios 2348–2351) and Orders of August 5, 1985, and March 19, 1986 (evidence file, folios 2352–2353).

60. On November 23, 1987, at the request of M.C.N.'s attorney,⁸⁹ the judge of the Fourth Criminal Court reversed the order for his pretrial detention, holding that the reasons for it no longer existed, since M.C.N. had presented himself to the authorities, had provided his address, had a good record, and was not a repeat offender.⁹⁰ On April 29, 1988, the defendant M.C.N. was questioned. He denied having committed the crime and stated that he had not appeared previously because of a "lack of financial means."⁹¹

61. On June 8, 1992, the Public Prosecutor's Office presented its final arguments, in which it requested that the case against C.O.S. be dismissed and that M.C.N. and J.P.N. be charged.⁹² On December 3, 1992, J.P.N.'s defense counsel presented final arguments, and on February 26, 1993, M.C.N.'s attorney submitted a request to withdraw as legal representative⁹³ of his client without presenting the defendant's final arguments.⁹⁴ On June 28, 1997, the Public Defender's Office presented M.C.N.'s final arguments.⁹⁵ On July 29, 1997, the Public Prosecutor's Office requested that Rafael Sales Pimenta be admitted as a prosecutorial assistant.⁹⁶ On April 27, 1998, the final arguments in defense of C.O.S. were presented.⁹⁷

C. Independent events after the recognition of the Court's contentious jurisdiction

C.1. Independent events that occurred in the context of the criminal trial after December 10, 1998

62. On November 23, 1999, the Public Prosecutor's Office requested termination of criminal liability for J.P.N. due to his death.⁹⁸ That request was granted by the judge on August 31, 2000, along with a dismissal of the accusation against C.O.S. due to a lack of evidence. Accordingly, M.C.N. was declared the only defendant.⁹⁹ Between January and May of 2001, M.C.N. was notified three

⁸⁹ Cf. Request for reversal of the order for the pretrial detention of M.C.N. on November 19, 1987 (evidence file, folios 2355–2357).

⁹⁰ Cf. Order issued by the judge of law in the Fourth Criminal Court on November 23, 1987 (evidence file, folios 2365–2366).

⁹¹ Cf. Documentation of classification and questioning of M.C.N. from April 29, 1988 (evidence file, folios 2360–2361).

⁹² Cf. Final arguments of the Public Prosecutor's Office on June 8, 1992 (evidence file, folios 2437–2440).

⁹³ On September 28, 1995, a public defender was appointed to represent M.C.N. and present his final arguments. On April 26, 1996, the Public Defender's Office reversed its appointment of the public defender because the defendant, as a landowner, had the "financial means" to hire an attorney. On June 3, 1996, through a request sent to the Judicial District of Vitória da Conquista, M.C.N. was given 48 hours to hire an attorney and present his final arguments. On July 16, 1996, M.C.N. went to the Court of Vitória da Conquista and reported that he did not have the financial means to hire an attorney. On May 12, 1997, the brother of the alleged victim, Rafael Sales Pimenta, provided an attorney to act as a prosecutorial assistant in the trial, and on May 28, 1997, he requested that M.C.N. be granted a public defender. Cf. Record signed by the judge of law of the Fourth Criminal Court on September 28, 1995 (evidence file, folio 2465); Document of reversal signed by the Public Defender's Office on April 26, 1996 (evidence file, folios 2467–2468); Request signed by the judge of the Fourth Criminal Court of Marabá on June 3, 1996 (evidence file, folios 2470–2471); Certificate issued by the clerk of Vitória da Conquista on July 16, 1996 (evidence file, folio 2473); Power of attorney signed by Rafael Sales Pimenta on May 12, 1997 (evidence file, folio 2475); and Request signed by the attorney of Rafael Sales Pimenta on May 28, 1997 (evidence file, folios 2478–2480).

⁹⁴ Cf. Final arguments of J.P.N. on December 3, 1992 (evidence file, folios 2453–2461) and Request for withdrawal signed by M.C.N.'s attorney on February 26, 1993 (evidence file, folio 2463).

⁹⁵ Cf. Final arguments of M.C.N. on June 28, 1997 (evidence file, folios 2482–2485).

⁹⁶ Cf. Request signed by the Public Prosecutor's Office on July 29, 1997 (evidence file, folio 2487).

⁹⁷ Cf. Final arguments of C.O.S. on April 27, 1998 (evidence file, folios 2489–2490).

⁹⁸ Cf. Death certificate of J.P.N. from September 13, 1999 (evidence file, folio 2498).

⁹⁹ Cf. Request of the Public Prosecutor's Office on November 23, 1999 (evidence file, folio 2061); Termination of criminal liability of J.P.N. on August 31, 2000 (evidence file, folio 2497); and Indictment of the defendants issued by the sitting judge on August 31, 2000 (evidence file, folios 2494–2495).

times so that he would be aware of the “*pronúncia*” judgment,¹⁰⁰ which was finalized on January 7, 2002.¹⁰¹

63. The jury trial was then scheduled for May 23, 2002.¹⁰² On May 7, 2002, it was ordered that the prosecution witnesses be called to trial: Edson Rodrigues Guimarães, Neuzila Cerqueira Guimarães, Antonio Francisco da Silva, Risomar Daniel Castro, and Luzia Batista.¹⁰³ Two witnesses were not located, including the eyewitness Luzia Batista, who was deceased, according to her neighbor.¹⁰⁴ The scheduled trial was not held because M.C.N. was not located. M.C.N.'s ex-wife reported that he lived in São Paulo.¹⁰⁵ That same day, an order for pretrial detention was issued, but it was not sent to the authorities in São Paulo.¹⁰⁶

64. On June 1, 2002, Rafael Sales Pimenta provided the Pastoral Land Commission’s attorneys to act as assistants to the prosecution.¹⁰⁷ On February 20, 2004, the case was referred to the Agrarian Court, as the Criminal Court had determined that it did not have jurisdiction because it considered the crime agrarian in nature.¹⁰⁸

65. While the case was with the Agrarian Court, the only legal action taken was the search for the defendant’s place of residence.¹⁰⁹ On August 4, 2004, the Federal Revenue Service reported that M.C.N. lived in the city of Brumado in the state of Bahia.¹¹⁰

66. In February of 2005, the Court of Justice of Pará decided that the Agrarian Court did not have jurisdiction over criminal cases. On July 28, 2005, the case records were returned to the Criminal Court.¹¹¹ Once the case was back with the Criminal Court, another session was scheduled for the trial, but it was not held because the defendant failed to appear. In response, the judge ordered that the session be postponed until the defendant could be located and that a detention order be issued in all the states of Brazil. On November 18, 2005, a new trial session was scheduled for February 15, 2006, and another detention order was issued.¹¹² On November 21, 2005, a request for the

¹⁰⁰ A “*pronúncia*” judgment is a decision by a judge in the course of a criminal trial in which the judge determines whether a defendant should go before a jury court, based on whether there is sufficient circumstantial evidence to determine who committed a deliberate crime against life.

¹⁰¹ Cf. Request No. 01/2001 of January 30, 2001 (evidence file, folio 2500); Certificate of notification to M.C.N. on February 15, 2001, and May 3, 2001 (evidence file, folios 2503–2504); and Certification of *res judicata* of the “*pronúncia*” judgment of M.C.N. on January 7, 2002 (evidence file, folio 2508).

¹⁰² Cf. Record signed by the assigned judge of law on March 26, 2002 (evidence file, folio 2515).

¹⁰³ Cf. Notification order No. 247/2002 from May 7, 2002 (evidence file, folio 2533).

¹⁰⁴ Cf. Certificate of the officer of the court from May 21, 2002 (evidence file, folio 2534).

¹⁰⁵ Cf. Request from March 2, 2002 (evidence file, folio 2516); Certificate of failure to notify M.C.N. from April 11, 2002 (evidence file, folio 2518); Request of April 30, 2002 (evidence file, folio 2520); and Certificate of failure to notify M.C.N. on May 20, 2002 (evidence file, folio 2521).

¹⁰⁶ Cf. Pretrial detention order No. 0272/2002 from May 23, 2002 (evidence file, folio 2541) and Decision issued by the assigned judge of law on May 23, 2002 (evidence file, folio 2536–2538).

¹⁰⁷ Cf. Power of attorney for Jose Batista Gonçalves Afonso from June 1, 2002 (evidence file, folios 2528–2529). On April 22, 2002, a month before the jury trial, the attorney who had been assisting the prosecution recused himself from the trial because he had been appointed Attorney General of the Municipality of Marabá. Cf. Appointment of then-attorney of Rafael Sales Pimenta on February 6, 2002 (evidence file, folio 2526) and Petition of then-attorney of Rafael Sales Pimenta on April 22, 2002 (evidence file, folio 2525).

¹⁰⁸ Cf. Order of lack of jurisdiction issued by the substitute judge of law in the Fourth Court on February 20, 2004 (evidence file, folio 2543).

¹⁰⁹ Cf. Letter No. 200/04-VA from July 7, 2004 (evidence file, folio 2548).

¹¹⁰ Cf. Record No. 367/200/04-VA signed by the Commissioner of the Federal Revenue Service (“*Receita Federal*”) on August 4, 2004 (evidence file, folio 2549).

¹¹¹ Cf. Decision of the substitute judge of law of the Agrarian Region of Marabá on July 28, 2005 (evidence file, folio 2545–2546).

¹¹² Cf. Decision of the substitute judge of law of the Fourth Criminal Court of the Judicial District of Marabá on November 18, 2005 (evidence file, folio 2552) and Pretrial detention order from November 21, 2005 (evidence file, folios 2554).

notification of M.C.N. was sent to the address obtained by the Federal Revenue Service (in Brumado, Bahia), but it was not located.¹¹³ On the day set for the trial, February 15, 2006, the defendant failed to appear.¹¹⁴ On that same day, the states were asked to report on compliance with the detention orders. At least nine states reported that they had not received them or that the requests they had received did not meet the minimum requirements.¹¹⁵ On February 24, 2006, a team of three Federal Police agents was formed to search for the defendant in the states of Bahia, Minas Gerais, and "others as necessary."¹¹⁶

67. On March 6, 2006, M.C.N. provided his address in Brumado, Bahia.¹¹⁷ On April 3, 2006, the Federal Police was able to carry out the pretrial detention order upon locating the defendant in another place: the city of Pitangui, in Minas Gerais.¹¹⁸ The trial was then scheduled for April 27, 2006.¹¹⁹ On April 10, 2006, the defendant's attorneys filed a motion for habeas corpus before the Court of Justice of Pará to request house arrest or termination of criminal liability on the basis of the statute of limitations.¹²⁰ The Public Prosecutor's Office was also in favor of declaring that the statute of limitations had passed.¹²¹ However, the attorneys acting as assistants for the prosecution denied that the crime was time-barred.¹²²

68. On May 2, 2006, the request for termination of criminal liability was denied by the first instance judge of the Criminal Court of Marabá.¹²³ On May 8, 2006, the Combined Criminal Divisions of the Court of Justice of Pará issued a decision to the contrary and declared the criminal liability terminated.¹²⁴

C.2. Additional steps taken by the family of Gabriel Sales Pimenta

69. In June of 2007, Rafael Sales Pimenta submitted a complaint before the National Council of Justice, in which he argued that the criminal trial proceedings for his brother's murder were taking an excessive amount of time. On September 12, 2008, the complaint was dismissed because it was

¹¹³ Cf. Request from the substitute judge of law of the Fourth Criminal Court of the Judicial District of Marabá on November 21, 2005 (evidence file, folio 2556).

¹¹⁴ Cf. Record of the jury trial session of February 15, 2006 (evidence file, folio 2587).

¹¹⁵ Cf. Record of the jury trial session of February 15, 2006 (evidence file, folio 2589) and Responses 13, 15, 16, 17, 20, 21, 23, and 31 from March 2006 (evidence file, folios 2597–2611).

¹¹⁶ Cf. Letter No. 45/2006-GAB/DPF.B/MBA/PA signed by the chief of the Federal Police office in Marabá on February 24, 2006 (evidence file, folio 2613).

¹¹⁷ Cf. Letter signed by the attorney of M.C.N. on March 6, 2006, which included the power of attorney granted by M.C.N. as well as his address (evidence file, folios 2615–2616).

¹¹⁸ Cf. Letter No. 085/2006-NO/DREX/SR/DPF/PA from April 3, 2006 (evidence file, folio 2618).

¹¹⁹ Cf. Request from the substitute judge of law of the Fourth Criminal Court of the Judicial District of Marabá on April 5, 2006 (evidence file, folio 2625).

¹²⁰ The attorneys argued that prosecution of the crime was time-barred on the basis of Articles 109 and 115 of the Criminal Code. They declared that the statute of limitations had expired because the defendant was over 80 years old and more than ten years had passed since the last procedural step. They stated that in accordance with Article 109, section I, the maximum statute of limitations for punitive claims related to homicide is 20 years and that Article 115 of the Criminal Code reduces by half the statutes of limitation for cases in which a convicted person is over 70 years old as of the date of the judgment. Cf. Habeas corpus filed on behalf of M.C.N. on April 10, 2006 (evidence file, folios 2628–2640).

¹²¹ Cf. Request by the Public Prosecutor's Office on April 12, 2006, that the statute of limitations be declared expired (evidence file, folios 2643–2644).

¹²² Cf. Brief of the Pastoral Land Commission referring to the request that the statute of limitations be declared expired, received on April 20, 2006 (evidence file, folios 2646–2650).

¹²³ Cf. Order issued by the Fourth Criminal Court of the Judicial District of Marabá on May 2, 2006 (evidence file, folios 2652–2665).

¹²⁴ Cf. Note from the President of the Combined Criminal Divisions on May 8, 2006, communicating the decision (evidence file, folio 2667) and Order of release No. 028/2006 signed by the President of the Combined Criminal Divisions on May 8, 2006 (evidence file, folio 2668). Publication of the ruling on May 8, 2005 in the official gazette of the state of Pará on May 18, 2006 (evidence file, folio 2674).

considered to no longer have purpose, as the criminal case had already been closed after being found time-barred.¹²⁵

70. Additionally, on November 22, 2007, the mother of Gabriel Sales Pimenta, Maria da Glória Sales Pimenta, filed a petition for compensation from the state of Pará for pain and suffering resulting from delays in the criminal proceedings and the consequent lack of justice for her son's murder.¹²⁶ On September 23, 2010, and March 24, 2011, two preliminary hearings were scheduled with the aim of reaching a settlement.¹²⁷ After unproductive settlement discussions, a hearing was held on March 24, 2011, to hear from the witnesses, and on August 16-17, 2011, the final arguments were presented.¹²⁸ On October 5, 2011, the Third Civil Court of the Judicial District of Marabá found the petition admissible and ordered the state of Pará to pay compensation of BRL 700,000 (seven hundred thousand reais) to Maria da Glória Sales Pimenta.¹²⁹ On November 3, 2011, the state of Pará appealed the judgment. In response, the Court of Justice admitted the appeal and on June 2, 2016, ruled against the state's responsibility and denied payment of compensation.¹³⁰ After several unsuccessful appeals filed by the family of Gabriel Sales Pimenta, on June 8, 2021, the First Division of the Superior Court of Justice denied the final appeal.¹³¹ The decision was finalized on September 13, 2021.¹³²

VIII MERITS

71. The *sub judice* case concerns alleged shortcomings in the legal proceedings following the violent death of Gabriel Sales Pimenta, attorney and defender of rural workers in Pará. On this point, the Court notes that Mr. Sales Pimenta's¹³³ work as a human rights defender is an uncontested fact.¹³⁴ Bearing in mind the arguments of the parties and the Commission as well as the Court's

¹²⁵ Cf. Decision signed by the National Inspector ("Corregedor") of Justice on September 12, 2008 (evidence file, folio 6265), and Follow-up sheet for trial No. 200710000004997 before the National Council of Justice (evidence file, folios 2037–2038).

