

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF CARVAJAL CARVAJAL ET AL. V. COLOMBIA

JUDGMENT MARCH 13, 2018

(Merits, reparations, court costs and legal fees)

In the case of *Carvajal Carvajal et al. v. Colombia*,

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

Eduardo Ferrer Mac-Gregor Poisot, President;
Eduardo Vio Grossi, Vice President;
Elizabeth Odio Benito, Judge;
Eugenio Raúl Zaffaroni, Judge, and
L. Patricio Pazmiño Freire, Judge;

also present,

Pablo Saavedra Alessandri, Registrar, and
Emilia Segares Rodríguez, Deputy Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers this judgment.

* Judge Humberto Antonio Sierra Porto, who is Colombian by nationality, did not take part in the deliberation of this judgment, in accordance with the provisions of Articles 19(1) and 19(2) of the Rules of Procedure of the Court. Judge Roberto F. Caldas did not participate in the deliberation or signing of this judgment owing to reasons beyond his control, duly accepted by the full Court.

CASE OF CARVAJAL CARVAJAL ET AL. V. COLOMBIA

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I INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* –On October 22, 2015, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Inter-American Court of Human Rights the case of *Nelson Carvajal Carvajal et al. v. the Republic of Colombia* (hereinafter “the State” or “Colombia”). It stated that the case addressed the homicide of journalist Nelson Carvajal Carvajal on April 16, 1998. According to the Commission’s submission, enough consistent, actionable evidence was available to conclude that Nelson Carvajal had been executed for reasons associated with the practice of his profession as a journalist, to silence his reporting on illegal acts allegedly committed under the protection of local authorities, and multiple evidence also pointed to the participation of state agents in the facts of the case. The Commission believed that the facts of the case constituted a violation of the victim’s right to life and right to freedom of thought and expression. The Commission also claimed that the State had not conducted a conscientious, diligent and timely investigation of the case, all this in an environment of threats and harassment of the journalist’s family members, with the consequence that several of them left Colombia altogether. It further alleged violations of the right to a fair trial and the right to judicial protection in the investigation and criminal proceedings, and that the facts had remained in a state of impunity for a period that cannot be considered reasonable. The Commission claimed that the repeated threats against witnesses and relatives of the victim, especially in the absence of protection measures and guarantees of an independent investigation, had an intimidating and chilling effect intended to discourage Nelson Carvajal’s family members from participating as complainants in the case and hampered the investigations and the criminal proceedings. The Commission concluded that the failure of due diligence in the investigation and the lack of official protection have undermined the family members’ psychological and moral health, and therefore it claimed violation of the right to humane treatment and the right to freedom of movement and residence because they claimed they were forced to leave Colombia as a consequence of the threats against them.¹

2. *Proceedings before the Commission.* – The following proceedings took place before the Commission:

a. *Petition.* – On June 21, 2002, the Commission received a petition submitted by the Inter-American Press Association (IAPA or “the petitioner”) against Colombia.

b. *Admissibility Report.* – On October 13, 2004, the Commission approved Admissibility Report No. 54/04².

c. *Report on the Merits.* – On March 26, 2015, the Commission issued Report on Merits No. 21/15 under the terms of article 50 of the Convention (hereinafter “Merits Report”), drawing a set of conclusion and offering several recommendations:

¹ The family members of Nelson Carvajal Carvajal who are included as alleged victims in the Report on the Merits are: (1) Ana Francisca Carvajal de Carvajal (mother), (2) Jairo Carvajal Cabrera (father), (3) Yaneth Cristina Carvajal Ardila (daughter), (4) Paola Andrea Carvajal Bolaños (daughter), (5) María Alejandra Carvajal Bolaños (daughter), (6) Luz Estela Bolaños Rodríguez (wife), (7) Judith Carvajal Carvajal (sister), (8) Gloria Mercedes Carvajal Carvajal (sister), (9) Ruth Dary Carvajal Carvajal (sister), (10) Luz Eny Carvajal Carvajal (sister), (11) Miriam Carvajal Carvajal (sister), (12) Fernando Augusto Carvajal Carvajal (brother), (13) Saúl Carvajal Carvajal (brother), (14) Cristhian Camilo Motta Carvajal (nephew) and (15) César Augusto Meneses Carvajal (nephew).

² The Commission declared admissibility of the petition on the case “Nelson Carvajal Carvajal and family” for the alleged violation of the right to life, right to a fair trial, freedom of expression and thought, and right to judicial protection, contained in articles 4, 8, 13 and 25 of the American Convention in conjunction with Convention article 1(1).

i. Conclusions. - The Commission claimed that Colombia was responsible for violating the rights enshrined in articles 4(1), 5(1), 8, 13, 22(1) and 25 of the Convention in conjunction with the obligations set forth in article 1(1) thereof.

ii. Recommendations. - It therefore recommended that the State:

1. Conduct an investigation within a reasonable period to shed light on the circumstances of Nelson Carvajal's murder and identify the guilty parties, including instances where such undertaking means reopening closed investigations or reexamining cases already adjudicated by the local justice system.
2. Take all necessary measures to ensure the safety of the witnesses and Nelson Carvajal Carvajal's relatives over the course of these investigations and proceedings.
3. Continue implementing effective protection measures to guarantee the safety of journalists who are particularly at risk on account of the practice of their profession, whether the threats are from State agents or private individuals. The State must especially strengthen the implementation of the "Program for Protection and Prevention of the rights to life, freedom, integrity, and security of persons, groups, and communities" for regional journalists, particularly those who practice the profession in rural areas of Colombia.
4. Provide appropriate redress for the human rights violations declared in this report, in both the pecuniary and non-pecuniary aspects, as well as the vindication of Nelson Carvajal Carvajal's work as a journalist in a local media outlet, with special attention given to the impact caused to his relatives.

d. Notification to the State. - The State was notified on April 22, 2015 and given a term of two months to report back on adoption of the recommendations. The State requested a three-month extension to submit a new report on the matter. The State's report did not offer full information on progress made to follow the recommendations, nor did it report concrete measures to adopt the recommendation on investigating the facts or delivering justice to family members.

3. *Submission to the Court.* - On October 22, 2015, the Commission submitted the full set of facts and alleged human rights violations outlined in the Merits Report to the jurisdiction of the Inter-American Court.

4. *Request of the Commission.* - Based on the foregoing, the Commission asked the Court to find and declare the international responsibility of Colombia for violation of the rights contained in its Merits Report. It also asked the Court to order the State to extend certain measures of reparation (*infra* Chapter VIII).

II.

PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representatives.*³ - The State and the representatives were notified on January 5, 2016 that the Commission had submitted the case.

6. *Brief with pleadings, motions and evidence.* - On March 7, 2016, the representatives submitted their brief of pleadings, motions and evidence (hereinafter "pleadings brief"), under

³ The representatives of the alleged victims who signed this brief are Ricardo Trotti of the Inter-American Press Association and Angelita Baeyens of Robert F. Kennedy Human Rights. Robert F. Kennedy Human Rights joined the instant case as legal representative of the victims in August, 2015.

the terms of articles 25 and 40 of the Rules of Procedure of the Court, expressing their agreement with the Commission's allegations and adding that the State was also responsible for violating the rights of the child, right to protection of the family and right to be free from arbitrary interference in private family life, for Nelson Carvajal's family members.

7. *Respondent's answer.*⁴ – On June 29, 2016, the State submitted its brief to the Court in response to the submission of the case and to the pleadings brief (hereinafter "answering brief" or "respondent's plea"), under the terms of article 41 of the Rules of Procedure of the Court, stating that it was not responsible for the alleged violations and raising a preliminary question involving new facts.

8. *Amici curiae.*– The Court received three *amicus curiae* briefs submitted by: (1) the Colombian Association of Newspaper and Media Publishers (Andiarios), the Association of Argentine Journalism Outlets (Adepa, Argentina), the International Association of Radio Broadcasters (AIR), the National Press Association (ANP, Bolivia), the National Press Association (ANP, Chile), the Brazilian Association of Investigative Journalism (Abraji), the Peruvian Press Council (CPP), the Argentine Forum of Journalists (Foepa), the Journalists' Forum for Freedom of Expression and Information (Panama), the Andean Foundation for Media Observation and Study (Fundamedios, Ecuador), the Gabriel García Márquez Foundation for New Iberoamerican Journalism (FNPI), the Freedom of Expression and Democracy Foundation (Fundación LED, Argentina), and the Institute for Press and Society (IPYS, Peru), on State obligations to prevent, protect, investigate, prosecute and sanction acts of violence against journalists; (2) the National Human Rights Commission of Mexico, on the overall environment of violence and impunity against journalists in the region and special standards of due diligence in these cases, and (3) the International Freedom of Expression Exchange (IFEX) and the Foundation for Press Freedom (FLIP) on the overall environment of violence against journalists in Colombia and applicable State obligations.

9. *Public hearing.*– The president of the Court issued an Order on July 6, 2017,⁵ to receive statements rendered before a public attestor (*affidavit*) from seven of the alleged victims, two witnesses offered by the representatives, three witnesses offered by the State, three expert witnesses offered by the representatives, two expert witnesses offered by the State and one expert witness offered by the Commission. The president in his Order convened the parties and the Commission to a public hearing, which took place at the seat of the Court during its 119th Regular Session⁶. Statements were taken at the hearing from one alleged victim, one witness offered by the State and one expert witness offered by the Commission, followed by comments and final oral pleadings by the Commission, the representative of the alleged victims and the State.

10. *Final written pleadings and observations.*– On September 25, 2017, the representatives and the State submitted their final written pleadings and attachments, and the Inter-American Commission submitted its final written observations.

11. *Deliberation of the case.* – The Court began deliberations on the instant case on March 12, 2018.

⁴ The State designated Juanita María López Patrón and Ángela María Ramírez Rincón as agents for the instant case.

⁵ *Cfr. Case of Carvajal Carvajal et al. v. Colombia.* Notice of hearing. Order of the president of the Inter-American Court of Human Rights, July 6, 2017.

⁶ The following parties appeared at the hearing: (a) for the Inter-American Commission: Edison Lanza and Tatiana Guasti Teubne; (b) for the representatives: Matthew Sanders, Roberto Rock, David Aponte, Ricardo Trotti, Angelita Baeyens, Wade McMullen and Lucia Marchueta, and (c) for the State of Colombia: Juanita María López Patrón, Ángela María Ramírez Rincón, María Angélica Velandia Rivero and Jonathan Duvan Riveros Tarazona.

III. JURISDICTION

12. The Court is competent to hear the instant case pursuant to article 62(3) of the Convention, as Colombia has been a State Party to the American Convention on Human Rights since July 31, 1973 and recognized the contentious jurisdiction of the Court on June 21, 1985.

