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**REPORT No. 63/15**  
**PETITION 1344-08 and 90-09**  
REPORT ON ADMISSIBILITY

REINALDO COUTINHO DA SILVA AND LUIZ OTÁVIO  
MONTEIRO  
BRAZIL

Approved by the Commission at its session No. 2051 held on October 27, 2015  
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**REPORT No. 63/15<sup>1</sup>**  
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ADMISSIBILITY  
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**I. SUMMARY**

1. This report is regarding two petitions filed before the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) by the Inter American Press Association (hereinafter “IAPA” or “Petitioner”), wherein it is alleged the Republic of Brazil (hereinafter “Brazil”, “the State” or “the State of Brazil”) is internationally responsible for the violation of Human Rights enshrined in the Inter-American Convention on Human Rights (“the American Convention” or “the Convention”), to the detriment of journalists Reinaldo Coutinho da Silva and Luiz Otávio Monteiro (hereinafter “the alleged victims”).

2. The petitioner alleges that journalists Reinaldo Coutinho da Silva and Luiz Otávio Monteiro were murdered in 1995 and 1988 respectively, for reasons related to their journalism work; and that over two decades have gone by since the crimes were committed and these crimes remain unpunished. In regards to Petition P-1344-08. The petitioner states that Reinaldo Coutinho da Silva was murdered on August 29, 1995, in the city of São Gonçalo, in the state of Rio de Janeiro, and the criminal investigation has not identified nor punished the perpetrators. She adds that family members received threats after the murder of the alleged victim and were forced to move to another state in the country. Regarding Petition P-90-09, the petitioner alleges that on December 29, 1988, the body of journalist Luiz Otávio Monteiro was found with four gunshot wounds in the city of Manaus, in the state of Amazonas. They state the investigation for this crime has been ineffective; although a person was convicted as the perpetrator, after 27 years, there has been no identification or punishment of other responsible parties nor has a mastermind been identified. Additionally, she holds that the family of Luiz Otávio Monteiro was subjected to threats after his death. Both complaints request the IACHR declare there was a violation of the rights enshrined in Articles 4 (Right to Life), 13 (Right to Freedom of Thought and Expression), 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, to the detriment of the alleged victims and their family members, as it pertains to Article 1.1 (Obligation to Respect Rights).

3. On its behalf the State maintains that in accordance with Article 47.b of the American Convention, the Commission should declare both petitions inadmissible, since the rights claimed in the petition are not in the provisions of the abovementioned instrument. In addition, regarding Petition P-1344-08, it maintains that the Petition is also inadmissible due to the fact that domestic remedies have not been exhausted as provided for in Article 46.1.a of the American Convention. It alleged that there is still an open criminal investigation on the case and that steps have been taken in order to identify and punish those who are responsible for the murder. On the other hand, regarding Petition P-90-09, it noted that the IACHR does not have *ratione temporis* jurisdiction in order to review the alleged violations to the American Convention, as the death of the journalist and the judicial measures taken by the State occurred before Brazil ratified said instrument.

4. After examining the positions of the parties in light of the admissibility requirements

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<sup>1</sup> In accordance with Article 17.2.a of the Rules of Procedure of the Commission, commissioner Paulo Vannuchi, a Brazilian citizen, did not participate in the deliberations or decision for this petition.