¹²⁶ Cf. Civil damages suit for pain and suffering brought by Maria da Glória Sales Pimenta, *supra* (evidence file, folios 2711–2770).

¹²⁷ Cf. Order issued by the Third Criminal Court of the Judicial District of Marabá on October 5, 2011 (evidence file, folios 2015).

¹²⁸ Cf. Record of instruction and trial hearing from March 24, 2011 (evidence file, folios 2008–2012); Final arguments presented by the attorneys of Maria da Glória Sales Pimenta on August 19, 2011 (evidence file, folios 5426–5434); and Final arguments presented by the attorneys of Maria da Glória Sales Pimenta on August 16, 2011 (evidence file, folios 5435–5439).

¹²⁹ Cf. Judgment issued by the Third Civil Court of the Judicial District of Marabá, *supra* (evidence file, folio 2023).

¹³⁰ Cf. Decision issued by the Fifth Independent Civil Division of the Court of Justice of the state of Pará on June 2, 2016 (evidence file, folios 2170 and 2181–2182).

¹³¹ Cf. Decision issued by the Fifth Independent Civil Division of the Court of Justice of the state of Pará on July 30, 2012 (evidence file, folio 2184); Decision of the Fifth Independent Civil Division of the Court of Justice of the state of Pará on September 15, 2016 (evidence file, folios 6300–6305); Decision issued by the President of the Court of Justice of the state of Pará on June 26 and October 3, 2017 (evidence file, folios 6307–6318); Decision issued by the Superior Court of Justice on July 29, 2018 (evidence file, folios 6327–6328); and Decision issued by the Superior Court of Justice on June 8, 2021 (evidence file, folios 6333–6334).

¹³² Cf. Certification of res judicata issued in the proceedings of action No. 0007348-91.2007.8.14.0028 for compensation for pain and suffering on September 13, 2021 (evidence file, folio 8547).

¹³³ This Court has held that the status of human rights defender is defined by the work carried out, regardless of whether the person is a private citizen or a public official. In this regard, the Court has referred to the monitoring, reporting, and education activities carried out by human rights defenders, emphasizing that the defense of rights not only applies to civil and political rights, but also necessarily covers economic, social, and cultural rights, according to the principles of universality, indivisibility, and interdependence. (Cf. *Case of Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations, and costs*. Judgment of August 28, 2014. Series C No. 283, para. 129). Furthermore, as expert witness Renan Kalil noted, "workers' leaders, insofar as they defend the rights and interests of workers, act as human rights defenders [...], [which] involves risks and threats from non-state actors, which can be exacerbated by social norms and stereotypes." Written version of Renan Kalil's expert opinion from April 20, 2022 (evidence file, folio 8697).

¹³⁴ The state authorities were aware of Gabriel Sales Pimenta's work as a human rights defender. Cf. Record No. ANATAG/15/82, *supra* (evidence file, folios 2202–2206); Report of police superintendent Luiz Carlos de Carvalho on

temporal jurisdiction, the Court will analyze the alleged violations that occurred after December 10, 1998, in light of the enhanced obligations to investigate and punish those responsible for acts of violence against human rights defenders, while also taking into consideration the demonstrated context of violence and impunity (*supra* paras. 44–51). Accordingly, the Court will proceed with its analysis of the merits in the following order: (b) the alleged violation of the rights to judicial guarantees and to judicial protection, as well as the right to the truth, and (b) the alleged violation of the right to personal integrity of the family of Gabriel Sales Pimenta.

VIII-1

RIGHTS TO JUDICIAL GUARANTEES¹³⁵ AND JUDICIAL PROTECTION,¹³⁶ AS WELL AS THE RIGHT TO THE TRUTH,¹³⁷ IN CONJUNCTION WITH THE OBLIGATION TO RESPECT AND ENSURE RIGHTS¹³⁸

A. Arguments of the parties and of the Commission

72. With respect to due diligence, the **Commission** held that Gabriel Sales Pimenta's murder was attributable to his work defending rural workers and that this was not taken into account by the authorities. It also concluded that this case is characterized by state omissions with respect to its obligation to investigate and punish those responsible for the murder. It noted in this respect that the reason "a guilty judgment was not issued against [C.O.S.]" was a lack of evidence, even though the authorities in charge of the investigation had not even put him before the two eyewitnesses to the crime for identification. Moreover, the Commission indicated that the authorities did not act with due diligence to ensure that M.C.N. and J.P.N. were present, to prevent them from fleeing, or to enforce the detention orders against them. It added that because the State had neither "duly clarified nor disputed" the strong circumstantial evidence that individuals connected to the investigation had been threatened, it held that "it was also responsible for violating the duty to investigate with due diligence, which necessarily involves ensuring the safety and protection of witnesses before, during, and after the investigation."

73. With regard to the issue of a reasonable timeframe, the Commission noted that over 20 years had passed between the murder of Mr. Sales Pimenta on July 18, 1982, and the declaration of the expiration of the statute of limitations. It argued that that length of time is in itself unreasonable. It stated that "the elements of complexity, actions of officials, and actions of family members do not explain or justify the excessive delay." It also indicated that there were delays at different stages, for example, the length of time until the *pronuncia* judgment was finally issued in August of 2000, as well as between the request of the Public Prosecutor's Office for termination of criminal liability for J.P.N. in November of 1999 and the decision granting it in August of 2000.

74. The **representatives** agreed with the Commission's arguments regarding the alleged violations committed in the context of the criminal trial, and they argued that the State: (i) did not take the necessary steps to investigate the murder of Gabriel Sales Pimenta or the prior threats against him, and failed to take into account factors such as his work as a human rights defender and the context in which the murder and the investigation thereof occurred, during the trial of three of the four suspects; (ii) did not take steps to identify, prosecute, or punish those responsible for the murder of Mr. Sales Pimenta; (iii) did not act with due diligence to enforce the detention orders issued during the trial to keep the defendants from fleeing; (iv) caused unjustified delays in the trial proceedings, which they noted is especially problematic for the reasonable time requirement in the

September 8, 1982 (evidence file, folios 2265–2267); and Hearing record of case No. 0007348-91.2007.814.0028, Court of Justice of the State of Pará, March 24, 2011 (evidence file, folios 2009–2010).

¹³⁵ Article 8 of the American Convention.

¹³⁶ Article 25 of the American Convention.

¹³⁷ Articles 8, 13, and 25 of the American Convention.

¹³⁸ Article 1(1) of the American Convention.

case of the murder of a human rights defender, given the need to combat the negative effects of impunity. They argue that each stage of the criminal trial was characterized by “alarming delays” and long periods of time in which no procedural steps were taken; (v) violated the competent judge principle by sending the case to the Agrarian Court, which led to the “unreasonable and groundless” paralysis of the trial for 18 months; and (vi) violated the right of access to justice by declaring the case time-barred, even though the delays had been solely attributable to the “obstructive” and “negligent actions” of the investigative and judicial authorities.

75. With respect to the alleged violations in the context of the action for compensation against the state of Pará, initiated by the family of Gabriel Sales Pimenta, the representatives noted that the family still has not received a final decision even though it has been over 14 years since they filed it. They stated that the “unjustified delay” argument is based exclusively on the negligence of the authorities.

76. Furthermore, the representatives indicated that the State withheld information of relevance to the case and did not establish necessary procedures or mechanisms to bring the truth to light. They therefore argued that the State is responsible for violating the right to the truth by preventing Gabriel Sales Pimenta’s family and Brazilian society from knowing the true circumstances of the death of Mr. Sales Pimenta, and by hindering the identification and punishment of those responsible.

77. With regard to the alleged violation of Article 8 of the American Convention, the **State** argued that responsibility for the alleged failures in the investigation and criminal prosecution of those involved in the death of Gabriel Sales Pimenta “is absolutely outside the *ratio essendi*” of Article 8, because neither he nor any of his family members was tried in a domestic court, and the supposed omissions or failures are not related to any criminal or civil proceedings in which they have declared as such. With respect to the alleged violation of Article 25 of the convention, it argued that the State had appropriate, effective domestic remedies that the alleged victims used, and others that are still in process in connection with this case. It added that all of the steps taken in the course of the criminal trial were done in a rigorous manner with the aim of identifying the perpetrators and ultimately punishing them. It argued that the representatives did not provide any evidence that in the criminal or civil proceedings private actors influenced public officials to ensure their impunity or vice versa. It stated that the alleged impunity with respect to the murder cannot be connected to actions taken during the investigation, which even resulted in the identification of responsible individuals.

78. Finally, regarding the alleged responsibility for unjustified delays and the declaration that the statute of limitations had passed, the State argued that these lack merit because the legal authorities complied with criminal law and criminal procedure law, acting in accordance with the procedural guarantees for defendants.¹³⁹

79. Regarding the sending of the records between the Criminal and Agrarian Courts, it stated that since an Agrarian Court had been created in the region, it was justifiable to send the case to it, given that agrarian judges are responsible for trying and prosecuting crimes principally motivated by agrarian concerns. With respect to the orders for detention, including pretrial detention, it explained that despite the challenges encountered, the search for the defendant in contempt, M.C.N., continued, and on November 18, 2005, the order for his pretrial detention was renewed.

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The State noted that,

as the defendant was 74 years old when he was accused and 17 years had passed between the first action that interrupted the statute of limitations (the Court receiving the accusation) and the second interruption of the statute of limitations (the decision to indict), the Court of Justice of Pará rightly declared the case time-barred and terminated criminal liability due to the passage of more than ten years (the applicable length of time after the reduction by half due to the defendant’s age) between the interruption points of the statute of limitations.

80. Concerning the compensatory action, it noted that the period of approximately three and a half years between when the action was brought and when the judgment was issued is reasonable and in keeping with the parameters of inter-American case law. Regarding the appeals stage, it stated that there have been no irregularities, acts, or omissions that unduly delayed the proceedings.

81. With respect to the alleged violation of the right to the truth, the State argued that it did not hinder in any way the criminal investigation of the events or the efforts of family members to seek reparation. It declared that at no point during the trial before the Commission or in its answering brief did it present an alternative or fictitious account of the events in an effort to conceal anything, and that it had no intention of concealing the historical truth or silencing the voices of the alleged victims. Lastly, it maintained that the domestic legal proceedings were legitimate even though their results did not meet the expectations of the alleged victims.

B. Considerations of the Court

82. The Court has established that, pursuant to the American Convention, States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be substantiated in keeping with the rules of due process of law (Article 8(1)), all of this under the general obligation of those States to ensure the free and full exercise of the rights recognized by the Convention for all persons subject to their jurisdiction (Article 1(1)).¹⁴⁰

83. The Court has noted that there is access to justice when the State ensures, within a reasonable time, the right of the alleged victims or their families to have all necessary measures taken to learn the truth about what happened and, as appropriate, for those responsible to be punished.¹⁴¹ Related to this, the Court recalls that Articles 8 and 25 of the Convention also establish the right to obtain a response to the claims and requests filed before the judicial authorities, because the effectiveness of the remedy involves a positive obligation to provide a response within a reasonable time.¹⁴²

84. Furthermore, the Court has maintained consistently in its case law that in cases of the deprivation of life, it is essential that the State identify, investigate effectively, and eventually punish those responsible. Otherwise, it would be creating the conditions for such acts to be repeated in a climate of impunity.¹⁴³

85. Moreover, the Court has consistently noted 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 duty, not as a mere formality doomed to be ineffective.¹⁴⁴ Further, 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.¹⁴⁵

¹⁴⁰ Cf. *Case of Velásquez-Rodríguez v. Honduras. Preliminary objections*, *supra*, para. 91, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 98.

¹⁴¹ Cf. *Case of Bulacio v. Argentina. Merits, reparations, and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, 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. 217.

¹⁴² Cf. *Case of Cantos v. Argentina. Merits, reparations, and costs*. Judgment of November 28, 2002. Series C No. 97, para. 57, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*. 218.

¹⁴³ Cf. *Case of Velásquez-Rodríguez. Merits*, *supra*, para. 177, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 99.

¹⁴⁴ Cf. *Case of Velásquez-Rodríguez v. Honduras. Merits*, *supra*, para. 177, and *Case of Maidanik et al. v. Uruguay. Merits and reparations*. Judgment of November 15, 2021. Series C No. 444, para. 139.

¹⁴⁵ 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 Barbosa de Souza et al. v. Brazil*, *supra*, para. 128.

86. In crimes against human rights defenders specifically, the Court has noted that States have a duty to investigate, seriously and effectively, any violations committed against them, to combat impunity,¹⁴⁶ and to ensure impartial, prompt, and authoritative justice, and that this entails an exhaustive search for all the information in order to design and carry out an investigation that involves the proper analysis of the different hypotheses of responsibility, by act or omission, at different levels, exploring all the pertinent lines of investigation to identify those responsible.¹⁴⁷ Consequently, when confronted with indications or allegations that a specific act against a human rights defender could be based precisely on their work defending and promoting human rights, the investigating authorities should take into account the context of the facts and their activities to identify the interests that could have been affected by those activities, in order to establish and exhaust the lines of investigation that take into account their work, determine the reason for the crime, and identify the perpetrators.¹⁴⁸

87. Due to the fundamental role of human rights defenders in promoting and protecting human rights in their day-to-day work, the Court has recognized the enhanced obligation of due diligence in the investigation of their deaths.¹⁴⁹ This obligation involves actions such as documenting the work of the defender, the role he or she played in the community and environment, the agenda he or she was implementing, and the region in which he or she worked, using methodological tools such as researching similar cases to identify systematic patterns.¹⁵⁰

88. The Court reiterates that compliance with the State's duty to create the necessary conditions for the effective exercise and enjoyment of the rights established in the Convention is intrinsically linked to the protection and recognition of the importance of the role played by human rights defenders,¹⁵¹ whose work is fundamental to strengthen democracy and the rule of law. The Court also recalls that the activities of monitoring, denunciation, and education that human rights defenders perform make an essential contribution to respect for human rights, because they act as guarantors against impunity. Thus, they complement the role, not only of the States, but also of the inter-American human rights system as a whole.¹⁵² In this regard, the Court has already stressed the need to eradicate impunity in cases of violence against human rights defenders, because this is essential to ensure that they may perform their task freely in a safe environment.¹⁵³

89. The Court stresses that violence against human rights defenders has a chilling effect,¹⁵⁴ especially when the crimes go unpunished. In this regard, the Court reiterates that the threats and attempts on the safety and life of human rights defenders and the impunity of those responsible for such actions are particularly grave because they have an impact that is not only individual, but also collective. When such things happen, society is prevented from learning the truth about whether the rights of persons are being respected or violated within the jurisdiction of a given State.¹⁵⁵

¹⁴⁶ Cf. *Case of Nogueira de Carvalho et al. v. Brazil*. Preliminary objections and merits. Judgment of November 28, 2006. Series C No. 161, para. 77, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 100.