IV. PRELIMINARY QUESTIONS

On including new facts and weighing information on public policies implemented by the State

13. The *State* introduced preliminary questions regarding: (a) inclusion of new facts in the pleadings brief, and (b) public policies on investigating, preventing and redressing acts of violence against journalists, implemented subsequent to the homicide of Nelson Carvajal. The information supplied by the State regarding the latter point could be useful for examining whether certain measures of redress should be ordered as guarantees of non-recurrence.

14. On the former point, the State noted that the representatives of the alleged victims had added new facts to their pleadings and motions brief, which had not been mentioned earlier in the body of facts for the instant case, nor had the Commission included them in its submission brief or its Merits Report. It cited articles 35(1) and 35(3) of the Rules of Procedure of the Court, according to which only the Commission may submit facts on alleged violations, through the Merits Report. It specifically objected to statements by the representatives that “the head Regional Prosecutor, who had determined the legal status of the accused, was Prosecutor [C.H.E.A.], who had allegedly collected money in exchange for granting him a favorable legal situation” and that “[o]n December 13, 2020, this prosecutor was sentenced to 96 months in prison by the Higher Court of Bogotá in a verdict in the appeals court for collusion in the crime of aggravated larceny.” The State asserted that “this fact should be excluded because it was not cited in the Merits Report and because it is irrelevant.”

15. In this regard, in keeping with the Court's *jurisprudence constante*, the body of facts in a proceeding before the Court consists of all the material contained in the Merits Report with the exception of any events that qualify as having arisen subsequently, so long as they are relevant to the facts of the matter. This is without prejudice to presenting information that may help explain, clarify or discard any facts that were raised in the Merits Report and submitted to the consideration of the Court.⁷ The Court deems that in the instant case, the information supplied by the representatives on the proceedings and criminal conviction against the prosecutor apply to a process that is unrelated to the facts contained herein. The Court therefore, in keeping with the standards developed in its *jurisprudence constante*, holds that the description of the facts in the instant case should not include the above-referenced material cited by the representatives or the evidence attesting thereto.

⁷ Cfr. Case of “Five Pensioners” v Peru. Merits, Reparations and Costs. Judgment February 28, 2003. Series C No. 98, par. 153 and Case of Dismissed Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment November 23 2017. Series C No. 344, par. 65.

V EVIDENCE

A. Documentary, testimonial and expert evidence

16. The Court received several documents filed by the State, the Commission and the representatives additional to their main briefs and their final pleadings and observations (*supra* pars. 5 to 7). The Court also received several statements rendered before public attestors (*affidavit*).⁸ The evidence delivered before the Court in the public hearing consisted of statements by Judith Carvajal Carvajal, alleged victim, Lilia Yaneth Hernández, witness offered by the State, and expert witness Carlos Lauría, offered by the Commission, whose statement was taken by video-conference.

17. The Court also received several documents submitted by the representatives and by the State, together with the final written pleadings.

B. Admission of evidence

18. The Court admits documents submitted by the parties and the Commission within the procedural time-limits (article 57 of the Rules of Procedure), so long as their admissibility has not come under challenge, objections or questions as to their authenticity.⁹ The Court is also pleased to receive statements delivered in the public hearing or before a public attestor if they strictly apply to the matter set forth in the Order of subpoena.¹⁰

19. Several documents were referenced via electronic link, and the Court has held that, if one of the parties or the Commission provides at least the direct electronic link to the document cited as evidence, and if the document is available to access, it does not impinge on legal certainty or procedural equilibrium because it is immediately available to the Court and other parties.¹¹ Consequently, the Court deems admissible the documents submitted by means of electronic links in the instant case.

20. Regarding procedural time-limits for adducing documentary evidence, under the terms of article 57(2) of the Rules of Procedure, evidence should be submitted together with the briefs of submission of the case, the pleadings brief or the answering brief, whichever applies. The Court notes that evidence submitted outside the procedural time-limits is not admissible, unless the exceptions given in article 57(2) apply, that is, in cases of force majeure or serious

⁸ Affidavits were submitted by: Miguel Emilio La Rota Uprimny, Diego Fernando Mora Arango, Ivonne González Rodríguez, Héctor Enrique Ordoñez Serrano, and María Carmelina Londoño, offered by the State, David Kaye offered by the Commission, and Luz Estela Bolaños Rodríguez, Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños, Yaneth Cristina Carvajal Ardila, Gloria Mercedes Carvajal Carvajal, Ruth Dary Carvajal Carvajal, Fernando Augusto Carvajal Carvajal, Luz Eny Carvajal Carvajal, Miriam Carvajal Carvajal, Ana Francisca Carvajal de Carvajal, Jairo Carvajal Cabrera, Saúl Carvajal Carvajal, Christian Camilo Motta Carvajal, Diana Calderón, Óscar Mauricio Bolaños Carvajal, Diego Fernando Bolaños Carvajal, Germán Augusto Rey Beltrán, Pedro José Vaca Villareal, and Guillermo Alberto Puyana Ramos, offered by the representatives.

⁹ *Cfr. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment July 29, 1988. Series C No. 4, par. 140, and **Case of Dismissed Employees of Petroperú et al. v. Peru, par. 74.**

¹⁰ The topics to be addressed in declarations are specified in the Court president's Order of July 6, 2017.

¹¹ *Cfr. Case of Escué Zapata v. Colombia. Merits, Reparations, Court Costs and Legal Fees.* Judgment July 4, 2007. Series C No. 165, par. 26, and **Case of Favela Nova Brasília v. Brazil, Preliminary Objections, Merits, Reparations and Court Costs. Judgment February 16, 2017. Series C No. 333, par. 92.**

impediment, or if it addresses an event that occurred subsequent to the expiration of the time-limit.¹²

21. On July 17, 2017, the representatives adduced as additional documentary evidence a copy of criminal evidentiary file No. 20 on the homicide of Nelson Carvajal and a copy of the record of the preparatory hearing held on July 12, 2017. The State, in turn, submitted several documents together with its final written pleadings.¹³ All these documents were remitted to the other parties and to the Commission, and no objections were raised thereto. The Court notes that this information was presented following expiration of the time-limit for briefs of pleadings, motions and evidence and answering briefs, but it has decided to admit the material under the terms of article 57(2) of the Rules of Procedure.

22. Finally, regarding the documents submitted by the representatives on legal fees and court costs together with the final written pleadings, the Court will consider only those that apply to recent legal costs incurred for the proceedings before this Court, that is, those that arose subsequent to the presentation of the pleadings brief.¹⁴

C. Weighing the Evidence

23. Based on the provisions of articles 46, 47, 48, 50, 51, 52 and 57 of the Rules of Procedure and on its *jurisprudence constante* regarding evidence and how it is assessed, the Court will examine and weigh the evidentiary documentation adduced by the parties and the Commission within the procedural time-limits, and the statements and opinions given via sworn statements rendered in the presence of a public attestor (*affidavits*) and during the public hearing. In so doing, it will abide by the principles of sound judicial discretion in the relevant regulatory framework, always cognizant of the full body of evidence and the allegations in the case.¹⁵

VI FACTS

24. This chapter gives the Court's exposition of the facts of the case based on the framework set forth in the Commission Report, including any material reported by the parties that may help to explain, shed light on or discard the framework of facts. The facts will be presented in the following order: (a) context; (b) Nelson Carvajal Carvajal and his murder; (c) judicial proceedings; (d) alleged threats against the family members of Nelson Carvajal Carvajal and other participants in the case, and (e) measures of protection adopted by the State for family members of Nelson Carvajal Carvajal and witnesses in the proceedings.

A. Context

¹² Cfr. *Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations, Court Costs*. Judgment Thursday, October 13, 2011. Series C No. 234, par. 22, and **Case of Dismissed Employees of Petroperú et al. v. Peru, par. 75**.

¹³ The documents were: (i) order of indictment, July 14, 2017, file 2294. Office of the Public Prosecutor; (ii) current criminal file on Nelson Carvajal Carvajal. File 19, pages 102 to 304 and File 20, pages 1 to 109, and (iii) Note sent by the Ministry of Foreign Relations on September 18, 2017.

¹⁴ Cfr. *Case of Tenorio Roca et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment June 22, 2016. Series C No. 314. par. 41. and **Case of Vereda La Esperanza v. Colombia. Preliminary Objections, Merits, Reparations and Court Costs. Judgment August 31, 2017. Series C No. 341, par. 47**.

¹⁵ Cfr. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment March 8, 1998. Series C No. 37 par. 76, and **Case of Dismissed Employees of Petroperú et al. v. Peru, par. 79**.

A.1. Context of violence against journalists in Colombia

25. The Commission, the representatives and the State all made reference to a context of journalist homicides in Colombia at the time these events took place. The State said more particularly that it recognized "the existence of a context of violence against journalists at the time of the facts in the instant case."¹⁶

26. Also regarding this context of violence against journalists, the Committee to Protect Journalists reported in 1997 that Colombia held second place on the worldwide list of journalists killed, and in 1998 the country had moved to first place and was tagged "the most deadly place for the press in the world."¹⁷ Expert witness Germán Augusto Rey Beltrán recalled that according to figures from the Center for Historical Memory, 152 Colombian journalists were killed for their work from 1977 to 2015, and over one-third of these homicides took place from 1996 to 2005.¹⁸ He pointed to figures showing that from 1986 to 1995, 61 journalists were killed in Colombia, while another 60 lost their lives from 1996 to 2005.¹⁹ Expert witness Carlos Lauría similarly stated in the public hearing on this case that four journalists, including Nelson Carvajal Carvajal, were killed in Colombia in 1998 in reprisal for their reporting.²⁰

27. Several clear features attach to this context of violence against journalists that arose in the 1990s as the armed conflict unfolded in the midst of a wave of criminal violence that instilled in the press a climate of growing fear and intimidation. In this setting, the multiple parties to the conflict targeted journalists who published criticism and exposés or who reported on sensitive subjects, especially drug-related violence.²¹ The violence against journalists was largely associated with Colombia's domestic armed conflict, long-lasting as it was, with a multiplicity of parties in many areas of the country.²² The Colombian Federation of Journalists has stated that most of the violence against journalists was concentrated in regions where the dynamics of armed conflict were most intense or that were dominated by de facto rulers in the political, economic and military spheres.²³

28. The United Nations Special Rapporteur on the right to freedom of opinion and expression said in this regard, "...the armed conflict has generated or facilitated the emergence of serious impediments to the exercise of the right to freedom of opinion and expression: the drug trafficking pandemic; a widespread sense of insecurity; the militarization of the country; the polarization of opinions accompanied by the stigmatization of opposing positions; and a link,

¹⁶ Briefs of the final written pleadings of the State, page 15, and its answering brief, p. 15. The State also noted in the public hearing that, "indeed, the 1990s posted high rates of violence against journalists."