established in articles 46 and 47 of the American Convention, the Commission decides it has jurisdiction in both petitions and these are admissible in order to review the merits of the alleged Human Rights violations. Regarding journalist Reinaldo Coutinho da Silva and family members, the IACHR declared the petition admissible as it pertains to the alleged human rights violations of the rights enshrined in Articles 4 (Right to Life), 5.1 (Right to Humane Treatment), 8.1 (Right to a Fair Trial), 13 (Right to Freedom of Thought and Expression), 22 (Freedom of Movement and Residence) and 25 (Right to Judicial Protection) of the American Convention, in light of the general obligation enshrined in Article 1.1 of the aforementioned instrument. In regards to journalist Luiz Otávio and family, the IACHR declared the petition admissible as it relates to the alleged violations of rights pursuant to Articles I (Right to life, liberty and the security of his person), IV (Right to freedom of investigation, of opinion, and of the expression and dissemination), and XVIII (Right to a fair trial) of the American Declaration of the Rights and Duties of Man, and Articles 5.1 (Right to Humane Treatment), 8.1 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention in light of the general obligation enshrined in Article 1.1 of said instrument. Likewise, the IACHR decided to join both petitions and process them jointly as to the merits. In addition the Commission decides to notify the parties and publish this report and include it in the Annual Report to the General Assembly of the Organization of American States.

## **II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION**

5. On November 19, 2008 the Commission received petition P-1344-08 and on January 27, 2009 Petition P-90-09. Each one of said petitions was duly forwarded to the State, as were the later communications sent by both parties, permitting the necessary time frames pursuant to the rules for additional observations. The Commission joins both petitions in this report due to similarities in their factual basis.

## **III. POSITIONS OF THE PARTIES**

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

#### **1. Shared allegations**

6. The petitions subject of this report refer to the murder of two journalists allegedly for reasons tied to the exercise of their profession and alleged lack of due diligence during the investigation and punishment for the crimes. According to the petitioner, over 20 years after opening the investigations, both cases remain unsolved for reasons attributable to the State.

#### **2. Specific allegations**

##### *Reinaldo Coutinho da Silva (P-1344-08)*

7. According to the petitioner, Reinaldo Coutinho da Silva was the editor and director of the *Cachoeiras Jornal* newspaper, in the city of Cachoeiras de Macau, and a correspondent for the *Nosso Jornal* newspaper in the city of São Gonçalo, both are cities in Rio de Janeiro. She alleged that on August 29, 1995, the alleged victim was murdered by fourteen gunshots, after stopping at a light, in the city of São Gonçalo. She notes that the “violence was such”, that the witnesses to the murder “preferred to remain silent”. Likewise, she states that the statements obtained by the police were contradictory as to the facts. According to IAPA, the day of the murder, the journalist was headed to a São Gonçalo Research, Study and Development Institute [*Instituto de Investigación, Estudios y Desarrollo de São Gonçalo*] meeting, he and others founded the institute in order discuss and offer solutions for the “city’s problems”.

8. According to the petition, the murder of the journalist was planned. It states that days before the murder, an automobile parked outside the home of the alleged victim for a few hours causing the

journalist to call the police. According to the petitioner, although the police sent an officer, the call was not officially registered and no complaint was filed. In addition she reports that the day before the murder a neighbor of the alleged victim was questioned by an unknown person who asked about his address and if the street had “only that narrow exit”.

9. The petitioner stated that since the alleged facts occurred twenty years ago, the investigation has had several obstacles and nobody has been charged to date. She states that although the 72nd São Gonçalo Police Precinct opened the criminal investigation shortly after the crime was committed, lack of due diligence in gathering evidence, negligence and delay in witness identification, as well as lack of protection of the witnesses who did in fact make statements, have delayed any progress as well as the identification and prosecution of those responsible. According to the petitioner, the witnesses to the crime were “extremely fearful” of making statements and “risking their lives”. Additionally, she states that after the murder of the alleged victim, his children were threatened and as a consequence one of them felt compelled to move with his family to another state in the country.

10. More specifically, the petitioner stated, among other things, that on March 8, 1996 an alleged perpetrator of the murder was arrested for a different crime and was released. Similarly, she stated that in July of 2008 and June of 2014 the petitioner received an official notice stating the investigation would continue under the Police Commission. She alleged that as of the date of filing the petition before the IACHR she has received no response to her requests for updated information on the investigation.