¹⁴⁷ Cf. *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, para. 47, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 100.

¹⁴⁸ Cf. *Case of Human Rights Defender et al. v. Guatemala*, *supra*, paras. 131, 216, and 219, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 100.

¹⁴⁹ Cf. *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 104.

¹⁵⁰ Cf. *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 104.

¹⁵¹ Cf. *Case of Nogueira de Carvalho et al. v. Brazil*, *supra*, para. 74, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 100.

¹⁵² Cf. *Case of Valle Jaramillo et al. v. Colombia*. Merits, reparations, and costs. Judgment of November 27, 2008. Series C No. 192, para. 88 and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 100.

¹⁵³ Cf. *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 135.

¹⁵⁴ Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 96, and *Case of Escaleras Mejía et al. v. Honduras*, *supra*, para. 69.

¹⁵⁵ Cf. *Case of Nogueira de Carvalho et al. v. Brazil*, *supra*, para. 76, and *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 96.

90. Bearing in mind the arguments of the parties and the Commission, and limiting itself to the analysis of events that occurred after the date of recognition of the Court's contentious jurisdiction, the Court will analyze below the alleged violations in the following order: (1) due diligence in the criminal trial; (2) a reasonable timeframe; (3) the right to the truth; and (4) conclusion.

b.1 Due diligence in the criminal trial

91. The Court recalls that in this case Brazil had an enhanced obligation to conduct the investigation into the death of Mr. Sales Pimenta with due diligence due to his work as a human rights defender.

92. First, the Court considers it appropriate to stress that, even though the record shows a series of state actions and omissions during the investigations prior to the date of recognition of the Court's jurisdiction on December 10, 1998, the consequences of those actions and omissions persisted throughout the criminal trial.

93. Specifically, the key events after December 10, 1998, that show Brazil's lack of due diligence in prosecuting and punishing all those responsible for the murder of Gabriel Sales Pimenta are: (i) the failure to identify and analyze the context in which he carried out his work in defense of rural workers' human rights; (ii) the failure to adopt protective measures for eyewitnesses, especially given the context of violence and impunity in land struggles in Brazil; (iii) the failure to investigate the death of the defendant J.P.N. during the stage of the "*pronúncia*" judgment and the death of the eyewitness Luzia Batista da Silva during the analysis of the case by the Jury Court; (iv) the exclusion of C.O.S. as a defendant in the "*pronúncia*" judgment due to a lack of evidence, given that the lack of evidence was a direct result of the failure to carry out certain essential investigative tasks; (v) the failure to take sufficient measures to ensure M.C.N.'s appearance at the procedural steps that required his presence and to follow appropriate procedures to apprehend him when there were detention orders against him; and (vi) sending the criminal case to the Agrarian Court when the Jury Court clearly had jurisdiction. The Court will discuss each of these facts below.

94. As the body of evidence in this case shows, and in light of statements by expert witness Kalil in a hearing,¹⁵⁶ the Court confirms that at no point during the criminal trial for the murder of Gabriel Sales Pimenta, even after December 10, 1998, did authorities take into consideration the context in which the victim defended human rights. If they had, it would have been possible to identify the economic and political interests that could have been affected by Mr. Sales Pimenta's work, particularly with respect to the judicial decision that reversed the expulsion of 150 individuals from the lands claimed by the landowners, a decision that had been taken in response to a remedy presented by the alleged victim shortly before his death (*supra* para. 53). There is no record that the Public Prosecutor's Office or the judicial authorities ever requested measures to determine whether the result of that action, which had significant public implications, could have been linked to the motive for the death. Such a determination could have also allowed for the identification of other

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The expert witness Kalil emphasized that

all allegations of violence against those who defend the rights and interests of workers should be thoroughly investigated, and the possibility of a connection, whether direct or indirect, between the violent act and the work of defending the rights of workers should be considered. [...] [T]he body investigating a human rights violation must examine the complexity of the events, the context in which they occurred, and the patterns that explain the reasons for the events [...] to ensure that no evidence has been omitted and all reasonable lines of inquiry have been pursued. It is thus critical to take the steps necessary to assess systematic patterns that allowed the human rights violations to occur, as well as the mechanisms and structures that enable impunity. Expert opinion of Renan Kalil during the public hearing of this case.

suspects and highlighted the need to protect witnesses¹⁵⁷ such as Luzia Batista da Silva, an adolescent at the time of the events and an eyewitness, and Neuzila Jardim Cerqueira, who was with Gabriel at the time of his death, among others.

95. The analysis of context is particularly important given the prevalence of violence and impunity related to land struggles at the time of Gabriel Sales Pimenta's death, as well as potential links and patterns across different cases.

96. Furthermore, if during the investigations or the criminal trial, the prosecutors, judicial authorities, or police officers had identified Gabriel Sales Pimenta as a human rights defender for rural workers, they could have developed a victim profile. The purpose would have been to understand what his work as a human rights defender involved, the environment in which he worked, and the risk factors associated with his work. They also would have been able to do interviews at his organization as well as with other individuals who were involved with his work and could comment on the events.¹⁵⁸

97. In addition, the State, aware of the context of rural violence and impunity, especially in the state of Pará—as has been documented (*supra* paras. 47–51) and corroborated by expert witnesses Kalil,¹⁵⁹ Michelotti,¹⁶⁰ and Gaio¹⁶¹ and by witnesses Frigo¹⁶² and Batista¹⁶³—should have identified the vulnerability of those who had witnessed Gabriel Sales Pimenta's violent death. Brazil should have taken steps to protect the witnesses, not just to prevent threats or harm to their personal integrity, but also to preserve evidence that was key to clarifying the events. Since August of 1982, even the Commissioner in charge of the investigation had brought to the attention of the judge with jurisdiction the need to protect the witnesses;¹⁶⁴ the declarant Antonio Francisco da Silva, president of the Union of Rural Workers (STR) at the time of Mr. Sales Pimenta's death, said that he had received threats from some of the suspects of the events in the case;¹⁶⁵ and Luzia Batista da Silva had indicated in her first statements that she was afraid of telling what she had witnessed (*supra* footnote 79). Nevertheless, there is no record of any protective measures taken for them during the entire course of the proceedings. Although Antonio Francisco da Silva had been summoned to the first session of the Jury Court scheduled for May of 2002, he failed to appear and gave no justification for his absence. Luzia Batista da Silva was also summoned to make a statement during the same session, but she could not be found at her home and the record shows that a neighbor stated that she was deceased.

98. The Court notes in this regard that despite having learned of the death of the eyewitness Luzia Batista da Silva during the stage in which the Jury Court was analyzing the case, in 2002,¹⁶⁶ and the death of the defendant J.P.N.¹⁶⁷ during the stage of the "*pronúncia*" judgment, there is no

¹⁵⁷ The Court agrees with the Special Rapporteur on the situation of human rights defenders that "the protection of victims, witnesses, and all parties to the proceedings must remain paramount throughout the entire process." Cf. UN, *Report of the Special Rapporteur on the situation of human rights defenders*, Michel Forst. Doc. A/74/159, July 15, 2019, para. 90.

¹⁵⁸ Cf. Expert opinion of Renan Kalil during the public hearing of this case.

¹⁵⁹ Cf. Written version of Renan Kalil's expert opinion from April 20, 2022 (evidence file, folios 8694–8712).

¹⁶⁰ Cf. Expert opinion of Fernando Michelotti, *supra* (evidence file, folios 7253–7263).

¹⁶¹ Cf. Expert opinion of Carlos Eduardo Gaio, *supra* (evidence file, folios 7286–7300).

¹⁶² Cf. Statement of Darci Frigo, *supra* (evidence file, folios 6722–6727).

¹⁶³ Cf. Statement of José Batista Gonçalves Afonso from March 10, 2022 (evidence file, folios 7175–7177).

¹⁶⁴ Cf. Addendum to the request for pretrial detention signed by the police commissioner on August 6, 1982 (evidence file, folios 2244–2247). See also *supra* footnote 78.

¹⁶⁵ Cf. Statement by Antonio Francisco da Silva, *supra* (evidence file, folio 196) and Statement by Antonio Francisco da Silva on July 19, 1982 (evidence file, folio 2234).

¹⁶⁶ Cf. Certificate signed by the officer of the court on May 21, 2002 (evidence file, folio 2534).

¹⁶⁷ Luzia Batista identified J.P.N. as the driver of the car used for the murder of Gabriel Sales Pimenta. Cf. Statement of Luzia Batista da Silva, *supra* (evidence file, folios 2226–2228); Certificate of identification of J.P.N. by Luzia Batista da Silva

record in the case file that the state authorities investigated the circumstances of these deaths or the possibility that they were connected to the criminal trial. This grave omission on the part of the State heightens the sense of impunity and undermines the authority of the courts in the eyes of the defendants.

99. Regarding the duty to exhaust all lines of investigation and take all investigative measures necessary to identify those responsible, the Court notes that in the “*pronúncia*” judgment from August of 2000, the judge decided that it was improper to present the case against C.O.S. to the Jury Court due to a lack of evidence, despite the fact that the final report of the police investigations included sufficient circumstantial evidence of his involvement in the crime; that the prosecutor in the case noted that Mr. Oliveira de Sousa had not been subjected to identification by the eyewitness, Luzia Batista da Silva, or by Neuzila Jardim Cerqueira, who was with Gabriel Sales Pimenta at the time of his death; and that C.O.S. was known as a gunman of J.P.N. in the region¹⁶⁸ and possibly the shooter in this case. Thus, the Court notes that the identity of the individual who shot Gabriel Sales Pimenta was never clearly determined.

100. Furthermore, the Court notes the absence, at several procedural stages, of measures sufficient to ensure the progress of the proceedings and the appearance of M.C.N. It was confirmed that because the State did not act with due diligence in enforcing the detention orders issued during the proceedings, the defendants whose pretrial detention had been ordered were able to flee. The Court notes the State’s failure to act even when the whereabouts of the defendant M.C.N. were well-known.¹⁶⁹ For example, after M.C.N.’s failure to appear at procedural steps that required his presence,¹⁷⁰ the Public Prosecutor’s Office requested his pretrial detention on April 23, 2002 (twenty years after the death of Gabriel Sales Pimenta), but it was only after the defendant failed to appear at the first session of the Jury Court, set for May 23, 2002, that the judge with jurisdiction issued the requested order.¹⁷¹ Despite this, there is no record that any measures were taken to detain M.C.N. over the next three years. What is clear is that it was not until four years later,¹⁷² in February of 2006, that by the judge’s order, a Federal Police team was formed to locate the defendant.¹⁷³

101. In addition, the Court holds that sending the criminal case on the death of Gabriel Sales Pimenta to the newly-created Agrarian Court in February of 2004—where it remained for a year and five months, despite the fact that the Jury Court obviously had jurisdiction to prosecute deliberate crimes against life (under Article 5, paragraph XXXVIII, “d,” of the Brazilian Constitution)—was another example of the State’s lack of due diligence in this case.

on August 2, 1982 (evidence file, folios 2273–2274); and Certificate of new questioning of Luzia Batista da Silva on July 13, 1983 (evidence file, folios 2276–2279).

¹⁶⁸ Cf. Report issued by the police commissioner, *supra* (evidence file, folios 2264–2267).

¹⁶⁹ For example, during the public hearing held on March 22, 2022, both Rafael Sales Pimenta and the expert witness Dissenha mentioned widely disseminated reporting in the magazine *Isto É* on November 12, 1986, which included a photo of the defendant next to his brother—at the time the Governor of Minas Gerais—as well as the President of the Republic at the time.

¹⁷⁰ M.C.N. failed to appear at the first hearing, which had been scheduled for December 27, 1983. He also failed to appear at six subsequent hearings. Cf. Service by publication of M.C.N. and C.O.S. for hearing on April 27, 1984 (evidence file, folio 2340), Certificate of the officer of the court from December 22, 1983 (evidence file, folio 2331), Orders issued on August 24 and November 22, 1984 (evidence file, folios 2348–2351), and Orders of August 5, 1985, and March 19, 1986 (evidence file, folios 2352–2353).

¹⁷¹ Cf. Pretrial detention order No. 0272/2002 from May 23, 2002 (evidence file, folio 2541) and Decision issued by the assigned judge of law on May 23, 2002 (evidence file, folio 2536–2538).

¹⁷² Cf. Letter No. 45/2006-GAB/DPF.B/MBA/PA signed by the chief of the Federal Police office in Marabá on February 24, 2006 (evidence file, folio 2613).

¹⁷³ M.C.N.’s own attorney highlighted the failure of state authorities to exercise due diligence to locate him quickly. Cf. Habeas corpus filed on behalf of M.C.N. before the Joint Criminal Division of the Court of Justice of Pará on April 18, 2006 (evidence file, folio 2630).

102. Finally, regarding the conclusion of the criminal trial, the Court deems it appropriate to recall that on May 8, 2006, the Court of Justice of Pará terminated M.C.N.'s criminal liability by reason of the statute of limitations, declaring it expired due to the 17 years that had passed between the admission of the Public Prosecutor's Office's initial accusation and the "*pronúncia*" ruling.¹⁷⁴ Thus, over 23 years after the death of Gabriel Sales Pimenta, the trial was closed without having clarified the circumstances of his death or identified or prosecuted those responsible.

103. As shown in the evidence found in the case file, the slow and negligent actions of the judicial authorities contributed significantly to the expiration of the statute of limitations. For example, given the existence of sufficient circumstantial evidence of responsibility for the crime as well as evidence of a deliberate crime against life, there was no justification for the delay in issuing the "*pronúncia*" judgment (a year and eight months from the date of recognition of the Court's jurisdiction), which was not even a sentence but merely a decision to continue the trial before the Jury Court.¹⁷⁵ As the expert witness Dissenha noted, the extreme delay in issuing the "*pronúncia*" judgment was decisive for the case exceeding the statute of limitations, as it was precisely due to the time elapsed between the admission of the Public Prosecutor's Office's initial accusation and the "*pronúncia*" judgment (17 years) that the statute of limitations was applied in favor of the defendant M.C.N. Another factor the Court sees as contributing to the application of the statute of limitations is the authorities' failure to take concrete, efficient measures to ensure the defendant's appearance during the trial, which caused a series of delays in the proceedings.¹⁷⁶

104. The Court therefore finds that the application of the statute of limitations in this case, and the resulting final closing of the case, were not the result of normal, expeditious criminal proceedings, but by a series of state actions and omissions during the course of those proceedings.¹⁷⁷

105. The Court therefore concludes that the State did not fulfill its obligation to act with enhanced due diligence to investigate earnestly and thoroughly the death of human rights defender Gabriel Sales Pimenta.

b.2 Reasonable timeframe

106. The Court has stated 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 family members to

¹⁷⁴ The expert witness Dissenha clarified that according to rules of the statute of limitations, the crime in question would exceed the statute of limitations in ten years, after taking into account the age of M.C.N. at the time of the "*pronúncia*" judgment, and that the admission of the Public Prosecutor's Office's initial accusation and the "*pronúncia*" ruling constitute two interruptions of the statute of limitations under Article 117 of the Brazilian Criminal Code. Cf. Expert opinion of Rui Carlo Dissenha during the public hearing of this case.