¹⁷ Committee to Protect Journalists, "Resúmenes por país: Colombia", 1998, quoted in the public hearing by expert witness Carlos Lauría. Available in Spanish from: <https://cpj.org/es/2004/07/resumenes-por-pais.php>

¹⁸ Cfr. Statement by expert witness Germán Augusto Rey Beltrán (evidence file, folio 13497), and report by the National Center for Historical Memory, "La Palabra y el Silencio. La violencia contra periodistas en Colombia (1977-2015)," 2015, p. 60. Available in Spanish at: <http://centrodememoriahistorica.gov.co/micrositios/periodistas/pdf/la-palabra-y-el-silencio-violencia-contra-periodistas.pdf>

¹⁹ Cfr. Statement by expert witness Germán Augusto Rey Beltrán (evidence file, folio 13497).

²⁰ Cfr. Statement in the public hearing by expert witness Carlos Lauría.

²¹ Cfr. Statement in the public hearing by expert witness Carlos Lauría.

²² Cfr. Statement by expert witness Germán Augusto Rey Beltrán (evidence file, folio 13498).

²³ Cfr. Colombian Federation of Journalists (FECOLPER), "Impactos de la Violencia contra Periodistas en el Marco del Conflicto Armado," 2015, p. 26. Report cited by the representatives in their pleadings brief, footnote p. 14. Available in Spanish from: <http://fape.es/wp-content/uploads/2015/11/Impactos-de-la-violencia-contra-periodistas-en-el-marco-del-conflicto-armado-colombiano.pdf>

albeit ambiguous, between purveyors of corruption, various armed groups and some sections of the military and law enforcement agencies."²⁴

29. A striking feature of the violence against journalists in Colombia has been the broad diversity of parties involved. Thus the drug trade built organized crime structures with "great power and facility for corruption [...]; different types of guerrilla groups active in regions where they acquired rule over territories and have not been fully defeated by law enforcement; paramilitary groups that built actual irregular armies, in many cases allied with political and military forces, that were able to co-opt local government structures and take over vast territories after expelling the original population [...], and crime syndicates ("*Bacrim*") that drew from local gangs, former demilitarized members of the self-defense forces and the guerrillas and former members of the police, the army and certain types of petty officials who thrive in the midst of dense processes of corruption. All these existed in addition to agents of the State, public officers, security organizations and the military."²⁵ The Colombian United Self-Defense Forces (hereinafter "AUC") began to demobilize in 2004, followed by the guerrillas from the Colombian Revolutionary Armed Forces (hereinafter "FARC") in 2017.

30. The United Nations Special Rapporteur said in this regard that the leaders of the FARC and the ELN viewed journalists and other types of professionals as potential military targets. He noted that paramilitary groups joined forces to form the AUC in 1997 that would lend a nationwide dimension to their fight against the guerrilla armies, and that some of their "military targets" included journalists accused of supporting the guerrilla groups. He added that the AUC allegedly took part in the deaths of around 15 journalists dating back to 1997, while another 20 chose to flee the country to escape the paramilitary forces. Finally, he stated that investigative reporters were often targeted by the AUC because of their focus on corruption.²⁶

31. Another feature of the violence against journalists was its regional character, as Columbia is a country of highly dissimilar, distinctive regions in which the domestic conflict itself was profoundly regional in nature.²⁷ This explains why the great majority of murdered journalists and media professionals hailed from the outer regions, as did those who experienced threats, forced displacement or torture. Regional and local reporters in Colombia have been closer to the armed clashes and violent operators, enmeshed in areas where illegal groups battled the State for territorial dominance, often for drug trafficking routs or freer movement by organized crime. The regions also lack a well-developed communications network, so only a few of these areas have a critical mass of media outlets, attractive opportunities for advertising, training facilities for journalists and healthy numbers of reporters. Given all this, journalists in many regions become community leaders and recognized, trustworthy spokespersons, monitoring the performance of government leaders and serving as the most visible source of investigations and complaints.²⁸

32. The resulting view is that, because they are in close proximity to the contexts of intense political and armed violence, local and regional media are more vulnerable to aggression, pressure or persecution by those engaged in the conflict and the war.²⁹ A clear example is the

²⁴ United Nations, Report of the Special Rapporteur on the right to freedom of opinion and expression, Mission to Colombia, E/CN.4/2005/64/Add.3, p. 2.

²⁵ Statement by expert witness Germán Augusto Rey Beltrán (evidence file, folio 13499).

²⁶ *Cfr. United Nations, Report of the Special Rapporteur on the right to freedom of opinion and expression, Mission to Colombia, E/CN.4/2005/64/Add.3, p. 8.*

²⁷ *Cfr. Statement by expert witness Germán Augusto Rey Beltrán (evidence file, folio 13502).*

²⁸ *Cfr. Statement by expert witness Germán Augusto Rey Beltrán (evidence file, folio 13502).*

²⁹ *Cfr. Colombian Federation of Journalists (FECOLPER), "Impactos de la Violencia contra Periodistas en el Marco del Conflicto Armado," 2015, p. 26.*

fact that 48 of the 58 journalists murdered from 1996 to 2005 worked for media of regional or local scope.³⁰ This means that deaths or threats against reporters cause serious collective damage. Journalists in certain regions are nearly the only source of information for the community, and their loss holds grave consequences for the collective.³¹ The situation varies by type of media. The journalists most affected worked in the written press and especially in radio.³²

33. According to the National Center for Historical Memory, the period from 2006 to 2015 saw both rising and falling levels of violence against journalists. Falling levels were reported whenever the figures on murdered journalists declined visibly from the previous period, but at the same time, violence was considered to be on the rise with the increase of “self-censorship and other forms of aggression affecting journalism and local and national society overall.”³³

A.2. Impunity in cases of violence against journalists in Colombia

34. The Colombian justice system has encountered considerable difficulty investigating the perpetrators of acts of aggression against journalists. Besides, these investigations tend to last a very long time, which heightens the effect of impunity for such acts of violence.³⁴ Expert witness Carlos Lauría recalled figures from the Freedom of the Press Foundation showing that over 99% of the cases of murder of journalists had gone unpunished “because not all the people responsible for these crimes have been convicted.”³⁵ The period from 1977 to 2015 saw 152 cases of murdered journalists (*supra* par. 26), of which 127 remain in complete impunity.³⁶

35. The United Nations Special Rapporteur on the right to freedom of opinion and expression, in a report on his visit to Colombia in 2004, expressed his concern for the persistence of impunity in cases of homicide against journalists. He stated in the report, “[l]ong and unjustified delays in the investigation of crimes, coupled with many unsolved cases of the murder of journalists, trade unionists, teachers and human rights defenders that may never successfully be concluded, have consolidated a deep-rooted culture of impunity, creating intimidation and increasing fear amongst the general public.”³⁷

36. Expert witness Carlos Lauría stressed, during the public hearing on this case, that the combination of acts of violence against journalists and, at the same time, the impunity surrounding these acts, has a highly negative impact. This is true, first, for the journalists themselves and their families, and second, because it has prevented communities in Colombia from receiving information on issues of importance to them, such as the armed conflict,

³⁰ Cfr. Report from the National Center for Historical Memory: “La Palabra y el Silencio. La violencia contra periodistas en Colombia (1977-2015),” 2015, pp. 98 and 99.

³¹ Cfr. Statement by expert witness Germán Augusto Rey Beltrán (evidence file, folio 13508).

³² Cfr. Statement by expert witness Germán Augusto Rey Beltrán (evidence file, folio 13505). Regional and local broadcasters are actively involved in two large radio groups through a “network,” especially for news programs, that also includes local community radio stations, which play a very important role as local media outlets.

³³ Report from the National Center for Historical Memory: “La Palabra y el Silencio. La violencia contra periodistas en Colombia (1977-2015),” 2015, pp. 101 and 105.

³⁴ Cfr. Statement by expert witness Pedro Vaca (evidence file, folio 13536).

³⁵ Statement by expert witness Pedro Vaca (evidence file, folio 13536).

³⁶ Cfr. *Statement in the public hearing by expert witness Carlos Lauría.*

³⁷ United Nations, Report of the Special Rapporteur on the right to freedom of opinion and expression, Mission to Colombia, E/CN.4/2005/64/Add.3, 26 November 2004, p. 2.

organized crime, the drug trade and political corruption.³⁸ Expert witness Germán Rey added that 50% of all crimes against journalists in Columbia have now lapsed under the statute of limitations. All this further contributes to the growing climate of fear and intimidation among journalists that culminates in censorship, which in turn affects society overall, instills a certain environment and helps consolidate the idea that the very act of practicing journalism is in itself a real and present danger.³⁹

B. Nelson Carvajal Carvajal and his murder

37. Nelson Carvajal Carvajal was born on August 16, 1961 in the town of Pitalito, department of Huila, Colombia. His parents were Ana Francisca Carvajal and Jairo Carvajal Cabrera. He had five sisters, Judith, Gloria Mercedes, Ruth Dary, Luz Eny and Miriam Carvajal Carvajal, two brothers, Fernando Augusto and Saúl Carvajal Carvajal, and two nephews, Christian Camilo Motta Carvajal and César Augusto Meneses Carvajal. Nelson was married to Luz Estela Bolaños Rodríguez and had three daughters, Yaneth Cristina Carvajal Ardila, Paola Andrea Carvajal Bolaños y María Alejandra Carvajal Bolaños.⁴⁰ He held an undergraduate degree in religious science and ethics.

38. His work as a journalist included serving as director of three radio programs, "Mirador de la Semana," "Amanecer en el Campo" and "Tribuna Médica," broadcast over the *Radio Sur* radio station in the municipality of Pitalito. Nelson Carvajal reported on matters of local interest, and in particular, exposed irregularities in the management of public resources, acts of corruption and money laundering with the proceeds of drug trafficking in the area and more generally, in the department of Huila.⁴¹ According to several witnesses, at the time the facts of this case occurred, Nelson Carvajal was developing a story about money laundering with the proceeds of drugs and arms trafficking in the region. In addition to his work as a journalist, he was a teacher and the principal of the Los Pinos School.⁴² The school now carries the name of Nelson Carvajal Carvajal in his honor.⁴³ He was also elected to serve two terms on the Pitalito town council, from 1992-1994 and 1995-1997.⁴⁴

39. On April 16, 1998, at approximately 6:15 PM, Nelson Carvajal was killed as he was leaving the Los Pinos School and readying his motorcycle. A man fired at him seven times with a firearm and then escaped on a motorcycle with another person who was waiting for him.⁴⁵

³⁸ Cfr. Statement in the public hearing by expert witness Carlos Lauría .

³⁹ Cfr. Statement by expert witness Germán Augusto Rey Beltrán (evidence file, folios 13509 and 13510).

⁴⁰ Cfr. Birth certificate and marriage license (evidence file, folios 1298 to 1327).

⁴¹ Cfr. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD.-210-209, Bogotá, January 18, 1999 (evidence file, folios 4ff.); Prosecutor General of the Nation. Regional Office of the Public Prosecutor. Intake Section. Supplement to the sworn statement, April 12, 1999 (evidence file, folios 181 to 193), and 22nd Office of the Prosecutor assigned to the Criminal Courts of the Pitalito Circuit. Statement by Judith Carvajal Carvajal, April 28, 1998 (evidence file, folios 166 to 171).