11. The petitioner stated that the authorities worked on several theories to explain the motivation behind the murder of the alleged victim. According to the complaint, one of the theories pertains to the August 18, 1995 publication on the front page of the *Cachoeiras Jornal* where the names and photographs of civil and military police accused of “creating a criminal enterprise” [*formação de quadrilha*] were included. The petitioner explained that other theories included” i) revenge for a publication about land conflict in the victim’s newspaper, ii) rivalries between the alleged victim and other journalists, iii) debt collection; iv) crime of passion. Nonetheless, she maintains that the hypothesis of murder and its tie to the exercise of journalism has not been duly investigated.

12. In addition, the petitioner affirms that in January of 2007 the officer in charge of the investigation was removed [*exonerado*] from his position as operations coordinator for the Prosecutor’s Office for reasons of “political support” and that the investigation has not moved forward since his removal.

13. As to domestic remedies, the petitioner states that the crime is “close to the statute of limitations”. In addition, she alleged that other cases of journalists murdered in the country in the 90’s were filed or reached the statute of limitations after years of investigating.

*Luiz Otávio Monteiro (P-90-09)*

14. According to the petitioner, Luiz Otávio Monteiro was a journalist who covered the police in the *Amazonas em Tempo* newspaper, in the city of Manaus, state of Amazonas. She states that before working for the aforementioned newspaper, the alleged victim worked as a reporter on police matters for the *Diário Popular, Jornal do Comércio, A Crítica y A Notícia*. According to the petitioner, the body of the journalist was found on December 29, 1988 with four shots to the head in a “mass grave where bodies of common criminals were usually left”. The last time he was seen alive- stated the petitioner- was on December 28, 1988 at a party organized by the Local Police Commission.

15. The petitioner stated that in 1988 there was a “death squad” in the region and it threatened several journalists with death at the hands of this group, therefore there was “great” fear of participating in the investigation of the death of Monteiro. She stated that a letter attributed to the “death squad” wherein the group claimed responsibility for the death of the alleged victim was sent to a local newspaper. However,

according to the newspaper, the letter had been “disregarded” by the police. The petitioner affirmed that after the murder of the alleged victim, some reporters received death threats for calling out publicly for the conviction of those responsible for the murder and for “directly” accusing the police of the crime.

16. The petitioner alleged that the authorities investigated several leads that tied the murder of Luiz Otávio Monteiro to his journalism work. She explained the journalist worked with “privileged” information from police sources and that, days before his death, his friends had seen him with a “file” that disappeared after his murder. Said file was allegedly a dossier regarding a “well known politician”. According to the petitioner, the alleged victim was aware of the involvement of both police and businessmen in the community with a “death squad” as well as with the crimes of robbery and contraband. The petitioner also underscored that the murder of Luiz Otávio Monteiro could be related to the publication of a complaint in the newspaper about an alleged bribery plot related to car theft, with the involvement of a civil police officer. Lastly, she reports that in 2008, 20 years after the alleged events, friends of the journalist reported that before his death Luiz Otávio Monteiro was researching alleged irregularities in the governorship at the time.

17. According to the petition, in January of 1989 the Office of the Prosecutor filed a criminal complaint against two civil police officers for the murder of the journalist, identifying them as the alleged perpetrators. The Office of the Prosecutor took statements from people who had seen the alleged victim leave the party with two police officers. In addition, the criminal complaint was based on a technical report claiming the blood of the journalist was found in the official police use vehicle.

18. The petitioner stated that in 1994 the Criminal Court hearing the case issued a “*pronuncia*” judgment against the defendants to go to trial before the Jury Court and one of the police officers was not convicted until 2007, to 16 years of prison for the murder of the alleged victim. She stated that the officer appealed, but the sentence was affirmed.

19. The petitioner stated that the other accused police officer is a fugitive since May of 1989, and no effective measures have been taken in order to arrest him. According to the petitioner, the Prosecutor [*Porcurador de Justiça*] assigned to the case suspects that the defendant’s escape was “aided”, as he was “material” to the identification of the masterminds. In addition the IAPA stated that said Prosecutor was removed from the case when “it was close to being solved” and had received “anonymous” threatening phone calls during the investigation. Additionally, it stated that the police investigation was not even targeting the masterminds.