¹⁷⁵ As the expert witness Dissenha noted, this delay in particular was key to the lapse under the statute of limitations and "if the judgment of accusation had been issued a few years earlier, the statute of limitations would not have applied." Written version of Rui Carlo Dissenha's expert opinion from March 11, 2022 (evidence file, folio 6633).

¹⁷⁶ Furthermore, as the expert witness Dissenha stressed during the hearing, until the year 1996, the Brazilian Code of Criminal Procedure established that the trial must continue in the absence of a defendant summoned to any procedural step who failed to appear without justification. Cf. Article 366 of the Code of Criminal Procedure until modified by Law 9.271 of April 17, 1996. This means that after procedural steps at which M.C.N. failed to appear without justification, the trial should have continued despite his failure to appear. Moreover, until 1996, the statute of limitations could not be suspended while a defendant was a fugitive.

¹⁷⁷ The expert witness Dissenha declared that the statute of limitations expiration in this criminal trial was "constructed," not from one isolated act but as a consequence of a series of egregious acts and omissions on the part of state officials over the course of years. Cf. Expert opinion by Rui Carlo Dissenha provided at a hearing on March 22, 2022. Similarly, the expert witness Kalil stated that "a lapse under the statute of limitations in criminal matters ends the punitive claim due to the passage of time, and it generally limits the punitive power of the State to prosecute unlawful conduct and punish those who commit it. It is a guarantee that all judges must observe for every criminal defendant. However, when that lapse is caused by the State's failure to take measures it should have taken through the judiciary [...] when it had the power to prevent that lapse but did nothing, and the context is one of general violence as well as intimidation of those defending the rights of people along with those who are asserting their rights [...] I do not think the statute of limitations [...] was intended for this; it should not be used as a mechanism for perpetuating impunity." Expert opinion by Renan Kalil provided at a hearing on March 23, 2022.

have all necessary steps taken to learn the truth about what happened and to investigate, prosecute, and punish, as appropriate, those eventually found responsible.¹⁷⁸ In addition, a significant delay in the proceedings can in itself constitute a violation of judicial guarantees.¹⁷⁹

107. Furthermore, the Court has established that the timeframe must be analyzed separately for each specific case in terms of the total duration of the proceedings, which could also include enforcement of the final judgment. Moreover, it has held that four elements must be examined to know whether the guarantee of a reasonable time has been observed, namely: (a) the complexity of the matter;¹⁸⁰ (b) the procedural activity of the interested party;¹⁸¹ (c) the conduct of the judicial authorities;¹⁸² and (d) the effects on the legal situation of the alleged victim.¹⁸³ The Court recalls that it is the State's responsibility to justify, based on these criteria, why it required the time that passed to process the case and that if it fails to do so, the Court has broad powers to form its own opinion in this regard.¹⁸⁴ The Court also reiterates that it is necessary to consider the total duration of the proceedings, from the initial procedural act until the final judgment is delivered, including any appeals that may be filed.¹⁸⁵

108. Regarding the complexity of the matter and the conduct of the authorities, the Court notes that this is a case of some complexity, as it requires, inter alia, the gathering of a certain amount of evidence, careful and detailed analysis of the crime, and complex expert analyses, as well as being subject to proceedings that are slower by their very nature, due to the Brazilian rules of criminal procedure.¹⁸⁶ On the other hand, it is clear that there was only one victim and that his body was available to the police, there were two eyewitnesses willing to make statements, the scene of the crime was not difficult to access, and the primary suspects were known in the area.

109. The Court also holds that the excessive delays in the criminal proceedings were unjustified and directly attributable to the conduct of the authorities responsible for the administration of justice,¹⁸⁷ in line with the analysis in the preceding chapter. In this regard, the Court confirms

¹⁷⁸ Cf. *Case of Bulacio v. Argentina*, *supra*, para. 114, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 130.

¹⁷⁹ Cf. *Case of Hilaire, Constantine, and Benjamin et al. v. Trinidad and Tobago*. Merits, reparations, and costs. Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 130.

¹⁸⁰ When analyzing the complexity of the matter, the Court has taken into account, inter alia, the complexity of the evidence, the multiplicity of procedural subjects or the number of victims, the time elapsed since the State became aware of the facts that needed to be investigated, the characteristics of the remedy contained in domestic law, and the context in which the violation occurred. Cf. *Case of Genie Lacayo v. Nicaragua*. Preliminary objections. Judgment of January 27, 1995. Series C No. 21, para. 78, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 131 and footnote 206.

¹⁸¹ Regarding the activity of the person interested in obtaining justice, the Court has taken into consideration whether their procedural conduct has in any way contributed to unduly prolonging the proceedings. Cf. *Case of Cantos v. Argentina*, *supra*, para. 57, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 131 and footnote 207.

¹⁸² The Court has understood that, in order to fully ensure the effectiveness of the judgment, the judicial authorities must act promptly and without delay, because the principle of effective judicial protection requires procedures to be implemented without undue delays or obstacles, in order to achieve its objective in a rapid, simple, and comprehensive manner. Cf. *Case of Mejía Idrovo v. Ecuador*. Preliminary objections, merits, reparations, and costs. Judgment of July 5, 2011. Series C No. 228, para. 106, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 131 and footnote 208.

¹⁸³ The Court has affirmed that, to determine whether the time has been reasonable, it is necessary to take into account the effects that the duration of the proceedings have had on the legal situation of the person concerned, considering, among other factors, the matter in dispute. Cf. *Case of National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*, *supra*, para. 148, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 131 and footnote 209.

¹⁸⁴ Cf. *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 Digna Ochoa and family members v. Mexico*, *supra*, para. 131.

¹⁸⁵ Cf. *Case of Suárez Rosero v. Ecuador*. Reparations and costs. Judgment of January 20, 1999. Series C No. 44, para. 71, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 131.

¹⁸⁶ Cf. Written version of Rui Carlo Dissenhas's expert opinion (evidence file, folio 6641).

¹⁸⁷ The expert witness Dissenhas, after a thorough analysis of every procedural step in this case, likewise concluded that the judicial authorities "bore complete and total responsibility for the excessive duration of the trial." Written version of Rui Carlo Dissenhas's expert opinion (evidence file, folio 6643).

excessive delays at different procedural stages, including but not limited to: (i) almost two years from the date of recognition of the Court's jurisdiction (December of 1998), through the presentation of the last document with final arguments, to the "*pronúncia*" judgment (August of 2000); (ii) eight months from the "*pronúncia*" judgment (August of 2000) to the notification thereof to the defendant M.C.N. (May of 2001); (iii) over nine months from the request of the Public Prosecutor's Office to terminate the liability of the defendant J.P.N. due to his death (November 23, 1999) to the judge's order granting that request (August 31, 2000); (iv) almost four years, from 2002 to 2006, in which the proceedings were stalled due to M.C.N.'s contempt of court; and (v) a year and four months from the sending of the case to the Agrarian Court (February 20, 2004) to its return to the Criminal Court (July 28, 2005).

110. Regarding the procedural activity of the victims, the Court confirms that no dilatory or obstructive conduct on the part of the family of Gabriel Sales Pimenta has been observed; on the contrary, his brother Rafael Sales Pimenta made himself available as a "prosecutorial assistant" whenever possible, and his actions served only to further the trial's progress.¹⁸⁸

111. Lastly, regarding the effects on the legal situation of those involved in the proceedings, the Court has established that, if the passage of time has a significant impact on the legal situation of the individual, the proceedings must advance with greater diligence so that the case may be decided as soon as possible.¹⁸⁹ The Court observes that as this case concerns a human rights defender, especially an attorney for rural workers in a context of violence and impunity, judicial authorities should have carried out the procedural steps more quickly and diligently, as was necessary in order to investigate and determine what had really happened. This is important because it was highly likely that Gabriel Sales Pimenta had been murdered because of his work defending human rights, which could be interpreted as a direct attack to send a message to all human rights defenders.

112. With respect to the alleged violations in the context of the action for compensation against the state of Pará initiated by the family of Gabriel Sales Pimenta, that action was filed by his mother in 2007, after the final decision in the criminal trial. However, it took almost 14 years to process that action, and the decision was that it was inadmissible. Here as well, the excessive delay was caused by the negligence of the judicial authorities. For example, four years passed between the filing of the action and the judgment of first instance (October 5, 2011), and almost ten more years passed between that judgment and the final ruling issued by the Superior Court of Justice.

113. Therefore, taking into consideration all of the above, and because almost 24 years passed between the events of this case and the decision that ended the criminal trial, more than seven years passed between the recognition of the Court's jurisdiction and that final decision in the criminal trial, and the civil proceedings lasted almost 14 years, the Court concludes that Brazil violated the right to a reasonable timeframe in its investigation and in its conduct of the criminal trial for the murder of human rights defender Gabriel Sales Pimenta.

b.3 Right to the truth

114. This Court has held that "everyone, including the next of kin of the victims of serious human rights violations, has the right to know the truth [about those violations]," which means that they "should be informed of everything that happened regarding such violations."¹⁹⁰ The right to the truth is broadly related to the right that the State take actions aimed at "the clarification of the facts of

¹⁸⁸ Cf. Written version of Rui Carlo Dissenha's expert opinion, *supra* (evidence file, folio 6642).

¹⁸⁹ Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 155, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 135.

¹⁹⁰ Cf. *Case of Trujillo Oroza v. Bolivia. Reparations and costs*. Judgment of February 27, 2002. Series C No. 92, para. 100, and *Case of Maidanik et al. v. Uruguay*, *supra*, para. 176. Also, *Case of Barbosa de Souza et al. v. Brazil*, *supra*, para. 134.

violations and the corresponding perpetrators.”¹⁹¹ Fulfilling this right is in the interests not only of the victims’ families but also of society as a whole, which is thereby aided in the prevention of these kinds of violations in the future.¹⁹²

115. This Court’s case law has also established the autonomy and broad nature of the right to truth, which is not established explicitly in the American Convention but is linked to several of its provisions. Depending on the circumstances of the case, the violation of this right can be related to different rights explicitly established in the Convention,¹⁹³ as is the case with the rights to judicial guarantees and to judicial protection, recognized in Articles 8 and 25 respectively,¹⁹⁴ or the right of access to information, protected by Article 13.¹⁹⁵

116. The violent death of Mr. Sales Pimenta occurred within a context of rampant murders of rural workers and those defending their rights, along with widespread impunity for those kinds of crimes and numerous previous threats against the alleged victim. Consequently, clarification of the facts of the murder and responsibility for it was important not only for the family of Gabriel Sales Pimenta; it also had collective importance, as a failure to clarify the circumstances of Mr. Sales Pimenta’s violent death would have a chilling effect on human rights defenders, rural workers, and society as a whole.

117. Moreover, the Court affirms that impunity prevails in this case to the present day. That is because the circumstances of Gabriel Sales Pimenta’s death were never clarified, despite the identification of three suspects and the existence of two eyewitnesses, as well as other evidence that was available to the state authorities.

118. Almost 40 years after the murder of Gabriel Sales Pimenta, the truth about what happened has not been ascertained, despite an abundance of evidence and the State’s duty to exercise enhanced due diligence to investigate the events of this case. The Court thus finds that Brazil has violated the right to truth to the detriment of Mr. Sales Pimenta’s family.

b.4 Conclusion

119. The serious shortcomings in the State’s investigation of the death of Gabriel Sales Pimenta identified in this chapter constituted a failure to fulfill the duty to exercise enhanced due diligence to investigate crimes committed against human rights defenders, as well as a flagrant violation of the right to a reasonable timeframe. Moreover, the Court affirms that impunity prevails in this case to the present day. That is because the circumstances of Gabriel Sales Pimenta’s death were never clarified, despite the identification of three suspects and the existence of two eyewitnesses, as well as other evidence that was available to the state authorities. Brazil was unable to identify Mr. Sales Pimenta’s shooter or punish all those responsible.

120. In view of the above considerations, the Court concludes that this case is situated within a context of structural impunity characterized by threats, murders, and other human rights violations against rural workers and those defending them in the state of Pará (*supra* paras. 47 to 51). That structural impunity is also reflected in the failure to exercise due diligence, as shown in the analysis of this case. Indeed, the record shows that the gross negligence of judicial authorities in the criminal

¹⁹¹ Cf. *Case of Gómez Palomino v. Peru*, *supra*, para. 80; *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations, and costs*. Judgment of May 25, 2010. Series C No. 212, para. 206; and *Case of Villaseñor Velarde et al. v. Guatemala. Merits, reparations, and costs*. Judgment of February 5, 2019. Series C No. 374, para. 110.

¹⁹² *Mutatis mutandis Case of Gómez Palomino v. Peru*, *supra*, para. 78.

¹⁹³ Cf. *Case of Trujillo Oroza v. Bolivia*, *supra*, para. 100, and *Case of Maidanik et al. v. Uruguay*, *supra*, para. 176.

¹⁹⁴ Cf. *Case of Velásquez-Rodríguez v. Honduras. Merits*, para. 181, and *Case of Maidanik et al. v. Uruguay*, *supra*, para. 176.

¹⁹⁵ The Court sees no reason to analyze Article 13 of the American Convention in this case, as none of the elements of the factual framework established by the Commission relate to access to information.

proceedings, which allowed the case to lapse under the statute of limitations, was the decisive factor that gave rise to the complete and ongoing impunity in the case.

121. For all of the reasons discussed in this chapter, the Court finds that the State of Brazil violated the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25 of the American Convention, in conjunction with Article 1(1), to the detriment of Maria da Glória Sales Pimenta, Geraldo Gomes Pimenta, Sérgio Sales Pimenta, Marcos Sales Pimenta, José Sales Pimenta, Rafael Sales Pimenta, André Sales Pimenta, and Daniel Sales Pimenta. The Court further concludes that the State violated the right to truth, to the detriment of the aforementioned relatives of Mr. Sales Pimenta, by violating Articles 8(1) and 25(1) of the American Convention on Human Rights, in conjunction with its Article 1(1).

VIII-2 RIGHT TO PERSONAL INTEGRITY, IN CONJUNCTION WITH THE DUTY TO RESPECT AND ENSURE RIGHTS¹⁹⁶

A. Arguments of the parties and of the Commission

122. The **Commission** asserted that the loss of a loved one in a context of violence, in combination with the impunity resulting from a lengthy trial, constitutes a violation of the psychological and emotional integrity of Gabriel Sales Pimenta's family members.