⁴² Cfr. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD.-210-209, Bogotá, January 18, de 1999, p. 1 (evidence file, folios 4 to 41).

⁴³ Cfr. Decision 053 of the Pitalito, Huila Town Council, December 10, 1998 (evidence file, folios 1345 to 1346).

⁴⁴ Cfr. Office of the Prosecutor General. Judicial Police. Huila Precinct. Corpse Inspection Certificate. Number 042, April 16, 1998, (evidence file, folios 156 to 160).

⁴⁵ Cfr. Single Criminal Court of the Specialized Circuit, Neiva, Huila. Judgment of December 15, 2000 (evidence file, folios 55 to 97); Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 98 to 140); Office of the Prosecutor General. Supplement to the sworn statement rendered by Carmenza Raigosa, August 9, 1999 (evidence file, folios 286 to 291), and Regional Office of the Public Prosecutor

C. Judicial proceedings

C.1. Pretrial Phase of the Criminal Proceeding - Proceeding 33.744

40. On April 16, 1998, following Nelson Carvajal Carvajal's murder, a deputy police officer reported to the scene of the crime,⁴⁶ and the corpse removal group from the Technical Investigations Unit (hereinafter "TIU") of the Prosecutor's Office arrived to conduct the judicial inspection of the body⁴⁷ and issue the corpse inspection certificate "with the respective description and the dactyloscopic search."⁴⁸

41. According to the January 18, 1999 report of the Regional Prosecutor's Office, a Judicial Inspection was documented at the crime scene in the presence of experts and witnesses, including an album with a photographic and fingerprint review. The report made reference to the file produced by the Criminalistics Section of Pitalito, Huila, including photographs of the crime scene and Nelson Carvajal's body. It also mentioned the autopsy report by the South Regional Unit of the Institute of Forensic Medicine.⁴⁹

42. On April 17, 1998, the TIU drafted a report addressed to the Joint Secretariat of the Offices of the Public Prosecutor assigned to the Criminal Courts of the Pitalito Circuit, indicating that an individual had witnessed the events and identified the alleged abettor. The report stated that the investigators had succeeded in identifying this suspect. That same day, the investigation was first assigned to the 22nd District Office of the Public Prosecutor assigned to the Criminal Courts of the Pitalito Circuit. Based on the TIU report and the corpse inspection certificate, that Prosecutor's Office formally launched a criminal investigation against the alleged perpetrator.⁵⁰ Several legal proceedings were undertaken during the first week following commission of the crime.⁵¹

43. On April 21, 1998 the 22nd District Office of the Public Prosecutor indicated that the evidence gathered led to the conclusion that the journalist had been murdered because of his profession, and that the regional court system would have jurisdiction over the investigation.⁵²

Special Terrorism Unit. Santa Fe de Bogotá. Statement by Luis Alberto España Rojas, May 6, 1998 (evidence file, folios 172 to 173).

⁴⁶ *Cfr.* Single Criminal Court of the Specialized Circuit, Neiva, Huila. Judgment of December 15, 2000, (evidence file, folios 55 to 97).

⁴⁷ *Cfr.* Technical Investigations Unit. Investigative Unit. Pitalito, Huila. Report No. 388. Reference: Corpse Inspection Certificate of Nelson Carvajal Carvajal Certificate No. 042, April 17, 1998 (evidence file folios 161 to 163).

⁴⁸ *Cfr.* Office of the Prosecutor General. Judicial Police. Huila Precinct. Corpse Inspection Certificate. Number 042, April 16, 1998 (evidence file, folios 156 to 160), and Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD.-210-209, Bogotá, January 18, 1999 (evidence file, folios 4 to 41).

⁴⁹ *Cfr.* Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD.-210-209, Bogotá, January 18, 1999 (evidence file, folios 4 to 41).

⁵⁰ *Cfr.* Office of the Prosecutor General. Judicial Police. Huila Precinct. Corpse Inspection Certificate. Number 042, April 16, 1998 (evidence file, folios 156 to 160), Technical Investigations Unit. Investigative Unit. Pitalito, Huila. Report No. 388. Reference: Corpse Inspection Certificate of Nelson Carvajal Carvajal, Record No. 042, April 17, 1998 (evidence file folios 161 to 1163), and Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 101).

⁵¹ The legal proceedings included: taking witness statements and identification of suspects in a lineup. The case file states that in the lineup, two eyewitnesses to Nelson Carvajal's murder, whose identities were protected, identified a second person as suspect. *Cfr.* Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD.-210-209, Bogotá, January 18, 1999 (evidence file, folios 4 to 41).

⁵² *Cfr.* Office of the Prosecutor General. 22nd District Office assigned to the Criminal Courts of the Pitalito Circuit, Huila. April 21, 1998, (evidence file, folios 164 to 165).

44. The investigation was later reassigned to the Regional Office of the Public Prosecutor for presentation before the Circuit Judges Specialized in Criminal Cases, located in Bogotá. On May 10, 1998, an order was given to take one of suspects of the homicide into preventive detention. The Prosecutor's Office also performed "intelligence" work, took new witness statements, and gathered documentary evidence.⁵³

45. On December 28, 1998, the Regional Prosecutor's Office assessed the probative value of the evidence and closed the investigation of one of the accused, stating, "the circumstantial evidence linking him to the crime has been disproven by new evidence." Similarly, on December 29, 1998, the Regional Prosecutor's Office issued arrest warrants against four persons, stating that it had "sufficient evidence to charge them with participation" in the crime.⁵⁴ The defense team of these suspects stated during the investigation stage that the people responsible for Nelson Carvajal's murder had been the FARC guerrilla group and the armed criminal gang from the Porvenir district of Pitalito.⁵⁵

46. On January 18, 1999, the Regional Prosecutor's Office issued an order outlining the facts, the identity of the accused, the body of evidence and the judicial proceedings that had been undertaken, and offered its opinions on the "materiality of the act," the classification of the criminal conduct, and the liability of the defendants. It stated, therefore, that homicide had been committed against Nelson Carvajal Carvajal, with prejudice to the interests of his family. It showed that this crime was duly defined in the Criminal Code, compounded by the fact that it was committed against "a person who was a candidate for public office and a journalist." The order also issued a warrant for preventive detention without bail for the alleged perpetrators of the aggravated crime of homicide. Finally, it called for more evidence to be taken, as well as additional statements from several persons, and ordered the Regional Prosecutor's Office of Neiva to pursue intelligence work for investigating the defendants' hypotheses that the 13th Front of the FARC and the armed criminal gang from the Porvenir district had committed the crime.⁵⁶

47. On February 19, 1999, another individual was apprehended and brought into the investigation through a formal statement at an initial appearance on March 13, 1999. He was ordered to remain in preventive detention and alleged to have materially committed the murder.⁵⁷

48. On March 1, 1999, Judith Carvajal Carvajal lodged a complaint with the Regional Office of the Public Prosecutor alleging that the defense attorneys for the accused in her brother's case had violated procedural confidentiality by delivering copies of some of the pretrial work in the criminal investigation to various persons in Pitalito who were not defendants in the case.⁵⁸

49. On March 29, 1999, the Regional Prosecutor's Office responded by transferring the complaint to the competent authority for investigation into the claims made by Judith

⁵³ *Cfr.* Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 98 to 140).

⁵⁴ *Cfr.* Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 98 to 140).

⁵⁵ *Cfr.* Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD.-210-209, Bogotá, January 18, 1999 (evidence file, folios 4 to 41).

⁵⁶ *Cfr.* Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD.-210-209, Bogotá, January 18, 1999 (evidence file, folios 4 to 41).

⁵⁷ *Cfr.* Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 98 to 140).

⁵⁸ *Cfr.* Complaint filed by Judith Carvajal Carvajal with the Regional Office of the Public Prosecutor on risk to witnesses, March 1, 1999 (evidence file, folios 179 to 180).

Carvajal.⁵⁹ Later, on November 24, 2006, Diana Calderón, speaking on behalf of the Inter-American Press Association, reported a variety of irregularities, including this breach of pretrial confidentiality.⁶⁰

50. On May 6, 1999, the Regional Prosecutor's Office denied requests to lift the preventive detention orders against two defendants in the case, and on June 18, reiterated the decision against reversal in both cases. On August 12, 1999 it denied a request to lift preventive detention of the then-mayor of Pitalito.⁶¹

51. On August 24, 1999, the Office of the Prosecutor General reassigned the investigation to the National Unit of Human Rights Prosecutors.⁶² Nevertheless, on September 7, 1999, the Criminal Judgment Division of the Superior Court for the Judicial District transferred jurisdiction over the case back to the Regional Prosecutor's Office under the Circuit Judges Specialized in Criminal Cases.⁶³

52. On November 2, 1999, the Criminal Division to Clear Backlogs in the unit assigned to the Bogotá Court ruled on an appeal of the refusal to lift preventive detention of the then-mayor of Pitalito, reversed the preventive detention measures and ordered his release.⁶⁴ The other two suspected principals in the crime were granted release on parole on December 10, 1999 and January 6, 2000.⁶⁵

53. On January 17, 2000, the Regional Prosecutor's Office weighed the evidence produced by the investigation and ordered indictments of three people. It also revoked the release on parole and closed the investigation against the then-mayor of Pitalito and a former member of the town council.⁶⁶

C.2. Hypotheses developed in the investigation into complicity of persons⁶⁷ and the motives for the murder of Nelson Carvajal Carvajal

54. At the beginning of the investigation prior to the criminal proceeding, the 22nd District Office of the Public Prosecutor indicated that "...what has been outlined thus far suggests that the murder of journalist [...] Nelson Carvajal Carvajal resulted from or was associated with

⁵⁹ Cfr. Office of the Prosecutor General. Filing: 33744. Bogotá, March 29, 1999 (evidence file, folios 194 to 195).

⁶⁰ Cfr. Huila District Office of the Judicial Council. Disciplinary Chamber of the Judicial Council. Filing 2007 - 376-00, December 7, 2007 (evidence file, folios 306 to 310).

⁶¹ Cfr. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 98 to 140).

⁶² Cfr. Order 00566 of the Office of the Prosecutor General, August 24, 1999 (evidence file, folios 273 to 275).

⁶³ Cfr. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 98 to 140).

⁶⁴ Cfr. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 98 to 140), and Criminal Court of the Specialized Circuit of Neiva, Huila. Proceedings from the trial on case number 2000-0090. Hearing number 047, November 29, 2000 (evidence file, folios 196 to 254).

⁶⁵ Cfr. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 98 to 140).

⁶⁶ Cfr. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 98 to 140).