20. Therefore, according to the petitioner, although the Brazilian authorities believe the crime was solved because two police officers were identified as the perpetrators of the murder of the journalist, the fact remains that one of them is a fugitive as of May of 1989 and no mastermind has been identified to date.

21. Regarding the alleged threats to the family members of the alleged victim, the petitioner alleges that the conviction of one of the perpetrators of the crime did not “relieve the pressure felt by the relatives and close friends [of the journalist]”. She notes that the “impunity of the fugitive police officer and the certainty that more people were involved in the crime make people remain silent for fear of retaliation”. In addition, she states that the widow of the alleged victim has been forced to move several times for her safety.

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

### **1. Shared allegations**

22. The State of Brazil maintains that the Inter-American Commission should declare the instant petition inadmissible, because the facts of the complaints are not in violation of the provisions of the American Convention. Thus, the State requests the Commission apply Article 47.b) of the aforementioned

instrument. In addition, the State presented specific argument regarding admissibility for each of the petitions.

## 2. Specific allegations

### *Reinaldo Coutinho da Silva (P-1344-08)*

23. The State alleges the petition is inadmissible pursuant to the rule of exhaustion of domestic remedies, pursuant to Article 46.1.a of the American Convention. According to the State, the petitioner has not exhausted domestic remedies, in light of the fact that the police investigation is still open. In addition, it maintains that the petitioner has not used Brazilian jurisdiction for civil liability by the State for the stated facts. According to the State, the petitioner has not utilized the appropriate and available domestic measures for the protection of the rights she believes were violated, therefore the State has not had the opportunity to internally resolve the conflict.

24. The State indicated that on the very day of the murder investigation for the murder of Coutinho da Silva was opened by the 72<sup>nd</sup> Police Station for São Gonçalo, as noted in the “Record of Events” Nbr. 002439/1995 [*registro de ocorrência*], opening police investigation 620/95. It explains that as of that moment, the Civil Police, the Office of the Prosecutor and the Judicial Branch have jointly worked on the identification and punishment of those responsible for the murder. In addition the State affirms that in light of previously adopted “failed measures”, on July 13, 2011 the Prosecutor [*Promotor de Justiça*] from the Office of the Prosecutor requested “various measures” from the Judiciary in order to “close the gaps in the instant case”. He stated that “several initiatives” were adopted in order to address the request of the Office of the Prosecutor, as well as to shed light on the motive. In its report the State indicated that the last break in the investigation occurred on December 27, 2013, when the files were sent to the Police Commission in order to comply with a 120-day time frame for proceedings.

25. Regarding the exhaustion of domestic remedies, the State highlighted that the Police Investigation for the murder of the journalist was still open; therefore domestic remedies have not been exhausted. It also emphasized that the Inter-American System for the protection of Human Rights is “supplementary and subsidiary”, among other things, and State jurisdiction “may not be bypassed in favor of international jurisdiction, and the State must have priority and the opportunity to resolve the matter domestically”.

26. Regarding the lack of specificity of the facts alleged to be in violation of Human Rights, the State argued that the analysis of the complaint, as well as the supporting documents provided by the petitioner, it can be seen that the State has made efforts to investigate the facts and its agents have acted “within the limits of their respective jurisdictions”. In addition, it maintains that the January 22, 2007 Police Investigation Analysis by the Military Police Coronel supported the “complex nature” of the investigation. The State notes that said document, enclosed by the petitioner, lists “5 theories of possible motives for the murder of Mr. Reinaldo Coutinho, such as: profession, debt collection, civil and military police retaliation, crime of passion or land dispute”. In that regard, the State affirmed that due to the broad scope of the investigation and the large numbers of suspects and theories, it has been impossible to identify those responsible for the crime to date, regardless of the number of witnesses questioned and the various measures adopted by the State. In addition, it alleges that the efforts made by the State agencies in order to solve the case, such as witness questioning, should be recognized. According to the State, the adopted measures within the investigation framework would disallow responsibility be adjudicated in the international arena, since, according to the Inter-American System, the duty to investigate is measured by means and not by results.