123. The **representatives** argued that the State violated the right to personal integrity of Gabriel Sales Pimenta's family because of the suffering caused by his murder, the failure to adequately investigate the murder and prosecute those responsible, and the resulting impunity. They noted that over the 23 years of the criminal trial, these relatives felt distraught, frustrated, powerless, angry, unsafe, and hopeless. The father and (now deceased) mother of Mr. Sales Pimenta "completely changed in temperament and lost all joy in life."

124. The **State** argued that the alleged violation for the murder of Mr. Sales Pimenta is outside the *ratione temporis* jurisdiction of the Court. It asserted that with respect to the failure to adequately investigate the crime and punish those responsible, one cannot base a finding of a lack of judicial protection on "mere" assumptions in order to frame it as a supposed violation of Article 5 of the American Convention. It added that if the lack of judicial protection is not established in that article, the article cannot be applied in this specific case. It also reiterated that throughout the trial, it acted appropriately in terms of issuing orders, accusations, instructions, and decisions. Furthermore, the search for the suspects in contempt of court did not cause unjustified delays in the criminal or civil proceedings, as the delays were caused by adverse circumstances. The State also noted the need for indirect relatives, identified as alleged victims, to prove the harm to their personal integrity, and it requested that the body of evidence be analyzed to that end.

B. Considerations of the Court

125. The Court has held on several occasions that family members of the victims of human rights violations can be victims in their own right.¹⁹⁷ The Court has considered that it is possible to declare the violation of the right to mental and moral integrity of "direct family members" of victims and other individuals with close ties to those victims, owing to the additional suffering they have experienced as a result of the particular circumstances of the violations perpetrated against their loved ones and due to the subsequent acts or omissions of state authorities in relation to those

¹⁹⁶ Articles 1(1) and 5 of the American Convention.

¹⁹⁷ Cf. *Case of Castillo Páez v. Peru. Merits. Judgment of November 3, 1997*. Series C No. 34, fourth operative paragraph, and *Case of Maidanik et al. v. Uruguay, supra*, para. 185.

events,¹⁹⁸ taking into account, among other matters, the steps taken to obtain justice and the existence of a close family relationship.¹⁹⁹

126. Bearing that in mind, the body of evidence in this case shows that Gabriel Sales Pimenta's family followed the criminal trial for his murder and were actively involved as "assistants of the prosecution"²⁰⁰ from the beginning, and that they made efforts in support of the trial's progress and conclusion. As has been noted previously, despite their efforts, the trial lasted almost 24 years, only to end with a termination of criminal liability under the statute of limitations for the only surviving defendant. Moreover, it has been shown that the length of the investigations and criminal trial, the lack of a conviction of anyone responsible for the violent death, and the failure to exercise due diligence caused those family members pain and suffering that harmed their psychological and emotional integrity. The absolute impunity that prevails for the murder of Gabriel Sales Pimenta is a primary cause of the harm to the personal integrity of each member of his family.

127. Rafael Sales Pimenta, brother of Mr. Sales Pimenta, was particularly involved in following the investigations. He noted the close ties of affection and "mutual support" that existed between him, his six brothers, and their parents.²⁰¹ He emphasized that he and his brothers had had "a very nice, wonderful childhood" and that their relationship with Gabriel Sales Pimenta was excellent. He saw Mr. Sales Pimenta as an example for him and believed his brothers did as well.²⁰² Regarding the harm experienced by him and his family due to the State's shortcomings in the criminal and civil proceedings in this case, as well as by the ongoing impunity, Rafael Sales Pimenta stated that

It affected us deeply [...], and it still does. It affects all of us without exception. My parents didn't see life the same way anymore; they no longer had any hope that those responsible would be punished in this life through the legal system, and each of the brothers, with our different personalities, experienced these challenges for the rest of our lives.²⁰³

[...] we've been seeking justice for 40 years. July 18 is the 40th anniversary of his murder, and the State of Brazil has done nothing about it.²⁰⁴

128. Sérgio Sales Pimenta²⁰⁵, Marcos Sales Pimenta²⁰⁶, André Sales Pimenta,²⁰⁷ and Daniel Sales Pimenta²⁰⁸ also described affectionate relationships between them and their brother Gabriel. The Court was able to observe the involvement of each of them in the events described in this case and the pain and suffering it caused them.

129. Daniel Sales Pimenta described feeling powerless whenever he received news of the criminal proceedings.²⁰⁹

¹⁹⁸ Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations, and costs*. Judgment of November 2, 2021. Series C No. 441, para. 262.

¹⁹⁹ Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 163, and *Case of Manuela et al. v. El Salvador, supra*, para. 262.

²⁰⁰ Article 268 of the Brazilian Criminal Code establishes that the victim or their legal representative, as well as others, can participate in the criminal trial to support the Public Prosecutor's Office. Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/decreto-lei/del3689.htm.

²⁰¹ Cf. Statement of Rafael Sales Pimenta during the public hearing of this case.

²⁰² Cf. Statement of Rafael Sales Pimenta during the public hearing of this case.

²⁰³ Cf. Statement of Rafael Sales Pimenta during the public hearing of this case.

²⁰⁴ Cf. Statement of Rafael Sales Pimenta during the public hearing of this case.

²⁰⁵ Cf. Statement of Sérgio Sales Pimenta, (evidence file, folios 6671–6672).

²⁰⁶ Cf. Statement of Marcos Sales Pimenta (evidence file, folio 6682).

²⁰⁷ Cf. Statement of André Sales Pimenta, (evidence file, folio 6697).

²⁰⁸ Cf. Statement of Daniel Sales Pimenta, (evidence file, folios 6710–6711).

²⁰⁹ Cf. Statement of Daniel Sales Pimenta, (evidence file, folio 6776).

130. André Sales Pimenta told of creating a website with clippings and other materials on the life of Gabriel Sales Pimenta, but he abandoned it when he saw that progress was not being made in the criminal trial. He said he would get very frustrated with every setback in the criminal trial, that he was losing hope, and that today he feels extremely frustrated. He also emphasized that his brother José Sales Pimenta had followed the trial more closely at first.²¹⁰

131. Regarding the impact on the family of Gabriel Sales Pimenta, expert witness Cristina Barros Mauer concluded that his father, Geraldo Gomes Pimenta (now deceased) “retreated for the rest of his life, becoming less sociable and less communicative,” while in the case of his mother, Maria da Glória Sales Pimenta (also deceased now), though she was unable to attend her son’s burial due to her immense pain, after “the death of Gabriel, [...] she redoubled her efforts, and she spent the rest of her life committed to fighting to hold those guilty of murdering her son accountable and also fighting for human rights.”²¹¹ Both of Gabriel Sales Pimenta’s parents died without having received resolution from the State concerning the murder of their son or reparation for the State’s failures.

132. Regarding the ongoing impunity in the case, Marcos Sales Pimenta asserted that:

Everyone behaves in their own way, but the feeling we all had in common was a sense of indignation. First because he died, second because he died in that way, third because of the impunity. So this pain, this distress it causes us [...] That is what we felt and what we still feel today.²¹²

133. The expert opinion provided by Ms. Barros Mauer corroborated the statements of Gabriel’s brothers inasmuch as the expert concluded, *inter alia*, that:

the effects of the trauma the family members experienced persisted, changing the course of each of their lives. Moreover, with regard to state actions, the family remained in the same situation faced by many other families affected by human rights violations: waiting for decades for a response from their country’s legal authorities.²¹³

134. For all of the reasons discussed above, the Court finds that the State violated the rights to personal integrity established in Article 5(1) of the American Convention, in conjunction with Article 1(1), to the detriment of Maria da Glória Sales Pimenta, Geraldo Gomes Pimenta, Sérgio Sales Pimenta, Marcos Sales Pimenta, José Sales Pimenta, Rafael Sales Pimenta, André Sales Pimenta, and Daniel Sales Pimenta.

IX REPARATIONS

135. Pursuant to the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to remedy it adequately, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on state responsibility.²¹⁴

136. Remedying the harm produced by the infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in restoring the prior situation. When this is not feasible, as in the majority of cases of human rights violations, this Court will determine measures to guarantee the violated rights and to remedy the consequences of those violations.²¹⁵ Therefore, the Court has found it necessary to grant various measures of reparation in

²¹⁰ Cf. Statement of André Sales Pimenta, (evidence file, folio 6702).

²¹¹ Cf. Expert opinion of Cristina Mair Barros Mauer on March 8, 2022 (evidence file, folio 7277).

²¹² Cf. Statement of Marcos Sales Pimenta in the public hearing on March 22, 2022 (evidence file, folio 6692).

²¹³ Cf. Expert opinion of Cristina Mair Barros Mauer, *supra* (evidence file, folio 7280).

²¹⁴ Cf. *Case of Velásquez-Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 24 and 25, and *Case of Pavez Pavez v. Chile, supra* para. 161.

²¹⁵ Cf. *Case of Velásquez-Rodríguez v. Honduras, supra*, para. 26, and *Case of Pavez Pavez v. Chile, supra* para. 162.

order to redress the harm comprehensively; thus—in addition to pecuniary compensation—measures of restitution, rehabilitation, and satisfaction, as well as guarantees of non-repetition, are especially important to redress the harm caused.²¹⁶

137. This Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the harm proven, and the measures requested to redress the harm. Accordingly, the Court must analyze all of these factors in order to rule appropriately and in keeping with the law.²¹⁷

138. Bearing in mind the violations of the American Convention declared in the previous chapters, and in light of the standards established in the Court's case law regarding the nature and scope of the obligation to make reparations,²¹⁸ the Court will analyze the petitions of the Commission and the representatives, as well as the arguments of the State, to establish below the measures of reparation for those violations.

A. Injured Party

139. Pursuant to Article 63(1) of the Convention, the Court holds that an injured party is anyone who has been declared a victim of the violation of any right recognized in the Convention. Accordingly, the Court considers Geraldo Gomes Pimenta,²¹⁹ Maria da Glória Sales Pimenta,²²⁰ Sérgio Sales Pimenta, Marcos Sales Pimenta, José Sales Pimenta,²²¹ Rafael Sales Pimenta, André Sales Pimenta, and Daniel Sales Pimenta to be injured parties who, as victims of the violations declared in chapter VIII, will be the beneficiaries of the reparations the Court orders.

B. Obligation to investigate the facts and identify, prosecute, and, as appropriate, punish those responsible

140. The **Commission** asked the Court to order the State to conduct and conclude the investigation diligently and effectively within a reasonable period of time in order to thoroughly clarify the events, identify all material and intellectual responsibility at all levels of decision-making and enforcement, impose the punishments that correspond to the human rights violations, and take all relevant steps to protect the witnesses and other participants in the proceedings, if necessary. The Commission stated that an expiration of the statute of limitations for the actions and alleged omissions of the State cannot be invoked to justify the State failing to take these measures.

141. The **representatives** asked the Court to order the State to (i) investigate the facts within a reasonable timeframe through impartial and independent institutions with jurisdiction and to investigate all those who participated directly or indirectly in the threats against Gabriel Sales Pimenta or his murder (perpetrators, conspirators, and accomplices), identifying, investigating, and prosecuting the suspects; (ii) investigate and eventually punish those who perpetuated impunity by being careless, negligent, or lenient in their duties to investigate and punish those responsible for the murder; (iii) take all measures to protect the witnesses and others as necessary; and (iv) ensure that at all stages of the proceedings the relatives of Gabriel Sales Pimenta have access and the ability to act. The representatives also asked the Court to remind the State that the concept of a statute of

²¹⁶ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79–81, and *Case of Pavez Pavez v. Chile*, *supra* para. 162.

²¹⁷ Cf. *Case of Ticona Estrada v. Bolivia. Merits, reparations, and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Pavez Pavez v. Chile*, *supra* para. 163.

²¹⁸ Cf. *Case of Velásquez-Rodríguez v. Honduras. Reparations and costs*, *supra*, para. 25 and 26, and *Case of Pavez Pavez v. Chile*, *supra* para. 164.

²¹⁹ Deceased prior to the submission of the case to the Court.

²²⁰ Deceased prior to the submission of the case to the Court.

²²¹ Deceased prior to the submission of the case to the Court.

limitations does not preclude taking these measures. Lastly, they asked the Court to order the State to disseminate broadly the results of the investigations in order to inform Brazilian society.

142. The **State** asserted that the alleged threats against Gabriel Sales Pimenta and his death are outside the temporal jurisdiction of the Court. It stated that because the statute of limitations was applied in accordance with the American Convention as well as with domestic law, not applying it would be inappropriate. It added that no negligent or careless acts by agents of the State have been confirmed and that, on the contrary, all procedures were followed rigorously in an effort to identify those responsible and punish them.

143. The **Court** recalls that this case concerns the violent death of a human rights defender who fought for the land rights of rural workers, in a context of structural impunity for violent deaths of human rights defenders. In this case, it is clear that the gross negligence of judicial officials, who failed to carry out a serious, effective investigation to determine what really happened to Mr. Sales Pimenta, turned the passage of time into a tool for impunity, as it allowed the statute of limitations to be applied (*supra* paras. 103, 104, and 120).

144. The Court reiterates that States have a duty to exercise enhanced due diligence for the violent deaths of human rights defenders because these defenders play a vital role for democracy. In this case, the proceedings were not conducted with enhanced due diligence—quite the opposite. The gross negligence of judicial officials allowed absolute impunity to prevail, as it did in the broader context at the time.

145. The Court has noted the context of structural impunity with respect to violence against human rights defenders of rural workers. It therefore deems it appropriate to order the State to create a working group to identify the causes and circumstances that give rise to that impunity and to develop lines of action aimed at rectifying them.

146. The working group shall be composed of five experts with the technical skills, moral suitability, and specific knowledge to carry out this work. One of them shall be a member of the National Council of Justice; this individual shall coordinate the group and facilitate its logistical operations. For the purpose of selecting the other four members, the State and the representatives shall within six months of the notification of this judgment provide the Court with a list of four independent experts. The Court will select two from each of these lists. The working group will be funded by the State. To carry out its work, the group will consult public bodies, academic institutions, and civil society organizations that can provide information for its report. The State shall ensure full access to all information the working group needs to carry out its task. The working group will have a consultative role, guiding and complementing the activities of government bodies, not usurping government functions.

147. The group shall have two years, counted from the date of its formation, to deliver a final report to the Court. That report shall be public and made available to government bodies and civil society.

C. Measure of rehabilitation

148. The **Commission** asked the Court to order the State to provide the physical and mental health services necessary for the rehabilitation of Gabriel Sales Pimenta's family members, should they so desire, and "with their agreement."

149. In their final written arguments, the **representatives** asked that the State be ordered to ensure access to medical and psychological care specific to the kind "of trauma the victims experienced," should the victims so desire and for the length of time deemed necessary on the basis of individual evaluations, and to provide the necessary medications and treatments.