⁶⁷ The expression "confederacy" or "complicity of persons" is used for this investigative hypotheses because the evidence could eventually point to the concrete intervention of a third party, whether as joint perpetrator, abettor, instigator or accomplice.

his profession, especially the type of exposés he reported.”⁶⁸ The Regional Prosecutor’s Office drew the same conclusion based on “the intelligence reports, eyewitness and confidential witness statements, and documentary evidence” gathered during the pretrial investigation.⁶⁹

55. During the pretrial investigation of the criminal proceeding and at trial, at least four working hypotheses were developed regarding the possible complicity and motives for the crime against journalist Carvajal Carvajal: (a) complicity by the then-local mayor and others; (b) complicity by a businessman and former town council member and others; (c) complicity by the Revolutionary Armed Forces (FARC); and (d) complicity by a criminal gang from the Porvenir district of Pitalito.

(a) Complicity by the then-local mayor and others

56. During the investigation, the authorities handling the case worked with the hypothesis that the then-mayor of Pitalito had been a confederate in the crime. According to the January 18, 1999 report by the Regional Prosecutor’s Office, weeks prior to his murder, Nelson Carvajal had reported irregularities in the purchase of a piece of land by the mayor. This land was to be used to build a nature park.⁷⁰ On April 17, 1998, the day after he died, Nelson Carvajal was supposed have made a statement to the Municipal Ombudsman concerning his reporting on this matter.⁷¹

57. The investigation against the former mayor of Pitalito was closed in 2000 (*supra* par. 53). Nevertheless, during a later investigation conducted in 2006, a witness who was a demobilized FARC combatant told a Special Prosecutor that the people responsible for Nelson Carvajal Carvajal’s murder included the former mayor and a local businessman.⁷²

(b) Complicity by a businessman and former town council member and others

58. According to the January 18, 1999 report by the Regional Prosecutor’s Office, weeks prior to his murder, Carvajal had exposed irregularities in the construction of a housing development in Pitalito by a builder who was a former member of the town council.⁷³ The Regional Prosecutor’s Office issued an order stating its conviction that Nelson Carvajal, “in his capacity as town council member and journalist, launched a series of public reports about alleged irregularities that [the defendants] had committed in various public and private actions, that had directly or indirectly undermined certain interests.” It stated, moreover, that Carvajal’s claims had given rise to several investigations into the irregularities brought to light

⁶⁸ Cfr. Office of the Prosecutor General. 22nd District Office assigned to the Criminal Courts of the Pitalito Circuit, Huila, April 21, 1998 (evidence file, folios 164 to 165).

⁶⁹ Cfr. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD.-210-209, Bogotá, January 18, 1999 (evidence file, folios 4 to 41).

⁷⁰ Cfr. Order by the Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD.-210-209, Bogotá, January 18, 1999 (evidence file, folios 4 to 41).

⁷¹ Cfr. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209, Bogotá, January 18, 1999 (evidence file, folios folios 4 to 41), and 22nd Office of the Prosecutor assigned to the Criminal Courts of the Pitalito Circuit. Statement delivered by Judith Carvajal Carvajal, April 28, 1998 (evidence file, folios 166 to 171).

⁷² Cfr. Supreme Court. Criminal Cassation Division. Case 30689. April 1, 2009, (evidence file, folios 164 to 305).

⁷³ Cfr. Criminal Court of the Specialized Circuit, Neiva, Huila. Proceedings from the trial on case number 2000-0090. Action for the crime of aggravated homicide. Hearing number 047, November 29, 2000 (evidence file, folios 196 to 254).

in the construction of the housing development.⁷⁴ The Regional Prosecutor's Office weighed the evidence produced during investigation and filed criminal charges against a businessman, a former member of the town council and one other person (*supra* par. 53).

(c) Complicity by the Revolutionary Armed Forces (FARC)

59. The pretrial investigation of the criminal proceeding and defense testimony at trial suggested an alternative hypothesis, that the FARC had been complicit. The Single Criminal Court of the Specialized Circuit accepted "the argument by the defense that the perpetrators of journalist Carvajal's death had been the FARC," but this working hypothesis had been ruled out by the Prosecutor's Office because it was "inconsistent and was a setup" by the accused.⁷⁵

60. The Single Criminal Court of the Specialized Circuit indicated that it had received a statement from a defense witness "who [...] asserted that the second-in-command of the 13th Front of the FARC [...] had ordered the murder of journalist Nelson Carvajal Carvajal." The Administrative Security Department (hereinafter "DAS") informed the court that its records contained "an intelligence note provided by a chance source, stating that [a] militant" from the 13th guerrilla unit of the FARC "was apparently the perpetrator of the murder of journalist Nelson Carvajal Carvajal."⁷⁶

61. According to the verdict by the Single Criminal Court of the Specialized Circuit, the local builder and the former town council member, reiterating that the charges against them were "absolutely false," asked the judge to take two witness statements, "given the importance of the information, from a good source, that the FARC committed the crime." Moreover, as evidenced in the judgment of the Single Criminal Court of the Specialized Circuit, the November 2, 1999 order lifting the preventive detention of the then-mayor of Pitalito stated, "the possibility that the perpetrators of journalist Nelson Carvajal Carvajal's murder may have been members of the [FARC] cannot be ruled out, as the radio station ["R]adio [S]ur[" had been the victim of guerrilla attacks.⁷⁷

62. However, Judith Carvajal Carvajal indicated in her supplemental statement that a person who self-identified as a member of the guerrillas told her that the group had not killed her brother Nelson Carvajal.⁷⁸

63. This hypothesis is still being investigated by authorities handling the case.

(d) Complicity by a criminal gang from the Porvenir district of Pitalito

64. The Special Prosecutor affirmed at trial that several of the statements taken suggested that members of a gang of common criminals from the Porvenir district of Pitalito could have

⁷⁴ Cfr. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD.-210-209, Bogotá, January 18, 1999 (evidence file, folios 4 to 41).

⁷⁵ Cfr. Communiqué by the State of Colombia, August 15, 2003. DDH.22027 (evidence file, folios 388 to 395).

⁷⁶ Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000, (evidence file, folios 55 to 97).

⁷⁷ Cfr. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000 (evidence file, folios 55 to 97).

⁷⁸ Cfr. Office of the Prosecutor General. Technical Investigations Unit. Regional Crimes Group. Record of supplemental sworn statement by Judith Carvajal Carvajal as part of case file 33.744, July 29, 1999 (evidence file, folios 42 to 54).

committed the murder.⁷⁹ The Office of the Prosecutor later noted that this “lesser” hypothesis had been weighed and subsequently discarded.⁸⁰

*C.3. Trial of a local businessman and others before the Single Specialized Court of Neiva*⁸¹

65. On January 17, 2000, the Regional Office of the Public Prosecutor before the Circuit Judges Specialized in Criminal Cases examined the evidence produced during the investigation and brought criminal charges against three individuals for the murder of journalist Nelson Carvajal Carvajal.

66. On November 29, 2000, the trial procedure was held in the Single Criminal Court of the Specialized Circuit of Neiva, which had jurisdiction over the case. On December 15, 2000, at the end of the trial phase, the court handed down its verdict acquitting the accused on the grounds of reasonable doubt. The Single Court held, *inter alia*, that the arguments put forward by the prosecution at trial were based solely on “theories and assumptions that, in strict legal terms, lack the necessary value and scope to obtain a conviction as per article 247 of the C[riminal] P[rocedural] C[ode],” and that there was no hard evidence, whether direct or indirect, to incriminate the defendants. The court examined the statements provided in the proceeding and held that they were insufficient to clear up the “serious and conspicuous uncertainties in the case” and that furthermore, “the prosecution disregarded—failed to investigate—the hypothesis that members of the insurgency could have perpetrated the crime, even though the investigating prosecutor had been informed of this possibility by investigators from the TIU in Bogotá.”⁸²

67. The court ordered the defendants to be released on parole and gave instructions for the matter to be forwarded and entrusted to the “Assignments Unit of the Prosecutors’ Offices under this Court to continue investigating the perpetrators and accomplices to the murder of Nelson Carvajal Carvajal.”⁸³

68. Both the Prosecutor’s Office and the defense attorney appealed to the Superior Court of the Judicial District of Neiva, challenging the December 15, 2000 judgment of the Single Criminal Court of the Specialized Circuit of Neiva. The higher court ruled on the appeal on April 6, 2001. The Prosecutor’s appeal claimed that the decision by the lower court was not

⁷⁹ *Cfr.* Criminal Court of the Specialized Circuit, Neiva, Huila. Proceedings from the trial on case number 2000-0090. Held for the crime of aggravated homicide. Hearing number 047, November 29, 2000 (evidence file, folios 196 to 254).

⁸⁰ *Cfr.* Communiqué by the State of Colombia, August 15, 2003. DDH.22027 (evidence file, folios 388 to 395).

⁸¹ Neiva is the capital city of the Department of Huila.

⁸² Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000 (evidence file, folios 55 to 97). The Single Court went on to say, “the testimony of multiple witnesses at trial points to the conclusion that the violent death of the aforementioned individual owed to his work as a journalist, as his ‘exposé’ reporting attracted the animosity of those who felt themselves adversely affected by his radio programs—so much so, that many lodged criminal actions against him for alleged crimes of moral turpitude.” Nevertheless, the judge held that the charges against the local businessman were based primarily on the criminal motive, and that he was not the only person to have “rivalries” with Nelson Carvajal. The judge also held that there was insufficient evidence to conclusively identify a link among the alleged perpetrators. Accordingly, he indicated that having seen the evidence gathered, he was not “certain or subjectively convinced that the three (3) defendants were responsible. The sense of doubt is unavoidable, was not cleared up—and at the current stage of the proceedings cannot be—pursuant to Article 445 of the Criminal Procedural Code.”

⁸³ *Cfr.* *Single Criminal Court of the Specialized Circuit.* Neiva, Huila. Judgment of December 15, 2000 (evidence file, folios 55 to 97).

strictly in accord with the law and that the charges were based on multiple witness statements suggesting complicity of the defendants.⁸⁴

69. The higher court upheld the decision being appealed and conducted an analysis of statements delivered in the process. It indicated that the Prosecutor's Office in charge of the case had offered insufficient arguments to demonstrate "the probative value of evidence produced during investigation," as it found only "circumstantial evidence of [B.A.'s] animosity toward the victim, supposedly the result of several critical reports aired by the deceased over the *Radio Sur* radio station of Pitalito regarding alleged irregularities in the [housing development project] by the [B.L.] construction company; this hatred was allegedly evidenced by the company's financial solvency and the owner's friendship—which could never be proven—with the so-called perpetrator." With respect to the alleged perpetrators, the Court noted that the record contained several witness statements indicating that at the time of the murder the alleged perpetrators "were engaged in lawful activities—statements that the Court certainly cannot refute with evidence to the contrary."⁸⁵

70. The Superior Court additionally stated that the defense counsel had demonstrated that "the Prosecutor's Office disregarded alternative hypotheses about other possible perpetrators of the [...] crime, which pointed to the FARC and to a syndicate of common criminals."⁸⁶

C.4. New Investigations by the Office of the Prosecutor

71. The Fourth Special Prosecutor's Office of Neiva took jurisdiction over the preliminary investigation in an order dated February 17, 2003, and instructed the DAS to gather evidence on the case of Nelson Carvajal. On November 1, 2005, the Prosecutor General reassigned the investigation to the National Unit on Human Rights and IHL. On December 20, 2005, the preliminary investigation was assumed by the 18th Office of the Special Prosecutor, which ordered the examination of various types of evidence.⁸⁷ On March 29 and October 11 and 12, 2006, a demilitarized FARC combatant named Pablo Emilio Bonilla delivered statements to the Office of the Special Prosecutor in Pitalito, narrating events that once again implicated the former mayor of Pitalito and a local businessman and former town council member as the perpetrators of Nelson Carvajal Carvajal's murder.⁸⁸ Pablo Bonilla was killed execution-style in Pitalito in May, 2007.