*Luiz Otávio Monteiro (P-90-09)*

27. Before the Commission the State alleged there is lack of *ratione temporis* jurisdiction, in light of the fact that the alleged murder occurred on December 29, 1988, prior to the ratification of the American Convention by the State of Brazil. According to the State, those facts occurring before September 25, 1992, when the State ratified the American Convention, cannot be subject to evaluation by the IACHR. In addition, the aforementioned temporary limitation is provided for in Article 28 of the 1969 Vienna Convention on the Law of Treaties, non-retroactivity of treaties.

28. Regarding the facts lacking the specifications of Human Rights violations, the State argued that the criminal investigation of the facts unfolded in its regular course, with a May 9, 2007 16 years imprisonment conviction of one of the defendants charged with the murder of Mr. Monteiro. In addition, it stated that although the petitioner alleged that additional persons were involved in the murder of the journalist, the IAPA did not present evidence to corroborate said allegations. In that regard, it indicated that the petitioner did not clarify if “new information” gathered by the IAPA through statements was forwarded to the appropriate authorities. It also affirmed that “[t]hese theories were not even presented during the crimina[[]] investigation”, as can be seen in the complaint filed by the Office of the Prosecutor on February 13, 1989 and the July 19, 1994 “judgment”.

29. Regarding the above, the State alleged that the petitioner “[i]s not convinced by the evidence produced during the investigation , and requests the Inter-American Commission [...] replace the domestic jurisdiction by ordering concrete methods or forms for investigating regarding a murder that took place over 26 years ago”. In that regard, Brazil noted that in the case of “*Nogueira de Carvalho et al v Brazil*”, the Inter-American Court of Human Rights already indicated that it does not have jurisdiction to “[r]eplace the domestic jurisdiction by ordering concrete methods or forms for investigating and judging a specific case in order to obtain a better or more effective outcom[e]”<sup>2</sup> unless the State's international obligations embodied in Articles 8 and 25 of the American Convention have been violated. Based on the foregoing it reiterated its request to declare the petition inadmissible.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. Competence of the Commission *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci***

30. In accordance with Article 44 of the American Convention, the petitioner has legal standing to lodge complaints. The alleged victims were under the jurisdiction of the State of Brazil at the time of the events in the complaint. Furthermore, Brazil ratified the American Convention on September 25, 1992. Therefore, the Commission has competence *ratione personae* to review the petitions.

31. In regard to competence *ratione temporis*, for Petition P-1344-08, the Commission has *ratione temporis* jurisdiction, in accordance with the American Convention, as it was in full force for Brazil at the time of the alleged events in the petition, therefore the State was under the obligation to respect and protect the rights protected by the Convention. Nonetheless, the Commission noted that as it pertains to Petition P-90-09, the death of the alleged victim took place on December 29, 1988, prior to the ratification of the American Convention by Brazil. Accordingly, the applicable source of law is the American Declaration<sup>3</sup>.

<sup>2</sup> Inter-American Court of Human Rights, *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits*. Judgment of November 28, 2006. C Series No. 130, par. 80.

<sup>3</sup> See, *mutatis mutandi*. IACHR. Report No. 5/11, Admissibility, Petition 702-03, Ivan Rocha, Brazil, March 22, 2011, par. 24; cites, *inter alia*, Inter-American Court of Human Rights, Advisory Opinion OC-10/89, *Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights*, July 14, 1989, Series A No. 10, paras. 35-45:

Nevertheless, the IACHR advises that the facts related to the criminal murder investigation taking place on September 25, 1992 and thereafter, in accordance with the aforementioned ratification, or those that may be appropriately considered as continuous violations of rights, occurring after those dates, the Inter-American Commission considers it has *ratione temporis* competence to review this petition under the American Convention.