150. The **State** asserted that the alleged victims already have access to free health care near where they live that meets their specific needs, as required by domestic law. It noted that the representatives did not indicate that the alleged victims have any difficulties or have sought care and that, in fact, during the stage of compliance with the Commission's recommendations, the representatives reported that the alleged victims did not have specific needs.

151. The **Court** observes that in their pleadings and motions brief, the representatives did not make any mention of the victims needing a measure of rehabilitation. However, as the Commission requested measures of rehabilitation, and those family members identified as victims experienced or are experiencing additional suffering due to the impunity caused by the State's acts and omissions in its response to the murder of Gabriel Sales Pimenta (*supra* paras. 126–133), the Court finds it appropriate to order the State to provide free psychological and/or psychiatric treatment immediately, appropriately, and effectively through its specialized institutions to any of Mr. Sales Pimenta's brothers named in this judgment who desire it. In addition, the treatments shall be provided, to the extent possible, at locations that are closest to their places of residence and for the length of time necessary, and they shall include the provision of any necessary medications. In the provision of treatments, the particular circumstances and needs of each victim shall be taken into consideration, as well as the desires of the victim and the findings of an initial evaluation.²²²

152. The beneficiaries have a period of six months from the notification of this judgment to inform the State of their intention to receive psychological and/or psychiatric treatment.²²³ If they do not do so, the State will be under no obligation to comply with this measure of rehabilitation. The State, for its part, shall have a maximum of six months from its receipt of any such request to diligently provide the care requested.

D. Measures of satisfaction

153. The **Commission** requested measures of satisfaction for the pecuniary and non-pecuniary damage caused.

154. The **representatives** requested that the Court order the State to take the following measures: (i) hold a public event to acknowledge international responsibility and issue a public apology—noting the State's international responsibility for actions as well as for inaction, especially for the denial of justice—organized with the participation of the victims and including the presence of high-level public officials and civil society leaders involved in combating violence, and publicize the event through the national media to ensure that victims who cannot travel to it have the opportunity to participate; (ii) publish the chapters of this judgment that include the facts, the merits, and the operative paragraphs in a national newspaper and the full text of the judgment on the website of the Public Prosecutor's Office and the judiciary; (iii) name two plazas after Gabriel Sales Pimenta—one in the municipality of Marabá in the state of Pará and the other in Juiz de Fora in the state of Minas Gerais—and place busts of Gabriel Sales Pimenta with a bronze plaque detailing his life in each of them; (iv) change the name of M.C.N. municipal school to Gabriel Sales Pimenta, place a bronze plaque on the front of the school explaining the change and detailing the life of Mr. Sales Pimenta, and refrain from naming any new public places after M.C.N.; and (v) build a public memorial in the city of Juiz de Fora, with the consent of Gabriel Sales Pimenta's family, in which the activism of Brazilian human rights defenders such as Gabriel Sales Pimenta is valued, protected, and preserved.

²²² Cf. *Case of Kawas Fernández v. Honduras. Merits, reparations, and costs*. Judgment of April 3, 2009. Series C No. 196, para. 209, and *Case of Maidanik et al. v. Uruguay, supra*, para. 227.

²²³ Cf. *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations, and costs*. Judgment of August 31, 2010. Series C No. 216, para. 253, and *Case of Maidanik et al. v. Uruguay, supra*, para. 229.

155. Subsequently, in their final written arguments, the representatives stated that some of Gabriel Sales Pimenta's family members had asked that in the city of Marabá in the state of Pará a monument be erected to Gabriel Sales Pimenta "and other human rights defenders" and that a film or documentary be made on the "life and struggle" of Gabriel Sales Pimenta.

156. The **State** argued that implementation of the requested measures would be "excessively intrusive." It also noted that because it had committed no human rights violations related to the facts of this case, there was no reason for the Court to order the measures requested.

D.1 Publication of the judgment

157. As it has done in other cases,²²⁴ the Court orders the State to publish, within six months of notification of this judgment, in a legible and appropriate font size: (a) the official summary of this judgment prepared by the Court, once, in the official gazette of Brazil and the official gazette of the state of Pará; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with broad circulation; and (c) this judgment in its entirety, available for at least one year, on an official website of the State, in a manner accessible to the public from a banner on the home page of the websites of the federal government, the Public Prosecutor's Office, and the judiciary of the state of Pará. The State shall immediately inform this Court once it has issued each of the publications ordered, regardless of the one-year timeframe to present its first report as indicated in operative paragraph 19 of this judgment.

D.2 Public event acknowledging international responsibility

158. In order to make reparation for the harm caused to the victims and to prevent such acts from recurring, especially given the chilling effect that can result from the murder of one human rights defender and from impunity for that crime, the Court deems it necessary to order the State to carry out a public event acknowledging international responsibility for the events of this case, within a year of the notification of this judgment. This event shall make reference to the human rights violations declared in paragraphs 119 and 120 of this judgment. It shall "expressly [acknowledge] the work

of human rights defenders, and explicitly [condemn] any type of attacks or crimes committed against them,"²²⁵ and also underscore the obligation of enhanced due diligence for all government authorities charged with preventing, investigating, prosecuting, and punishing those responsible for threatening, harassing, or murdering human rights defenders. This event shall consist of a public ceremony in the presence of the victims identified in this judgment, if they so desire, as well as high-level officials of the state of Pará and the federal government. The local and federal governments will decide who will be responsible for carrying out this task. Furthermore, the State shall invite civil society organizations involved in the fight against agrarian violence in Brazil.²²⁶ The State shall consult with the victims and/or their representatives ahead of time to agree upon the date, location, and modalities of the event.²²⁷

²²⁴ Cf. *Case of Canales Huapaya et al. v. Peru. Preliminary objections, merits, reparations, and costs*. Judgment of June 24, 2015. Series C No. 296, para. 152, and *Case of Pavez Pavez v. Chile, supra*, para. 168.

²²⁵ Cf. *Case of Digna Ochoa and family members v. Mexico, supra*, para. 170.

²²⁶ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs, supra*, para. 81, and *Case of Pavez Pavez v. Chile, supra* para. 172.

²²⁷ Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations, and costs*. Judgment of November 23, 2009. Series C No. 209, para. 353, and *Case of Pavez Pavez v. Chile, supra* para. 173.

159. Moreover, with the aim of raising awareness in order to prevent the recurrence of harmful acts like the crime in this case, the Court orders the State to publicize this event through open, national television media and on the social media of an official body of the state of Pará.²²⁸

D.3 Memorials

160. It has been requested in this case that the State be ordered to name two plazas after Gabriel Sales Pimenta and create a public memorial to value, protect, and preserve the activism of human rights defenders in Brazil, including Gabriel Sales Pimenta (*supra* para. 154).

161. This Court holds that memorials help prevent the repetition of harmful acts and keep the memory of victims alive.²²⁹ Furthermore, the Court agrees with the expert opinion in this case²³⁰ that these measures serve to “preserve and celebrate” the work of human rights defenders and that they also have the potential to educate people about the importance of that work. In this case, because of the context of violence and impunity related to land struggles in Brazil, memorials also have a role to play in raising awareness in society as a whole about this situation.

162. Accordingly, the Court orders the State to do the following within one year: (1) name a plaza in the municipality of Marabá in the state of Pará after Gabriel Sales Pimenta. In a visible location within that plaza, a bronze plaque shall be placed with the full name of Gabriel Sales Pimenta and a brief description of his life. The brief biographical description shall be written with the prior input and agreement of the victims and/or their representatives, and (2) create a public memorial in the city of Juiz de Fora, with the consent of Gabriel Sales Pimenta's family, to value, protect, and preserve the activism of human rights defenders in Brazil, including that of Gabriel Sales Pimenta.

163. In the event that the parties do not come to an agreement on the content and length of the biographical descriptions on the plaques, the Court shall write them in accordance with the facts proven in this judgment.

D.4 Other measures of satisfaction requested

164. The Court considers this judgment, as well as the other measures ordered, to be sufficient and appropriate for remedying the violations suffered by the victims. It therefore does not consider it necessary to order the additional measures of satisfaction requested by the representatives.²³¹

165. The Court notes that the measures of satisfaction first requested by the representatives in their final written arguments²³² cannot be admitted as they were untimely. Accordingly, the Court will not rule on them.

E. Guarantees of non-repetition

²²⁸ See, for example, *Case of the Miguel Castro-Castro Prison v. Peru. Merits, reparations, and costs*. Judgment of November 25, 2006. Series C No. 160, para. 445, and *Case of Pavez Pavez v. Chile. Merits, reparations, and costs*. Judgment of February 4, 2022. Series C No. 449, para. 173.

²²⁹ Cf. *Case of the 19 Merchants v. Colombia. Merits, reparations, and costs*. Judgment of July 5, 2004. Series C No. 109, para. 273.

²³⁰ Cf. Expert opinion of Laurel E. Fletcher on March 4, 2022 (evidence file, folio 7342).

²³¹ The other measures requested (*supra* para. 154) were: (i) name a plaza in the municipality of Juiz de Fora in the state of Minas Gerais after Gabriel Sales Pimenta; (ii) place a bust of Gabriel Sales Pimenta in each of the two plazas to be named after Gabriel Sales Pimenta, in Juiz de Fora and Marabá; (iii) change the name of M.C.N. municipal school to Gabriel Sales Pimenta and refrain from naming new public places after M.C.N.

²³² Those measures were: (i) erect in the city of Marabá a monument to Gabriel Sales Pimenta “and other human rights defenders,” and (ii) make a film or documentary on the “life and struggle” of Gabriel Sales Pimenta.

166. The **Commission** asked the Court to order the State to (i) strengthen the Human Rights Defenders Protection Program, focusing on the prevention of acts of violence against human rights defenders working on behalf of rural workers in Brazil; (ii) carry out an independent, rigorous, candid assessment of the situation of human rights defenders in the context of land conflicts with the aim of adopting structural measures to enable the detection and eradication of sources of risk to the defenders. This assessment is to include, among other elements, an analysis of the unequal distribution of land as a structural cause of the violence; and (iii) improve its ability to investigate crimes against human rights defenders.

167. The **representatives** asked the Court to order the State to (i) develop a national protocol of due diligence for the investigation of crimes against human rights defenders, which should comprehensively regulate the actions of bodies involved in the investigation of crimes against human rights defenders, including the Public Prosecutor's Office, the police, and the judiciary, with the aim of responding appropriately and quickly to such crimes. It should also consider the participation of civil society; (ii) create an information system on violations of the rights of human rights defenders with specific, detailed information on official responses; (iii) create specialized units within offices of the prosecutor general at both the federal and state levels; (iv) create a "Commission to Combat Violence against Human Rights Defenders" that has a diverse membership and that makes information on its cases and activities available to the public; and (v) carry out training sessions for officials responsible for investigating violations against human rights defenders with the aim of fostering due diligence in those investigations. Moreover, in an effort to facilitate due diligence in its conduct, it should promote a course on the protection of human rights defenders, including those defending land rights. The representatives also supported the Commission's request that the Human Rights Defenders Protection Program be strengthened. Specifically, they requested the "formalization" of that program as a public policy, and that it involve civil society participation and have an "appropriate budget sufficient for the other states" of Brazil.

168. The **State** asserted that it is already firmly committed to protecting human rights defenders. It stated that there is an official structure to protect them and to combat rural conflict and violence. Specifically, it noted (i) the Program for the Protection of Human Rights Defenders, Activists, and Environmentalists, which it stated is compliant with the Constitution of the Federative Republic of Brazil and the American Convention and rests on a public policy of the State (Decree 6.044); (ii) institutions related to "combating rural conflict and violence," such as the Institute for Applied Economic Research and the National Institute for Settlement and Agrarian Reform; (iii) in the state of Pará specifically, an ombudsman for agrarian issues,²³³ "commissions specialized in agrarian conflict," five specialized units of the civil police for rural conflicts, the Commission for the Mediation of Land Conflicts, and the Land Registry System; and (iv) projects such as the National Ballistic Analysis System. Furthermore, in its final written arguments, it noted the existence of the National Prison Monitoring Database, the budgetary execution level for the Human Rights Defenders Protection Program, as well as its composition, the number of individuals helped, and the ways civil society could be involved in its implementation.

E.1 National protocol of due diligence for the investigation of crimes against human rights defenders

169. In chapter VIII-1 of this judgment, the Court noted that the criminal proceedings were stalled at different points due to the inertia of state authorities, and it concluded that Brazil did not make a full effort within a reasonable timeframe to enable a swift determination of the truth and the identification and punishment of all those responsible, including pursuing and capturing the defendants in order to put them on trial. The Court also observed that this case is situated within a

²³³ "Ouvidoria Agrária" in Portuguese.

context of impunity (*supra* para. 51) that persists to this day,²³⁴ in addition to the context of violence and murders against human rights defenders, particularly in the area of rural conflicts. In this regard, expert witness Carlos Eduardo Gaio asserted that:

In the last 20 years of available data, from 2001–2020, the context of violence and murder remained constant or worsened in some periods. During that period, 269 murders of land rights defenders were documented in the state of Pará alone, out of a total of 762 activists murdered in the entire country during the same period. It is undoubtedly the state in which the lives of rural workers and human rights defenders are most at risk.²³⁵

170. As it has in other cases,²³⁶ the Court deems it necessary for the State to create and implement nationally, within three years, a unified, comprehensive protocol of investigation focused specifically on crimes against human rights defenders, which takes into account the risks inherent in their work. This initiative will ultimately help improve access to justice,²³⁷ in light of the context of impunity for murders of human rights defenders in Brazil (*supra*, para. 51). To that end, this protocol shall (i) follow due diligence principles to identify all those responsible for such crimes and follow the guidelines that “complement and reinforce due diligence in the investigation of human rights violations against human rights defenders” established by Special Rapporteur on the situation of human rights defenders, Michel Forst;²³⁸ (ii) set clear and uniform criteria for investigations; (iii) include parameters for all investigatory stages; (iv) comprehensively regulate the specific functions and responsibilities of the Public Prosecutor’s Office, the police, the judiciary, expert institutes, and other bodies involved in the investigation of serious human rights violations; and it shall also give consideration to:

- 1) The concept of a human rights defender;
- 2) Standards on the development of investigatory tools for due diligence, including international best practices and due diligence standards according to the type of crime (for example, extrajudicial killings, murders, torture, threats, etc.);
- 3) The risks inherent to the work of defending human rights in Brazil, including regional specifics;
- 4) The context in which human rights defenders work and the interests they challenge in the country and in each region;
- 5) The existence of threat patterns and any methods used to frighten, threaten, intimidate, or attack human rights defenders in their work;
- 6) Criteria and techniques for investigating whether the criminal acts are related to the work of the human rights defenders;

²³⁴ According to the Institute for Applied Economic Research, “the institutional roots of rural violence in Brazil—profound social and economic inequality between rural and urban areas, a high concentration of land ownership, a lack of mechanisms for mediating and resolving rural conflicts, and high levels of impunity for crimes against traditional communities, rural workers, and small farmers—have persisted throughout the country’s history and remain entrenched to this day.” Institute for Applied Economic Research. *Atlas da Violência no Campo no Brasil: Condicionantes socioeconômicos e territoriais*. Brasília, 2020, p.10. Available in Portuguese at: https://ipea.gov.br/portal/images/stories/PDFs/relatorio_institucional/200717_relatorio_institucional_atlas_da_violencia.pdf. See also expert opinion of Carlos Eduardo Gaio, *supra* (evidence file, folios 7287 and 7295–7296).