72. On August 26, 2008, the 18th Office of the Special Prosecutor cited the sitting president of the departmental legislature of Huila for the offenses of criminal conspiracy and murder.⁸⁹ This person had been a defense witness in the trial against the accused.⁹⁰ The Prosecutor's Office in charge of the case then instructed the State's Attorney to examine the possibility of filing a motion before the Supreme Court of Justice to review the acquittal handed down by

⁸⁴ *Cfr. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 98 to 140).*

⁸⁵ *Cfr. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 98 to 140).*

⁸⁶ *Cfr. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001 (evidence file, folios 98 to 140).*

⁸⁷ *Cfr. Office of the Prosecutor General. Prosecutor 101 of the National Unit on Human Rights and International Humanitarian Law. July 23, 2013 (evidence file, folios 292 to 294).*

⁸⁸ *Cfr. Supreme Court. Criminal Cassation Division. Case 30689. April 1, 2009 (evidence file, folios 295 to 305).*

⁸⁹ *Cfr. Office of the Prosecutor General. Prosecutor 101 of the National Unit on Human Rights and International Humanitarian Law. July 23, 2013 (evidence file, folios 292 to 294).*

⁹⁰ *Cfr. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD.-210-209, Bogotá, January 18, 1999 (evidence file, folios 4 to 41).*

the Single Criminal Court of the Specialized Circuit of Neiva.⁹¹ Meanwhile, on September 4, 2008 the Prosecutor's Office ordered that this suspect be held in preventive detention with no option for release.

73. Based on the above, the Second Criminal Court Prosecuting Attorney filed a motion for review with the Supreme Court against the verdicts by the Single Criminal Court of the Specialized Circuit of Neiva and the Superior Court for the Judicial District of Neiva, which had acquitted the defendants of the murder of journalist Nelson Carvajal Carvajal.⁹² On April 1, 2009 the Criminal Chamber of the Supreme Court declined to hear the motion for review.⁹³

74. Based on the Supreme Court's decision, on September 25, 2009, the Prosecutor's Office decided to close the investigation against the then-president of the departmental legislature of Huila and ordered the investigation against him shelved.⁹⁴

75. Finally, on September 7, 2010, the Prosecutor General reassigned the investigation to a prosecutor from the Human Rights Unit, who took over the case on November 5, 2010, and on February 21, 2011, ordered the examination of the evidence. By July 23, 2013, three files had reportedly been received from the judicial police. The Prosecutor also added alias "O.P." to the case for crimes of sedition and aggravated homicide, as well as alias "C.;" both were alleged members of the FARC. The Prosecutor issued warrants for their arrest on these grounds.⁹⁵

C.5. Disciplinary Investigation before the Judicial Council

76. On November 24, 2006, Diana Calderón, representative of the petitioner, sent information to the Disciplinary Chamber of the Judicial Council citing irregularities allegedly committed by the judicial authorities who handled the criminal case for Nelson Carvajal's murder (the 22nd District Prosecutor of Pitalito and the Single Criminal Judge of the Specialized Circuit of Neiva).⁹⁶ On December 7, 2007 the Huila District Office of the Judiciary issued an order stating that the disciplinary action for alleged irregularities against the 22nd District Prosecutor of Pitalito and the Single Circuit Judge Specialized in Criminal Cases of

⁹¹ Cfr. Office of the Prosecutor General. Prosecutor 101 of the National Unit on Human Rights and International Humanitarian Law. July 23, 2013 (evidence file, folios 292 to 294).

⁹² The Case Prosecutor argued that "subsequent to the acquittal, new evidence arose that was not known at the time of trial, which incriminates the acquitted defendants, to wit: the statement given by Pablo Emilio Bonilla, and the supplemental affidavit delivered on August 25, 2008 by Judith Carvajal Carvajal." Cfr. Supreme Court. Criminal Cassation Division. Case 30689, April 1, 2009 (evidence file, folios 295 to 305).

⁹³ She argued in particular that "neither the new evidence that came to light, which provided grounds for the National Unit on Human Rights and International Humanitarian Law to issue an order for preventive detention against the then-president of the departmental legislature of Huila on September 4, 2008 for the murder of Nelson Carvajal Carvajal, nor the admissibility of petition 559/2002, dated October 13, 2004, [fulfilled] the "corroboration" requirement cited by the Constitutional Court in its 2003 judgment C-004." Cfr. Supreme Court. Criminal Cassation Division. Case 30.689. April 1, 2009 (evidence file, folios 295 to 305).

⁹⁴ Cfr. Office of the Prosecutor General. Prosecutor 101 of the National Unit on Human Rights and International Humanitarian Law. July 23, 2013 (evidence file, folios 292 to 294).

⁹⁵ Cfr. Office of the Prosecutor General. Prosecutor 101 of the National Unit on Human Rights and International Humanitarian Law. July 23, 2013 (evidence file, folios 292 to 294).

⁹⁶ Cfr. *Huila District Office of the Judiciary*. Disciplinary Chamber of the Judiciary. Filing 2007-376-00. December 7, 2007. pp.1-2. Attached to the communication by the petitioner, dated May 13, 2009 (evidence file, folios 306 to 310). These alleged irregularities included: failing to take necessary measures to preserve evidence at the crime scene; denying protection to several witnesses who were too fearful to testify; not taking statements from individuals who had knowledge of the facts; failing to examine different hypotheses on the motives for the crime, and allowing a breach of confidentiality by the attorneys involved in the investigation.

Neiva was barred by statute of limitations.⁹⁷

D. Alleged threats against the family members of Nelson Carvajal Carvajal and other participants in the case

77. Nelson Carvajal's father, Jairo Carvajal Cabrera, stated in his affidavit that he went to the Office of the Prosecutor General after his son's death to file a criminal complaint requesting investigation of the murder. He was told at that time that the 22nd District Office of the Public Prosecutor of Pitalito would open the investigation. According to Jairo Carvajal, Nelson Carvajal's family decided to grant power of attorney to a lawyer to serve as civil plaintiff in the criminal proceedings, to ensure that the crime did not go unpunished, but that several attorneys "were fearful, and refused to work for the family [...]. Therefore they turned to an attorney who was willing to offer his services for a very high fee because he said he feared for his life." He stated that Nelson's sister Miriam Carvajal had contacted two attorneys who were willing to represent the family as civil plaintiffs, but because of the death threats to Nelson's wife Luz Stella Bolaños Rodríguez and to his sister Judith Carvajal, the family had decided to waive their right. He indicated that they had been "warned verbally and by telephone that if they continue[d] to go after the perpetrators there would be more deaths in the family."⁹⁸

78. Judith Carvajal said that several days after the death of Nelson Carvajal, she had received a telephone call at her home in Pitalito, threatening her and warning that "if she kept messing with 'them,' she would end up like her brother." Judith Carvajal also stated that she had spoken at her brother's burial service on April 18, 1998 to the group of people assembled at the San Antonio Pitalito temple, and made reference to the construction company that was allegedly involved in irregularities in Pitalito. On April 23, 1998, the mayor of Pitalito filed a complaint against Judith Carvajal alleging criminal defamation and verbal abuse, but the proceedings were terminated on April 14, 1999 because the alleged offense was deemed not to be a crime.⁹⁹

79. According to Judith Carvajal, the threats increased after January 5, 1999, the date when the Office of the Prosecutor General had arrested several people suspected for the murder of Nelson Carvajal. She stated that the telephone calls intensified, both to her house and to the *Radio Sur* radio station, where she had a Sunday program. She further indicated that in March 1999, a man approached her at the exit door of the María Auxiliadora de Pitalito Clinic and said she was "the one who was being a pain in the ass, that she was the last nut to crack if we want to clinch that business," and that he said to the men who were with him, "that's her." She also stated that on the afternoon of April 14, 1999, a man stood outside her house for a lengthy period of time. She stated that her son had told her not to leave the house because the man "had a weapon and had been standing there for a long time, watching everyone who came and went from the house." Judith Carvajal stated that she had left the house later "together with several other people and [saw] the [person] climb onto a motorcycle and tell the driver, 'Couldn't do it today, pal, we'll get it done some other day.'"¹⁰⁰

80. In view of this situation, Judith Carvajal had decided to leave Pitalito for another part of

⁹⁷ Cfr. *Huila District Office of the Judiciary*. Disciplinary Chamber of the Judiciary. Filing 2007-376-00. December 7, 2007 (evidence file, folios 306 to 310). It held that more than five years had elapsed from the time the trial court's decision had become final, and the disciplinary action was therefore time-barred pursuant to article 34 of Law 200 of 1995.

⁹⁸ Cfr. First Civil Law Notary of Pitalito. Department of Huila. Record Number 683. Statement by Jairo Carvajal Cabrera, September 18, 2003 (evidence file, folios 147 to 149).

⁹⁹ Cfr. Brief by Judith Carvajal Carvajal to the Prosecutor General (evidence file, folios 150 to 153).

¹⁰⁰ Cfr. Brief by Judith Carvajal Carvajal to the Prosecutor General (evidence file, folios 150 to 153).

the country, and she told the Office of the Prosecutor General what had happened so it could be duly investigated. Judith Carvajal went into the Victim and Witness Protection Program of the Office of the Prosecutor General in early 1999.¹⁰¹

81. On October 15, 1999, Judith Carvajal informed the Human Rights Unit of the Office of the Prosecutor General of her imminent departure from Colombia because of the threats she was allegedly receiving from persons being investigated for the death of her brother Nelson Carvajal. She expressed concern for her entire family remaining in Pitalito, since they were receiving threats. She additionally asked “the Prosecutor’s Office for protection for [her] family, which [was] in the process of leaving Pitalito for fear that something [could] happen to them,” and she requested protection for L.O., the person heard on a recording she had submitted as part of the case, who had told her on April 3, 1999 that his accomplices had received an order to kill her.¹⁰²

82. Subsequently, in 2006 and 2010, nine relatives of Nelson Carvajal had reportedly left the country for safety reasons: Paola Andrea and María Alejandra Carvajal Bolaños, Luz Estela Bolaños Rodríguez, Judith Carvajal Carvajal, Gloria Mercedes, Fernando Augusto and Ruth Dary Carvajal Carvajal, Cristhian Camilo Motta Carvajal and César Augusto Meneses Carvajal.