32. The Commission has *ratione loci* competence to hear the petitions, in as much as these allege violations of rights protected under the American Convention within a State party to said treaty.

## **B. Requirements for the Admissibility of the Petition**

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

33. Pursuant to Article 46.1.a) of the American Convention for a petition to be admissible before the Inter-American Commission in accordance with Article 44 of the Convention, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The object of this requirement is to allow for domestic authorities to preside over the alleged violation of a protected right and, if applicable, be permitted to resolve it before it is heard by an international instance.

34. Article 46.2 establishes that this requirement shall not be applicable when: a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. Both the Commission and the Inter-American Court have noted that domestic remedies must be exhausted only in order to address and alleged infringement<sup>4</sup>.

35. The petitions reviewed for this report pertain to the murder of two journalists, allegedly due to the exercise of their profession and supposed lack of due diligence in the investigation and punishment for the crimes. According to the allegations by the petitioner, after over 20 years since the opening of the investigations, both cases remain in impunity for reasons attributable to the State.

36. On its behalf the State of Brazil maintains that Petition P-1344-08 is inadmissible due to the lack of exhaustion of domestic remedies, in accordance with the requirements in Article 46.1.a of the American convention, since, according to the State, there is still an open police investigation in the case. In addition, it stated that the petitioner has not utilized Brazilian jurisdiction to hold the State civilly liable for the stated events. According to the State, the petitioner has not utilized the appropriate and available domestic resources for the protection of those rights she believes have been violated, therefore the State has not been granted the opportunity to resolve the conflict domestically.

37. The Commission notes that in Petition P-1344-08 the murder of journalist Reinaldo Coutinho da Silva on August 29, 1995 is not a contested fact, and the criminal investigation in this case remains open to date and nobody has been held criminally responsible.

38. Likewise in Petition P-90-09 it is not a contested fact that journalist Luiz Otávio Monteiro was found dead on December 29, 1988 and that on May 9, 2007 one of the defendants to the murder of journalist Monteiro was convicted to 16 years imprisonment, and the other defendant is an escapee.

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<sup>4</sup> The Inter-American Court of Human Rights has held that adequate domestic remedies are those which are suitable to address an infringement of a legal right, if a remedy is not adequate in a specific case, it obviously need not be exhausted. Inter-Am. Ct. H.R. *Case Velasquez Rodriguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C. Nbr. 4, par. 64.



According to the allegations made by the petitioner, the State has yet to determine the mastermind behind the Monteiro murder.<sup>6</sup> [sic]

39. In that regard, in accordance with Commission precedence, any time a prosecutable crime is committed, the State is obligated to file and prosecute<sup>5</sup> and, in those cases, that is the proper method to shed light on the facts, judge those responsible and establish the appropriate criminal punishment, in addition to other reparation such as pecuniary damages. Likewise, the Inter-American Commission has noted that as a general rule, a criminal investigation must be undertaken promptly in order to protect the interest of the victims, preserve the evidence and safeguard the rights of any person deemed a suspect in the context of the investigation<sup>6</sup>.

40. Additionally, it is noted that the alleged facts in both petitions involve an arbitrary violation of the right to life allegedly for reasons related to the exercise of freedom of expression by the alleged victims. In that regard, the IACHR reiterates that States have the obligation to investigate, identify, prosecute and punish all perpetrators of such crimes, including those who commit the crime and the masterminds, within a reasonable time period; as it is essential to identify the motive for the crime in order to protect and integrally repair not only the right to life but also the right to freedom of expression<sup>7</sup>.

41. Therefore, given the characteristics of the petitions and the time that has transpired since the events that give rise to the complaint, the Commission considers that the exception provided for in Article 46.2 c) of the Convention is applicable regarding the unjustified delay in the criminal investigations for the murders of the alleged victims, consequently the requirement for the exhaustion of domestic remedies is not applicable. In any case, the efficiency of recourse as it relates to the rights to protection and constitutional rights shall be examined in the merits phase<sup>8</sup>.