²³⁵ Cf. Expert opinion of Carlos Eduardo Gaio, *supra* (evidence file, folio 7293).

²³⁶ See, for example: *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations, and costs*. Judgment of March 25, 2017. Series C No. 334, para. 223–224; *Case of Escaleras Mejía et al. v. Honduras, supra*, para. 102; and *Case of Digna Ochoa and family members v. Mexico, supra*, para. 178 and 179.

²³⁷ Cf. Expert opinion of Laurel E. Fletcher, *supra* (evidence file, folio 7343).

²³⁸ Cf. UN, *Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst*. Doc. A/74/159, July 15, 2019.

- 7) Techniques for investigating the existence and operations of complex criminal structures in the area where human rights defenders work, as well as an analysis of any other powerful non-state groups;
- 8) Techniques for investigating responsibility for committing and planning crimes;
- 9) Gender and ethnicity perspectives in the investigation of crimes, as well as the elimination of stereotypes and stigmas.

171. This protocol shall be geared toward personnel involved in the administration of justice who are in any way involved in the investigation and processing of cases of crimes against human rights defenders. It shall also be integrated into the work of those officials through internal instructions and rules that are mandatory for all public officials.²³⁹

172. In addition, the State shall implement a training plan based on that protocol for personnel involved in the investigation and processing of cases of crimes against human rights in the state of Pará, and create a system of indicators to measure the protocol's effectiveness and to document a substantive reduction in impunity for murders of human rights defenders, with data disaggregated by gender.²⁴⁰ The State has two years from the adoption of the protocol to fulfill this obligation. Once the protocol is adopted, the State shall send a detailed annual report on the training plan and the system of indicators for five years from the date of the release of the first report and its delivery to the Court.²⁴¹

E.2 National public policy for the protection of human rights defenders

173. The Court appreciates the State's creation of institutions and mechanisms for the protection of human rights defenders, particularly in the state of Pará. However, this Court notes with concern that despite that fact, violence against land rights defenders in Brazil and the resulting vulnerability they experience, have remained extremely high since the 1980s²⁴² and that, within this context, the state of Pará is the region with the most murders of human rights defenders over the last 40 years.²⁴³

174. It is worth recalling here the statements made by the brother of Mr. Sales Pimenta during the public hearing that "what we want is for no one else to die," "for no more attorneys to die for their work defending minorities."²⁴⁴ Moreover, as the expert witness Carlos Eduardo Gaio stated with respect to other forms of violence such as death threats, murder attempts, and physical attacks, the situation of violence is similar today.²⁴⁵ For example, he reported that in 2020 alone, in addition to the 18 murders, there were 159 death threats and 35 murder attempts in the country.²⁴⁶

175. In addition, the first framework for the Human Rights Defenders Protection Program was Decree 6.044 from 2007,²⁴⁷ which approved the National Policy for the Protection of Human Rights

²³⁹ Cf. *Case of Barbosa de Souza et al. v. Brazil*, *supra*, para. 201.

²⁴⁰ Cf. *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 179.

²⁴¹ Cf. *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 179.

²⁴² Cf. Amicus brief presented by the Human Rights Clinic of the Federal University of Bahia (evidence file, folio 8237); Amicus brief presented by the Order of Attorneys of Brazil, Minas Gerais section (evidence file, folios 7721-7725); Amicus brief presented by the Union of Attorneys of Brazil, Minas Gerais section (evidence file, folio 7746).

²⁴³ Expert opinion of Carlos Eduardo Gaio, *supra* (evidence file, folio 7295).

²⁴⁴ Cf. Statement of Rafael Sales Pimenta during the public hearing on March 22, 2022.

²⁴⁵ Expert opinion of Carlos Eduardo Gaio, *supra* (evidence file, folio 7295).

²⁴⁶ Expert opinion of Carlos Eduardo Gaio, *supra* (evidence file, folio 7295).

²⁴⁷ Cf. Expert opinion of Douglas Sampaio Franco during the public hearing of this case, and Decree 6.044: "National Policy for the Protection of Human Rights Defenders," of February 12, 2007. Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6044.htm.

Defenders. Subsequently, with the directives having been established in that law, the program was created in 2016 through Decree 8.724,²⁴⁸ which was repealed by Decree 9.937 of 2019,²⁴⁹ which was modified by Decree 10.815²⁵⁰ of 2021.²⁵¹ The aforementioned program received the name "Program for the Protection of Human Rights Defenders, Activists, and Environmentalists," and it also has the "Deliberative Council of the Program for the Protection of Human Rights Defenders, Activists, and Environmentalists" within the Ministry of Women, Family and Human Rights.²⁵² That council is a collegial body that includes three civil society representatives. The program "is implemented through an agreement between the federal government and the states," which is valid for three years and can be renewed. The states and the federal government contribute resources for its implementation.²⁵³

176. Regarding the above, it is concerning that according to the information contained in the case file, this program rests on a foundation not of laws in a strict sense but on decrees that can be changed or revoked at any time by the President of the Republic, which could result in a lack of continuity in their implementation.²⁵⁴ Furthermore, this program has a low level of budgetary execution;²⁵⁵ it is implemented unevenly across the different states of Brazil;²⁵⁶ it has restrictive requirements for human rights defenders to receive benefits; and it lacks the equal participation of civil society within the existing deliberative council.²⁵⁷ Regarding the restrictions for defenders to receive benefits, it is important to highlight that the State noted the following:

The PPDDH's method of service provision requires the submission of an application for inclusion by the person who is in a threatening situation. The application must meet certain criteria for the person to receive protection, such as: (a) voluntary inclusion; **(b) representation of an organization and recognition as a legitimate representative of that organization;** (c) relationship between the threat experienced and the applicant's activities as a human rights defender (emphasis added).

177. For the reasons set out above, the State shall review and adjust its existing mechanisms, especially the Program for the Protection of Human Rights Defenders, Activists, and Environmentalists, at both the federal and state levels, so that it is established in and regulated by

²⁴⁸ Cf. Decree 8.725: "National Policy for the Protection of Human Rights Defenders," of April 27, 2016. Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Decreto/D8724.htm.

²⁴⁹ Cf. Decree 9.937: "Program for the Protection of Human Rights Defenders, Activists, and Environmentalists and the Deliberative Council of the Program for the Protection of Human Rights Defenders, Activists, and Environmentalists within the Ministry of Women, Family, and Human Rights," from July 24, 2019. Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Decreto/D9937.htm#art11.

²⁵⁰ Cf. Expert opinion of Douglas Sampaio Franco during the public hearing of this case.

²⁵¹ Since then, at least one ruling has been issued that modified its contents (No. 507 in February of 2022). Cf. Expert opinion of Douglas Sampaio Franco during the public hearing of this case.

²⁵² Cf. Brazilian Committee of Human Rights Defenders. *Vidas em Luta: Criminalização e violência contra defensoras e defensores de direitos humanos no Brasil em 2017*. Rio de Janeiro: Justiça Global, 2018 (evidence file, folio 7147).

²⁵³ Cf. Expert opinion of Douglas Sampaio Franco during the public hearing of this case.

²⁵⁴ Cf. Amicus brief presented by the Human Rights Clinic of the Federal University of Bahia (evidence file, folio 8234–8235).

²⁵⁵ Cf. Brazilian Committee of Human Rights Defenders. *Vidas em Luta: Criminalização e violência contra defensoras e defensores de direitos humanos no Brasil em 2017*. Rio de Janeiro: Justiça Global, 2018 (evidence file, folio 7117); Brazilian Committee of Human Rights Defenders. *Vidas em Luta: Criminalização e violência contra defensoras e defensores de direitos humanos no Brasil*. Período 2018-2020/1. Curitiba: Terra de Direitos, 2020, p. 156. Available in Portuguese at: <https://terradedireitos.org.br/uploads/arquivos/Dossie-Vidas-em-Luta.pdf>; Amicus brief presented by the Human Rights and Environmental Law Clinic at the University of the State of Amazonas (evidence file, folios 7812–7814), Amicus brief presented by the Human Rights and Environmental Law Clinic of the University of the State of Amazonas (evidence file, folio 6730).

²⁵⁶ Cf. Brazilian Committee of Human Rights Defenders. *Vidas em Luta: Criminalização e violência contra defensoras e defensores de direitos humanos no Brasil*. Período 2018-2020/1, *supra*, pp. 153–154; Amicus brief presented by the Human Rights Clinic of the Federal University of Bahia (evidence file, folio 8235).

²⁵⁷ Brazilian Committee of Human Rights Defenders. *Vidas em Luta: Criminalização e violência contra defensoras e defensores de direitos humanos no Brasil em 2017*, *supra* (evidence file, folio 7122).

an ordinary law and takes into account the risks inherent in the work of defending human rights, including at a minimum the following requirements:²⁵⁸

- a) the equal participation of human rights defenders, civil society organizations, and experts in the development of legal frameworks for the protection of this group;
- b) flexible criteria for the inclusion of beneficiaries, taking into account the comments already made by this Court regarding the concept of a human rights defender;
- c) the development of a risk analysis model that adequately determines the risks and protection needs of each defender or group;
- d) the design of protection plans that take into account the risks faced by each defender and the nature of their work;
- e) the promotion of a culture that legitimizes and safeguards the work of human rights defenders; and
- f) the provision of sufficient human and financial resources to address the real protection needs of human rights defenders, as well as proper execution of the allocated budget.

E.3 Data collection and production of statistics

178. The Court considers it necessary to collect comprehensive information on violence against human rights defenders in Brazil in order to determine the true magnitude of this phenomenon and design public strategies and policies for the prevention and eradication of this kind of violence. To that end, as it has in other cases,²⁵⁹ the Court orders the State to design and implement within two years, through the corresponding State entity, a national system to compile data and figures related to cases of violence against human rights defenders in order to precisely and uniformly assess the types, prevalence, trends, and patterns of violence against human rights defenders, disaggregating the data by state, ethnicity, organization, gender, and age. The number of cases prosecuted should also be recorded, specifying the number of indictments, convictions, and acquittals. The State shall publish this information each year in the corresponding report, ensuring that the general public has access to it, while keeping the identity of the victims confidential. The State must present the Court with an annual report detailing the relevant actions taken for five years following the implementation of the data collection system.

E.4 Mechanism for reopening judicial proceedings

179. In the *sub judice* case, as in other cases concerning Brazil,²⁶⁰ the Court has observed the persistence of impunity due to a lack of due diligence on the part of judicial authorities as well as failures to determine criminal responsibility within a reasonable timeframe, which have undoubtedly contributed to criminal cases exceeding the statute of limitations. The authorities failed to fully clarify the circumstances of the crime, identify those responsible, and punish them.

²⁵⁸ Cf. *Case of Human Rights Defender et al. v. Guatemala*, *supra*, para. 263, and *Case of Acosta et al. v. Nicaragua*, *supra*, para. 222.

²⁵⁹ 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. Merits, reparations, and costs*. Judgment of March 26, 2021. Series C No. 422, para. 179.

²⁶⁰ See, for example, *Case of Herzog et al. v. Brazil. Preliminary objections, merits, reparations, and costs*. Judgment of March 15, 2018. Series C No. 353, para. 311–312; *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*, *supra*, paras. 230–231; and *Case of Barbosa de Souza et al. v. Brazil*, *supra*, para. 121–123.

180. Accordingly, without prejudice to the duty of State authorities to comply with the judgments of this Court²⁶¹ and to conduct the respective Convention-based judicial review within its jurisdiction, the Court finds it appropriate to order the State to create within three years a mechanism that follows existing best practices²⁶² for reopening judicial investigations and trials, including those that have exceeded the statute of limitations, when the Court declares in a judgment the State's international responsibility for failing to fulfill its duty to investigate human rights violations with diligence and impartiality.

E.5 Other guarantees of non-repetition requested

181. The Court considers this judgment, as well as the other measures ordered, to be sufficient and appropriate for remedying the violations suffered by the victims. It therefore does not consider it necessary to order the additional measures of non-repetition requested by the representatives.²⁶³

F. Compensation

F.1. Pecuniary and non-pecuniary damage

182. In this section, the Court will analyze pecuniary and non-pecuniary damage jointly.

183. The **Commission** asked the Court to order the State of Brazil to provide monetary compensation for both pecuniary and non-pecuniary damage caused.

184. The **representatives** asked the Court to order the State to pay the alleged victims an amount in equity set by the Court for pecuniary damage. They stated that they had made several trips over

²⁶¹ Article 68 of the American Convention.

²⁶² Some countries of the region have certain kinds of mechanisms that allow judicial proceedings that have reached a final judgment to be reopened on the basis of the decisions of international bodies. For example, in Colombia, the Code of Criminal Procedure (Law 906 of 2004) notes in its Article 192 that a review action is appropriate "(...) When after a judgment in cases of human rights violations or serious infringements of international humanitarian law, an international body responsible for supervision and review of human rights—whose jurisdiction the State of Colombia has formally accepted—issues a ruling declaring the State's conspicuous failure to fulfill its duty to investigate such violations earnestly and impartially. In such cases, it is unnecessary to confirm the existence of new facts or evidence that was unknown at the time of the deliberations." (Available in Spanish at https://leves.co/codigo_de_procedimiento_penal/192.htm) Article 123 of Peru's Constitutional Code of Procedure establishes that the "orders of courts whose jurisdiction the State of Peru has expressly recognized do not require, for their validity or effectiveness, any prior recognition, review, or evaluation. Those orders are communicated by the Ministry of Foreign Affairs to the president of the judiciary, who in turn sends them to the court where domestic remedies had been exhausted and orders the judge with jurisdiction to implement them pursuant to the laws regulating proceedings for the implementation of judgments issued by supranational courts." (available in Spanish at <https://busquedas.elperuano.pe/normaslegales/nuevo-codigo-procesal-constitucional-ley-no-31307-1975873-2/>). In some European countries as well, such as Spain and France, the legal framework includes provisions allowing the reconsideration of a final criminal judgment on the basis of a judgment of the European Court of Human Rights. Article 5 bis of the Spanish Judiciary Act establishes that "an action for review can be brought before the Supreme Court against a final judicial order, in accordance with the procedural rules of each jurisdiction, when the European Court of Human Rights has declared that said order was issued in violation of any of the rights established in the European Convention on Human Rights and Fundamental Freedoms or its protocols, if the nature and seriousness of the violation gives rise to persistent effects that cannot be arrested by any means other than this review" (available in Spanish at <https://www.boe.es/buscar/act.php?id=BOE-A-1985-12666>). Similarly, Article 622-1 of the Code of Criminal Procedure of France establishes that "the reconsideration of a final criminal decision can be requested by any person found guilty of a crime when it results from a judgment issued by the European Court of Human Rights [...]" (available in French at https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071154/LEGISCTA000006138099/#LEGISCTA000029122011). In addition, the German Procedural Code establishes in its Article 359 that the "reopening of a trial that has been closed by final judgment shall be admissible in favor of the convict" when, among other situations: "the European Court of Human Rights has declared a violation of the European Convention on Human Rights and Fundamental Freedoms or its protocols and the judgment is based on that violation." Available at: https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html.