83. Pablo Emilio Bonilla, a prosecution witness in the case and demobilized FARC combatant, was murdered in May 2007; he had delivered a statement to a Special Prosecutor on March 29 and October 11 and 12, 2006, in Pitalito, Huila. In his statement he had named the former mayor of Pitalito and the previously acquitted local businessman as the perpetrators of Nelson Carvajal Carvajal’s murder. Based on his statement, the Second Criminal Prosecutor filed a Supreme Court motion for review of the judgments of the Single Criminal Court of the Specialized Circuit of Neiva and the Superior Court for the Judicial District of Neiva.

84. The threats against the Carvajal Carvajal family intensified once again in August 2008, when the then-president of the departmental legislature of Huila was added to the investigation into the murder of Nelson Carvajal.¹⁰³ The Office of the Prosecutor General requested that the Ministry of the Interior and Justice and the DAS provide protection to Diana Calderón, the representative the petitioning organization (IAPA), after she received a piece of paper depicting a skull beside a gravestone inscribed with the name of Nelson Carvajal. The paper also showed five more graves, each one alluding to a relative of Nelson Carvajal’s, and the message, “keep investigating and you too will go to rest.”¹⁰⁴ After these events, Ruth Dary Carvajal Carvajal and her son César Augusto Meneses Carvajal were also forced to leave the country.¹⁰⁵

E. Measures of protection adopted by the State for family members of Nelson Carvajal Carvajal and witnesses in the proceedings

85. The State adopted the following measures to protect the life and safety of Judith Carvajal

¹⁰¹ Cfr. Pleadings brief (merits file, folio 223).

¹⁰² Cfr. Office of the Prosecutor General. Technical Investigations Unit. Regional Crimes Group. Record of supplemental sworn statement by Judith Carvajal Carvajal as part of case file 33.744, July 29, 1999 (evidence file, folios 42 to 54), and statement by Judith Carvajal Carvajal. Filing 582, UDH, October 15, 1999 (evidence file, folios 154 to 155).

¹⁰³ Cfr. Office of the Prosecutor General. Prosecutor 101 of the National Unit on Human Rights and International Humanitarian Law, July 23, 2013 (evidence file, folios 292 to 294), and communiqué from the Inter-American Press Association, August 12, 2013 (evidence file, folios 311 to 316).

¹⁰⁴ Cfr. Prosecutor 25 assigned to the Circuit Criminal Courts. Record number 927 dated August 15, 2006 (evidence file, folios 9171 to 974).

¹⁰⁵ Cfr. Communiqué from the Inter-American Press Association, August 12, 2013 (evidence file, folios 311 to 316).

Carvajal and her immediate family: (i) the Prosecutor General issued an order on April 16, 1999 to provide Judith Carvajal with immediate protection, extended to her nuclear family consisting of her minor son, and (ii) a commitment signed on October 11, 1999 to relocate Judith Carvajal and her son Christian Camilo Mota Carvajal outside of Colombia.¹⁰⁶

86. The rest of Nelson Carvajal Carvajal's family members were also considered for inclusion in the protection program of the Office of the Prosecutor General. However, the decision was made under an order on November 25, 1999, not to place the Carvajal Carvajal family under the Prosecutor's Protection and Assistance Program, specifically naming Jairo Carvajal Cabrera, Ana Francisca Carvajal de Carvajal, Gloria Mercedes Carvajal Carvajal, Saúl Carvajal Carvajal, Luz Estela Bolaños, Yaneth Cristina Carvajal Ardila, Paola Andrea Carvajal Bolaños and María Alejandra Carvajal Bolaños, as "they had not consented to avail themselves of the security programs being offered."¹⁰⁷ Moreover, the National Unit on Human Rights and International Humanitarian Law, taking note of the risk to family members of journalist Nelson Carvajal Carvajal when the investigation was reopened, requested the DAS and the Municipal Police of Pitalito-Huila to take whatever measures were necessary to protect Jairo Carvajal Cabrera, Ana Francisca Carvajal de Carvajal, Saúl Carvajal Carvajal, Ruth Dary Carvajal Carvajal and Luz Eny Carvajal Carvajal.¹⁰⁸

87. In the case of Gloria Mercedes Carvajal, Prosecutor 25 of the Pitalito-Huila unit asked the Crime Investigation Department and Interpol (hereinafter "SIJIN") to provide security, if the situation so merited, and to conduct inquiries into the source of the reported threats.¹⁰⁹

88. The Prosecutor's Protection and Assistance Program had also assessed the situation of threat and risk in the case of Pablo Emilio Bonilla (*supra* par. 71), the witness in the proceedings for the murder of Nelson Carvajal, starting on May 23, 2003, and duly offered protection. Pablo Bonilla, however, in a communication on May 6, 2003, stated that he could not join the Protection Program until June 15 of the same year, as currently he was being protected through his support for the work of the GAULA in the city of Neiva. The Protection Program therefore concluded that Pablo Bonilla was not in imminent danger.¹¹⁰ In addition, a process was underway with the Prosecutor's Protection and Assistance Program, which eventually led to excluding Pablo Bonilla from the Program due to a failure to comply with all legal requirements.¹¹¹ Later, on February 5, 2007, the Prosecutor's Protection and Assistance Program reassessed the risk facing Pablo Bonilla and found no cause-and-effect link between his effective cooperation with the administration of justice, and the factors of risk and/or threat, which made it impossible to design any sort of protection plan; the resulting decision

¹⁰⁶ Cfr. Record of the Office of the Prosecutor General with measures of protection, No. 20161700039261, June 13, 2016 (evidence file, folios 2327 to 2352).

¹⁰⁷ Cfr. Record of the Office of the Prosecutor General with measures of protection, No. 20161700039261, June 13, 2016 (evidence file, folios 2327 to 2352).

¹⁰⁸ Cfr. Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law, Decision of November 23, 2006 (evidence file, folio 9221). In addition, the Huila Police Department visited the residence of Ana Francisca Carvajal and Saúl Carvajal Carvajal, and recommended several security measures they could take at home and when they went out. They also went to the home of Ruth Dary Carvajal to make similar recommendations (Colombian National Police, Region 2). Huila Police Department, Judicial Police and Investigations Unit. Record No. 1110/DPH.SIJIN.DIPIT, dated December 7, 2006 (evidence file, folio 9239).

¹⁰⁹ Cfr. Prosecutor 25 assigned to the Circuit Criminal Courts of Pitalito, Huila. Record No. 1043 of September 4, 2006 (evidence file, folio 9181).

¹¹⁰ Cfr. Office of the Prosecutor General. National Unit on Human Rights and International Humanitarian Law. Judgment of August 23, 2007 (evidence file, folios 9355 to 9358).

¹¹¹ Cfr. Record of the Office of the Prosecutor General with measures of protection, No. 20161700039261, June 13, 2016 (evidence file, folios 2327 to 2352).

was not to include him in the Program.¹¹² Pablo Emilio Bonilla was murdered on April 19, 2007 in the town of Pitalito, Huila¹¹³.

89. Finally, the State reported that Diana Calderón Fernández worked for the Rapid Response Team of the Inter-American Press Association. On November 26, 2007, the Ministry of the Interior and Justice notified the Victims and Witnesses Services and Assistance Unit of the State's Attorney's Office that it was currently awaiting a technical study on the level of risk and degree of threat for the journalist, which it had requested from the DAS. The Ministry also reported that the Committee for Risk Assessment and Regulation of the Program for the Protection of Journalists had agreed to set up a team to escort her whenever she went out, but she declined because she had no vehicle to transport them. Subsequently, on August 21, 2008, the head of the National Unit on Human Rights and International Humanitarian Law of the Office of the Prosecutor requested special measures of protection for Calderón Fernández, in the belief that the risk to her life and personal safety had increased. The Committee for Risk Assessment and Regulation accordingly recommended that a personalized security plan be assigned to her, including a civilian vehicle, two escort teams and two means of communication, and that these measures should be approved at the next meeting of the Committee for Risk Assessment and Regulation. Moreover, on September 18, 2008, Diana Calderón asked the Ministry of the Interior for a mobile telephone ("Avantel") for one of the escort teams assigned to her, who accompanied her whenever she went out. On September 26, 2008, the Ministry of the Interior and Justice notified Diana Calderón that the personalized security plan had been approved for six more months, and it was duly implemented. Finally, on February 10, 2009, the DAS submitted the study on level of risk and degree of threat for Diana Calderón to the Ministry of the Interior, classifying it as medium and suggesting preventive measures. The State submitted evidentiary documentation to substantiate its claims, but in a brief on August 5, 2016, stated that the information was confidential and therefore could not be forwarded.¹¹⁴ Neither the representatives nor the Commission challenged the information submitted by the State.

VII. MERITS

90. This case entails close interaction between the right to a fair trial and judicial protection, and the right to life and freedom of expression for Nelson Carvajal, and therefore the Court will examine the arguments on the merits in the following order: (a) right to a fair trial and right to judicial protection for Nelson Carvajal Carvajal and his family members; (b) right to life and right to freedom of expression for Nelson Carvajal, and (c) right to humane treatment, right to private family life, rights of the family, rights of the child and freedom of movement and residence, for the family members of Nelson Carvajal.

¹¹² *Cfr.* Record of the Office of the Prosecutor General with measures of protection, No. 20161700039261, June 13, 2016 (evidence file, folios 2327 to 2352).

¹¹³ *Cfr.* Criminal Record, Volume 14, folio 157, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law, Decision of August 27, 2008 (evidence file, folios 3497 to 3499).

¹¹⁴ Brief by the State, August 5, 2016.

VII.1
RIGHT TO A FAIR TRIAL¹¹⁵ AND RIGHT TO JUDICIAL PROTECTION¹¹⁶ FOR NELSON CARVAJAL CARVAJAL AND HIS FAMILY MEMBERS

A. Arguments of the Commission and of the parties

91. The *Commission* argued that the measures taken to advance the investigation into the murder of Nelson Carvajal had not been adequate or sufficient to satisfy the obligation of the State to conduct an exhaustive and diligent investigation. More specifically, it noted that during the course of later investigations into the murder of Nelson Carvajal, the residents of Pitalito, witnesses and family members of the alleged victim received threats and acts of intimidation and that the State was aware of them and did not demonstrate that it had ordered any measures of protection during the investigation or conducted any investigation into the reported threats.¹¹⁷ The Commission also stated that flaws and omissions in gathering evidence demonstrate a lack of due diligence by the State in recovering and preserving evidence.¹¹⁸

92. The Commission discussed the lines of investigation followed by the State, which from the beginning had explored a link between the murder and Nelson Carvajal's work, although the Commission also felt that "...the witness statements and the nature of the crime clearly show that multiple individuals were involved as perpetrators and abettors, as well as accessories after the fact who leveled serious threats against the victim's family members, witnesses or others involved in uncovering the truth of the matter." It added that, "the State failed to demonstrate that it has conducted investigations to shed light on the relationship between the threats received by Nelson Carvajal's relatives and by the witnesses, and the commission of the crime," "no potential connection has been explored between the violent death of [a] witness [...] and the murder of journalist Carvajal[,]" nor has the State "followed up on the body of evidence that pointed to the involvement of the mayor of Pitalito as mastermind or accessory to the crime."¹¹⁹ The Commission argued that there had been undue delay and a lack of substantial progress in the investigations, and more particularly, by 2001, the investigation had gone on for more than 16 years," with long periods of inactivity and few

¹¹⁵ Article 8 of the Convention states: "Right to a Fair Trial. 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

¹¹⁶ Article 25 of the Convention states: "Right to Judicial Protection: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. 2. The States Parties undertake: a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b. to develop the possibilities of judicial remedy; and c. to ensure that the competent authorities shall enforce such remedies when granted.