## 2. Timeliness of the petition

42. Article 46.1.b of the American Convention requires the petition “is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment”. On the other hand, Article 32.2 of the IACHR rules states:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determines by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

43. The IACHR has decided *supra* (par. 41) that these petitions are exempt from the requirement of prior exhaustion of domestic remedies; and therefore must determine if the petition was lodged in a timely manner. Petition P-1344-08 was lodged on November 19, 2008, 18 years after the investigation was opened, and it still remains open. On the other hand Petition P-90-09 was lodged on January 27, 2009, over 28 years

<sup>5</sup> IACHR, Report No. 52/97, Case 11.218, Background, Arges Sequeira Mangas, Nicaragua, IACHR 1997 Annual Report, paras. 96 and 97. See also Report No. 55/97, Case 11.137, Background, Abella Et al., Argentina, par. 392.

<sup>6</sup> IACHR, Report No. 151/11, Petition 1077-06, Admissibility, Luis Giovan Laverde Moreno Et al., Colombia, November 2, 2011, par. 28.

<sup>7</sup> IACHR. 2013 Annual Report. Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149 Doc. 50. December 31, 2013 par. 166; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism. OEA/Ser.L/V/II.131.Doc. 35. March 8, 2008, par. 40

<sup>8</sup> IACHR. Report No. 90/03. Petition 222-10. Josué Vargas Mateus, Miguel Ángel Barajas Collazos, Saúl Castalleda Zuñiga, Silvia Margarita Duzán Sáenz and families. Colombia. November 4, 2013, par. 44.

after the investigation was open and fewer than two years after the conviction of the perpetrator in the alleged case and during the course of the prosecution of the other defendant. Taking the foregoing into account in light of the specific situation of these petitions, the IACHR concludes that the petitions were timely and that the requirement in Article 32.2 of the IACHR Rules has been met.

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

44. Article 46.2.c) of the Convention requires the admission of petitions be subject to the requirement that the subject “of the petition or communication is not pending in another international proceeding for settlement” and in Article 47.d) the Convention stipulates that the Commission shall consider inadmissible if the petition or communication is substantially the same as one previously studied by the Commission or by another international organization. In the petitions subject to this report, the parties have not argued the existence of either of these circumstances, nor do they appear in the file.

### 4. Colorable claim

45. Regarding admissibility, it is incumbent upon the Commission to decide if the facts described in the petition can be deemed a violation, as set forth in Article 47.b) of the American Convention, if the petition is “manifestly groundless” or “obviously out of order”, in accordance with subparagraph c) of that Article. The standard of appreciation for these extremes is different than the requirement to decide on the merits of a matter. At this procedural stage it is incumbent upon the IACHR to conduct a *prima facie* evaluation to examine whether the complaint establishes potential violation of a right guaranteed by the American Convention, and not to establish the existence of a violation. Such an examination does not imply any prejudice or preliminary opinion on the merits<sup>9</sup>.

46. Likewise, neither the American Convention nor the Rules of Procedure for the IACHR require the petitioners identify the specific rights alleged to have been violated by the State in the matter before the Inter-American Commission, although the petitioners may do so. On the other hand, it is incumbent upon the Commission, based on jurisprudence of the system, to determine in the admissibility reports, what provisions of the relevant Inter-American instruments are applicable and may be possible violations, if the alleged facts were proven via sufficient evidence and legal argument.

47. In Petition P-1344-08, the petitioner alleged that journalist Reinaldo Coutinho da Sliva was murdered on August 29, 1995, in the city of São Gonçalo in the state of Rio de Janeiro, for reasons related to his journalism work, and that almost 20 years after the events the criminal investigation remains open without establishing the appropriate criminal responsibility. Lastly, the petitioner stated in a general manner, that after the murder of the alleged victim, his children were victims of threats, and that due to that one of them was forced to move with his family to another state within the country.