²⁶³ The other measures requested (*supra* para. 167) were: (i) create specialized units within offices of the prosecutor general at both the federal and state levels; (ii) create a "Commission to Combat Violence against Human Rights Defenders" that has a diverse membership and that makes information on its cases and activities available to the public; and (iii) carry out an independent, rigorous, candid assessment of the situation of human rights defenders in the context of land conflicts.

the course of the proceedings in order to participate in them and that they had hired attorneys. They also requested that—because of the emotional impact caused, as well as the suffering, feelings of powerlessness, and other emotional effects of the lack of justice—the State pay each of the alleged victims an amount in equity set by the Court for non-pecuniary damage.

185. The **State** asserted that because it does not bear international responsibility for violating the articles of the Convention, it should not have to compensate the alleged victims. It requested that if it is declared responsible, the Court analyze the requested amount on the basis of evidence that is “actually produced” and that is found in the case file.

186. In its case law, this **Court** has developed the concept that pecuniary damage supposes the loss of, or detriment to, the victims’ income, the expenses incurred as a result of the events, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.²⁶⁴ This Court has also established in its case law that non-pecuniary damage may include both the suffering and affliction caused by the violation and also the impairment of values of great significance to the individuals, as well as any alteration of a non-pecuniary character in the living conditions of the victims or their families.²⁶⁵ In addition, since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, it can only be compensated, for the purposes of comprehensive reparation to the victims, by the payment of a sum of money or the delivery of goods or services with a monetary value determined by the Court in reasonable application of sound judicial criteria and based on equity.²⁶⁶

187. With respect to pecuniary damage, the Court notes that despite the fact that no documentation was provided for expenses, it can be assumed that the family of Gabriel Sales Pimenta, especially his mother Maria da Glória Sales Pimenta and his brother Rafael Sales Pimenta, incurred costs as a result of their participation in the petition for compensation for pain and suffering (*supra* para. 70), the criminal trial (*supra* paras. 62–68), and the proceedings before the National Council of Justice (*supra* para. 69). Accordingly, the Court hereby orders pecuniary damage compensation in equity equivalent to USD 20,000.00 (twenty thousand United States dollars) for Maria da Glória Sales Pimenta, which shall be paid to her heirs pursuant to the inheritance laws in effect in Brazil, USD 30,000.00 (thirty thousand dollars) for Rafael Sales Pimenta, and USD 10,000.00 (ten thousand dollars) for each of the other brothers of Gabriel Sales Pimenta.²⁶⁷

188. Due to the circumstances of this case; the magnitude, nature, and seriousness of the violations committed; the suffering described (*supra* paras. 126–133); and the length of time since the crime was committed, the Court considers it appropriate to order the payment of compensation for non-pecuniary damage to the family of Gabriel Sales Pimenta, which shall include compensation for the impossibility of reopening the criminal investigation of the murder of Mr. Sales Pimenta. The Court therefore orders, in equity, that the State pay compensation for non-pecuniary damage in the amount of USD 50,000.00 (fifty thousand dollars) for Maria da Glória Sales Pimenta, USD 50,000.00 (fifty thousand dollars) for Geraldo Gomes Pimenta—both of which shall be paid to their heirs in accordance with the inheritance laws in effect in Brazil—and USD 30,000.00 (thirty thousand dollars) to each of Gabriel Sales Pimenta’s brothers²⁶⁸ declared victims in this judgment (*supra* para. 139).

²⁶⁴ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Pavez Pavez v. Chile, supra* para. 192.

²⁶⁵ 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 Pavez Pavez v. Chile, supra* para. 197.

²⁶⁶ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs, supra*, para. 53, and *Case of Pavez Pavez v. Chile, supra* para. 197.

²⁶⁷ The amount due to José Sales Pimenta shall be paid to his heirs according to the terms of the inheritance laws in effect in Brazil.

²⁶⁸ The amount due to José Sales Pimenta shall be paid to his heirs according to the terms of the inheritance laws in effect in Brazil.

G. Costs and expenses

189. The **representatives** asked the Court to order the State to pay the following amounts for costs and expenses incurred by the organizations that have defended the victims: (i) USD 15,698.14 (fifteen thousand six hundred ninety-eight dollars and fourteen cents) for travel, meetings, copy services, and fees, to the Center for Justice and International Law, and (ii) USD 5,044.80 (five thousand forty-four dollars and eighty cents) for travel, meetings, and fees, to the Pastoral Land Commission. They also asserted that the State should cover future expenses for the compliance stage of the judgment at both the national and international levels. In addition, they asked the Court for permission to submit at a later date the figures and updated documentation for expenses incurred during proceedings before the Court, and that the judgment stipulate an amount for expenses during the compliance monitoring stage of the judgment.

190. After presenting the pleadings and motions brief, the representatives reported on expenses incurred by the organizations that had defended the victims, the Center for Justice and International Law and the Pastoral Land Commission, between April of 2021 and April of 2022. They stated that the Center for Justice and International Law had incurred expenses totaling USD 12,595.42 (twelve thousand five hundred ninety-five dollars and forty-two cents) for: the presentation of the pleadings and motions brief as well as subsequent briefs, such as observations on the preliminary objections presented by the State; preparation for the hearings held in this case; the collection of statements; and the presentation of expert opinions, their translations, and fees for them. With regard to this last point, they stressed that the “defense work” included a strategy of consistent communication that conveyed information on the case to civil society, restoring the memory of Gabriel Sales Pimenta and his important work of defense in the struggle for land, and publicizing the public hearing held for this case. With respect to the Pastoral Land Commission, they stated that it had incurred total expenses of USD 2,616.65 (two thousand six hundred sixteen dollars and sixty-five cents) for travel, meetings, and fees for two attorneys hired in January and April of 2022.

191. In sum, the representatives requested a payment of USD 28,293.56 (twenty-eight thousand two hundred ninety-three dollars and fifty-six cents) to the Center for Justice and International Law and USD 7,661.45 (seven thousand six hundred sixty-one dollars and forty-five cents) to the Pastoral Land Commission.

192. The **State** asked that the Court only take into account the amounts requested, the supporting documentation, and a direct relationship between the requests and the circumstances of the case. It also asked the Court to “objectively verify the work done jointly or by the representatives and for which reimbursement of costs is requested—development of the brief with pleadings, motions, and evidence as well as the final written arguments—to prevent the duplication of reimbursements resulting in disproportionate payments for Brazil.” Brazil also argued that with respect to expenses for fees and travel, there is no exclusive or necessary connection between the work of the Center for Justice and International Law and the case, as that organization had unilaterally established approximate percentages of activity to allocate to the case, and the travel expenses enumerated and whose reimbursement is requested do not appear to be related exclusively to the work of the Center for Justice and International Law on this case. Lastly, it asserted that the expenses related to “communication” should not be covered by the State, as they are not essential for processing the case.

193. The **Court** recalls that, pursuant to its case law, costs and expenses are part of the concept of reparation in all cases in which the efforts of the victims in seeking justice, both nationally and internationally, entail expenditures that must be compensated for when the international responsibility of the State is declared in a condemnatory judgment. With respect to reimbursement for costs and expenses, it is the Court’s responsibility to prudently assess their scope, which includes expenses incurred before domestic legal authorities, as well as those incurred in the course of the trial before the inter-American system, keeping in mind the circumstances of the specific case and

the nature of international jurisdiction for the protection of human rights. This assessment can be done on the basis of the principle of equity and taking into consideration the expenses declared by the parties, provided the amounts are reasonable.²⁶⁹

194. This Court has indicated that “the claims of the victims or their representatives with regard to costs and expenses, and the evidence to support them, must be submitted to the Court at the first procedural opportunity granted to them; that is, in the pleadings and motions brief, without prejudice to such claims being updated subsequently, in keeping with the new costs and expenses incurred during the proceedings before this Court.”²⁷⁰ The Court also reiterates that it is not sufficient merely to forward evidentiary documents; rather, the parties are required to include arguments that relate the evidence to the facts that they represent and, in the case of alleged financial disbursements, clearly specify the items and their justification.²⁷¹

195. Taking into consideration the amounts requested by the representatives and the payment receipts submitted, the Court orders the payment in equity of USD 25,000.00 (twenty-five thousand dollars) to the Center for Justice and International Law and USD 7,500.00 (seven thousand five hundred dollars) to the Pastoral Land Commission—both amounts for costs and expenses. These sums shall be sent directly to the Center for Justice and International Law and the Pastoral Land Commission respectively.

196. Finally, regarding the statement of the representatives that the State should cover future expenses incurred in connection with the compliance monitoring stage of the judgment at the national and international levels, and the request that this Court establish an amount for expenses during the compliance monitoring stage of this judgment, as it has done in other cases,²⁷² this Court holds that during the compliance monitoring stage of this judgment, it will be able to order the State to reimburse the victims or their representatives for reasonable expenses incurred during that procedural stage.

H. Method of compliance with the payments ordered

197. The State shall pay compensation for pecuniary and non-pecuniary damage as well as the reimbursement of costs and expenses established in the present judgment directly to the individuals and organizations indicated in the same, within one year of the notification of this judgment, without prejudice to making the full payments in advance, under the terms of the following paragraphs. Regarding the compensation payments for Geraldo Gomes Pimenta, Maria da Glória Sales Pimenta, and José Sales Pimenta, the State shall remit them to their heirs in accordance with applicable domestic law within one year of the date of notification of this judgment.

198. In the event that other beneficiaries die before their respective compensation is rendered to them, the compensation will be made directly to their heirs in accordance with applicable domestic law.

199. The State shall comply with its monetary obligations by payment in United States dollars or the equivalent in the national currency, calculated using the published market exchange rate or calculated by a relevant banking or financial authority, on the date closest to the payment date.

²⁶⁹ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, paras. 82 and 244, and *Case of Pavez Pavez v. Chile*, *supra* para. 200.

²⁷⁰ Cf. *Case of Garrido and Baigorria v. Argentina*, *supra*, para. 79, and *Case of Pavez Pavez v. Chile*, *supra*, para. 201.

²⁷¹ Cf. *Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador. Preliminary objections, merits, reparations, and costs*. Judgment of November 21, 2007. Series C No. 170, para. 277, and *Case of Pavez Pavez v. Chile*, *supra* para. 201.

²⁷² 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 Pavez Pavez v. Chile*, *supra*, para. 202.

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

201. The amounts set in the present judgment as measures of reparation for damage and as reimbursement for costs and expenses shall be rendered to the stated individuals in full with no reductions resulting from eventual tax charges.

202. If the State falls behind, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Federative Republic of Brazil.

X OPERATIVE PARAGRAPHS

Therefore,

THE COURT

DECIDES:

unanimously,

1. To reject the preliminary objection for *ratione temporis*, pursuant to paragraphs 20 to 22 of this judgment.
2. To reject the preliminary objection regarding the failure to exhaust domestic remedies, pursuant to paragraphs 26 to 28 of this judgment.
3. To reject the preliminary objection concerning the “fourth instance,” pursuant to paragraphs 32 and 33 of this judgment.

DECLARES,

unanimously, that:

4. The State is responsible for violating the rights to judicial guarantees and judicial protection contained in Articles 8(1) and 25 of the American Convention on Human Rights, in conjunction with the duty to respect and ensure rights established in Article 1(1) of that convention, to the detriment of Geraldo Gomes Pimenta, Maria da Glória Sales Pimenta, Sérgio Sales Pimenta, Marcos Sales Pimenta, José Sales Pimenta, Rafael Sales Pimenta, André Sales Pimenta, and Daniel Sales Pimenta. Moreover, the State violated the right to the truth to the detriment of Gabriel Sales Pimenta’s family. All of the above is under the terms of paragraphs 82 to 121 of this judgment.

5. The State is responsible for violating the right to personal integrity established in Article 5(1) of the American Convention on Human Rights, in conjunction with the duty to respect and ensure rights established in Article 1(1) of that convention, to the detriment of Geraldo Gomes Pimenta, Maria da Glória Sales Pimenta, Sérgio Sales Pimenta, Marcos Sales Pimenta, José Sales Pimenta, Rafael Sales Pimenta, André Sales Pimenta, and Daniel Sales Pimenta.

AND ESTABLISHES,

unanimously, that:

6. This judgment itself constitutes a form of reparation.
7. The State shall create a working group under the terms of paragraphs 145 to 147 of this judgment.
8. The State shall provide psychological and/or psychiatric treatment to the brothers of Mr. Sales Pimenta under the terms of paragraphs 151 and 152 of this judgment.
9. The State shall make the publications indicated in paragraph 157 of this judgment within six months of its notification.
10. The State shall carry out a public event acknowledging international responsibility for the events of this case under the terms of paragraphs 158 and 159 of this judgment.
11. The State shall name a plaza after Gabriel Sales Pimenta in the municipality of Marabá in the state of Pará under the terms of paragraphs 162 and 163 of this judgment.
12. The State shall create a memorial in a public space in the city of Juiz de Fora in the state of Minas Gerais under the terms of paragraph 162 of the present judgment.
13. The State shall create and implement a protocol for the investigation of crimes against human rights defenders and a system of indicators to assess the protocol's effectiveness, under the terms of paragraphs 170 to 172 of this judgment.
14. The State shall implement a training plan for personnel involved in the investigation and processing of cases of crimes against human rights defenders. This plan shall be based on the aforementioned investigatory protocol, under the terms of paragraph 172 of this judgment.
15. The State shall review and adjust its existing mechanisms, especially the Program for the Protection of Human Rights, Activists, and Environmentalists under the terms of paragraph 177 of this judgment.
16. The State shall design and implement a national system for collecting data and figures related to cases of violence against human rights defenders under the terms of paragraph 178 of this judgment.
17. The State shall create a mechanism for reopening judicial proceedings under the terms of paragraph 180 of this judgment.
18. The State shall pay the amounts established in paragraphs 187, 188, and 195 of this judgment as compensation for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses, pursuant to paragraphs 197 to 202 of this judgment.
19. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures taken to comply with it.
20. The Court will monitor full compliance with this judgment in exercise of its authority and in fulfillment of its duties under the American Convention on Human Rights and will consider this case closed when the State has complied fully with all its provisions.

Done in Spanish in San José, Costa Rica, on June 30, 2022.

I/A Court HR. *Case of Sales Pimenta v. Brazil*. Preliminary objections, merits, reparations, and costs. Judgment of June 30, 2022. Judgment adopted in San José, Costa Rica.

Ricardo C. Pérez Manrique
President

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Nancy Hernández López

Verónica Gómez

Patricia Pérez Goldberg

Pablo Saavedra Alessandri
Registrar

So ordered,

Ricardo C. Pérez Manrique
President

Pablo Saavedra Alessandri
Registrar