48. Regarding Petition P-90-09, she alleged the journalist Luiz Otávio Monteiro was murdered and on December 29, 1988 his body, which had sustained four shots, was found in the city of Manaus, in the state of Amazonas. According to the petitioner, there is evidence that his death was related to his journalism work. She alleged that although one of the perpetrators was convicted to 16 years imprisonment in 2007, to date there has been no identification or punishment of the remaining responsible parties, including the mastermind and one of the perpetrators who has been a fugitive since May of 1989. She indicated that the investigation has not revealed or even pursued questioning regarding the mastermind of the crime. According to the petitioner, the Prosecutor [*Procurador de Justiça*] assigned to the case suspects that the defendant’s escape was “aided”, as he was “material” to the identification of the masterminds. In this regard, she affirmed, “the impunity of the fugitive police officer and the certainty that additional people were involved in the crime

<sup>9</sup> See, IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luís Tapia González et al., Chile, February 24, 2004, Par. 33.

has made people remain silent for fear of retaliation”. In addition, she reported that the family of the journalist has been threatened, and that his widow was forced to move on several occasions for safety reasons.

49. The State, on its behalf, maintains that pursuant to Article 47.b) of the American Convention, the Commission should declare both petitions inadmissible, since the facts alleged Interpreter he complaints do not describe violations to the provisions of the aforementioned instrument.

50. The inter-American case law has established that in compliance with their duty to investigate and try those responsible for acts of violence against journalists, States have a special obligation to exhaust all lines of investigation connected to the victim’s journalism work and establish the motives for the crime. As mentioned, this requires an effective investigation, prosecution and punishment of all perpetrators of the crime, including the masterminds.<sup>10</sup>

51. In that regard, in light of the factual elements and law submitted by the parties and the nature of the matter before it, the IACHR considers the petitioner’s argument regarding alleged State responsibility as to the events that give rise to the complaint may possibly be violations of the rights in Articles I, IV and XVIII of the American Declaration of the Rights and Duties of Man; as well as Articles 4, 5.1, 8.1, 13, 22 and 25 of the American Convention on Human Rights. The Commission will analyze the possible violations of these last provisions in light of the general obligations enshrined in Article 1.1 of said document.

52. In conclusion, the IACHR decides that these petitions are not “manifestly groundless” nor “obviously out of order”, and therefore declares the petitioner has met the *prima facie* requirements provided for in Articles 47.b and 47.c of the American Convention as these relate to possible violations of Articles 4, 5.1, 8.1, 13, 22 and 25 of the American Convention, pertaining to Article 1.1 of the same instrument; as well as possible violations of Article I, IV and XVIII of the American Declaration of the Rights and Duties of Man.

## V. CONCLUSION

53. Based on the aforesaid considerations of fact and law, and without prejudging the merits the merits of these matters, the Inter-American Commission concludes that the two petitions subject of this report meet the requirements for admissibility established in Articles 46 and 47 of the American Convention. Consequently

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES:

1. To declare Petition P-1344-08 admissible as it relates to Articles 4, 5.1, 8.1, 13, 22 and 25 of the American Convention, in accordance with Article 1.1 of the treaty. Also, to declare Petition P-90-09 admissible as it relates to Articles I, IV and XVIII of the American Declaration, as well as Articles 5.1, 8.1 and 25 of the American Convention, pursuant to Article 1.1 of said instrument.

2. To notify the State and petitioner of this decision.

3. To join the two petitions declared admissible in this Admissibility Report and record them as case number 13.012, and to begin its analysis of the merits of the case.

<sup>10</sup> Inter-American Court. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 3, 2012. Series C No. 248. Para. 211; IACHR. Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 203.

4. To publish this decision and include it in the Annual Report to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 27<sup>th</sup> day of the month of October, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; Felipe González, Rosa María Ortiz and Tracy Robinson Commissioners.