¹¹⁷ It added that the measures adopted for protecting key witnesses were neither suitable nor sufficient. It held, moreover, that these conditions had an intimidating and chilling effect to discourage them from participating as complainants in the case and hampered the investigations and the criminal proceedings.

¹¹⁸ It argued specifically that witness testimony "was neither obtained nor preserved with due diligence, because of the lack of adequate protection for witnesses," that international standards were not followed when the body and the crime scene were inspected, that the bullet nose and shell casings collected around Nelson Carvajal's body were "not submitted for ballistic testing," and that "[t]here is no indication in the file as to whether these casings were lost or where the evidence was taken."

¹¹⁹ The Commission also noted that, even though the Prosecutor and the representatives believed that the hypothesis of FARC involvement in the death of Nelson Carvajal was a "setup," "the authorities responsible for the pretrial phase of the criminal proceeding have continued the investigation into the alleged responsibility of the FARC guerrillas [...] without any specific outcome after more than a decade of investigations."

results.”

93. The *representatives* agreed with the Commission's arguments and noted that in the department of Huila “the pressures that these criminal gangs exerted, and to a degree continue to exert on the judicial system by means of intimidation and complicity with the police, judges and prosecutors is a serious roadblock to the processes of investigation, elucidation of the facts and the possibility of prosecuting the perpetrators, and this perpetuates impunity.” They also stated that the reassignments of the cases within the Office of the Prosecutor “produced flaws in the investigation of the facts.”

94. They recalled, regarding threats against the parties to the process, that Nelson Carvajal’s family members “were threatened for their attempts to clear up the facts [and] obtain justice, forcing nine members of the family to leave the country at different times,” and that “several people refrained from making statements during the process [out of fear] or as a consequence of threats received.” They added that the State had failed in its duty to guarantee participation by the victims because: (1) “the attorneys they contacted were afraid to help them;” (2) “the family members received no measures of protection despite having advised authorities that they were receiving threats;” (3) these threats were not duly investigated, and (4) the defense attorneys of the accused committed a “breach of procedural confidentiality, and a key witness was [murdered].”

95. Finally, they argued that at the time of this case, “the State [...] was under obligation to create specialized teams with sufficient resources and proper training to provide an effective, efficient response to crimes against journalists,” and that country was experiencing a high murder rate of journalists and high rates of impunity for these crimes. They explained that “it was not until 1999 that the State created a sub-unit to investigate the murders of journalists, attached to the Human Rights Unit of the [Office of the Prosecutor General].”

96. The *State* asserted that “competent authorities took all the steps necessary to shed light on the events of April 16, 1998 and to identify the culprits,” and concluded that it could not be held responsible for failing in its duty to investigate, prosecute and penalize the murder of Nelson Carvajal. It argued more specifically that it had “adopted appropriate measures on behalf of those who participated as witnesses in the process [...] involving the murder of Nelson Carvajal, to ensure [their] effectiveness.”

97. It detailed several measures it had taken to protect the family members of Nelson Carvajal,¹²⁰ and in the case of the murder of Pablo Emilio Bonilla, stated that “he was serving as a witness in other criminal proceedings as well, so starting on May 23, 2003 (prior to the statements he delivered in the proceedings for the murder of Nelson Carvajal), the Prosecutor's Protection and Assistance Program had already assessed the situation of threat and risk to Pablo Bonilla and had accordingly offered him due protection.” However, the State added, the witness did not accept this protection because “he was already protected and supporting the work of the GAULA in the city of Neiva” and therefore “the protection program concluded that Mr. Bonilla was not in imminent danger” and further, that “the 27th Office of the Prosecutor for the Pitalito-Huila Region, which was conducting the investigation into the murder of Pablo Emilio Bonilla, found no evidence relating [this] homicide [...] to the statements the witness had delivered in the proceedings on Nelson Carvajal.”¹²¹ The State

¹²⁰ The agents of the State named several actions taken to protect the physical safety of Judith Carvajal and her son, including assistance in resettling her abroad. They pointed to the case of other family members who, they noted, had not given their consent to be beneficiaries of the measures for protection offered by the State, but that even so, the DAS and the Pitalito-Huila police were asked to provide protective measures. They also outlined measures taken to investigate the alleged threats against the family members of Nelson Carvajal.

¹²¹ The State pointed out that “on February 5, 2007, the Prosecutor's Protection and Assistance Program reassessed the risk facing Pablo Bonilla and found no causal nexus between his effective cooperation with the administration of justice, and the factors of risk and/or threat, which made it impossible to design any sort of protection plan; the resulting decision was not to include him in the Program;” it concluded with its belief that in fact,

also discussed the actions and measures adopted on behalf of Diana Calderón, who was working for the Rapid Response Unit of the IAPA.

98. Colombia further stated that “it has a specialized structure to pursue a proper, effective investigation of crimes against journalists.” It began by explaining that “the obligation to have specialized units to investigate crimes against journalists did not yet exist at the time of this case,” and added that the Office of the Prosecutor General “has been building up its investigative capacity in the outer regions and the central region of the country in order to solve crimes against journalists more effectively.” It asserted that “[t]he authorities in charge of the investigation did a competent job gathering evidence to be used in the process undertaken on the murder of Nelson Carvajal,” and pointed to the measures taken for removing Nelson Carvajal’s body and performing ballistics analysis. It argued that the authorities “have demonstrated due diligence in following up on all the possible lines of investigation to discover who was responsible for the homicide of the journalist.”¹²²

99. The State held that “[t]he authorities have pursued all these actions [...] within a reasonable period.” It further explained that “the Office of the Prosecutor, based on the evidence gathered, consolidated the hypothesis that several local politicians had met with members of the FARC to plot the murder of Mr. Carvajal.” It noted that the case of Nelson Carvajal “is a complex one because the Office of the Prosecution is trying to uncover the truth of the matter through the participation of several members of the FARC guerrilla group who may have acted in isolation” and that “because these are members of armed groups operating outside the law, the investigation of the facts is even more complex.”

100. Regarding the reassignments of the investigation, the State explained that they were intended “for the purpose of conducting a more effective investigation of the facts.” It argued that “the investigation for the murder of Nelson Carvajal has been developed mostly by the human rights prosecutors of the [Office of the Prosecutor General], to guarantee the greatest possible efficiency in clearing up the facts and identifying those responsible.”¹²³ Finally, the State asserted that “the course of the criminal process [...] pursued several lines of inquiry into the details of the case and the identification of the culprits, based on evidence collected in the process, [and that t]hese lines of investigation have made it possible to establish with certainty that the homicide of Nelson Carvajal [...] was related to the practice of his journalistic work.”

B. Considerations of the Court

101. Article 8(1) of the Convention recognizes the right of every person to a hearing with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights, all this as part of the general obligation of the States to guarantee the free and full exercise of the rights enshrined in the

the State had “taken all necessary investigation and protection measures to safeguard the participation of witness Pablo Emilio Bonilla in the proceedings on the journalist’s murder.”

¹²² The State listed and explained the lines of inquiry followed in the investigation of the death of Nelson Carvajal, including: (a) linking his death to his journalistic work; (b) considering the possibility that agents of the states had been the perpetrators, and (c) the alleged responsibility of the FARC in the case under investigation. They commented that “[t]he of various lines of investigation have been developed and furthered conscientiously and exhaustively, as can be seen in the evidence gathered during the process.”

¹²³ The State noted, moreover, that “in this investigation there have been no changes in jurisdiction, which is clearly defined by law,” and that “the reassignments were based on the special character of the victim of this homicide, that is, his status as a journalist, to make sure that the investigators worked within the framework and approach of a human rights violation rather than a common crime.”

Convention to all persons subject to their jurisdiction (article 1(1)).¹²⁴

102. The Court has also held consistently that the duty to investigate is an obligation of means, not results, that must be assumed by the State as its proper legal duty and not as a mere formality preordained to be ineffective, or a step taken by private interests that depends upon the initiative of the victims or their families or the provision of evidence by private parties.¹²⁵ The investigation should be serious, impartial and effective, and oriented toward finding the truth and obtaining the prosecution, arrest and finally trial and punishment of the perpetrators.¹²⁶ Also due diligence demands that the investigative body must take all necessary measures to try and obtain results.¹²⁷

103. In the case at hand, the Commission and the representatives argued that the State had failed in its obligation to investigate the homicide of Nelson Carvajal and also made reference to threats received by family members after the homicide. This Court will now discuss the arguments about breach of the right to a fair trial in the following order: B.1. The reasonable time for investigations and criminal proceedings in the homicide of Nelson Carvajal; B.2. The alleged lack of due diligence in gathering and preserving evidence; B.3. The alleged failure to investigate and adopt measures of protection for the parties to the process and the family members of Nelson Carvajal; B.4. Logical lines of investigation; B.5. The institutional design for properly investigating acts of violence against journalists, and B.6. Conclusion.

B.1. The reasonable time for investigation and criminal proceedings in the homicide of Nelson Carvajal

104. Both the Commission and the representatives claim that the State was liable for lengthy delays in the investigations it conducted on the murder of Nelson Carvajal. The Commission noted in particular that during the first four years after the journalist was murdered (1998 to 2001), the authorities completed an investigation, formalized criminal charges against three persons, conducted a trial that acquitted several defendants and adjudicated an appeal by upholding the verdict of the lower court. It showed, however, that as of 2001, the investigation had continued for over 16 years, including lengthy periods of inactivity and few results. The Court takes the arguments regarding a reasonable period and the duration of the investigation to refer mainly to the time running from 2001, when the acquittal by the lower court was upheld, to the present.

105. Regarding the notion of a reasonable time, the Court recalls that under article 8(1) of the Convention, facts investigated in criminal proceedings must be settled within a reasonable time, as a lengthy delay, in certain cases, can in and of itself become a breach of the right to a fair trial.¹²⁸ Similarly, the case law of this Court has identified four factors to determine whether or not the right to a fair trial within a reasonable time has been honored: (a) the complexity of the matter; (b) procedural activities by the interested party; (c) the conduct of judicial authorities, and (d) harm to the legal situation of the person involved in the proceeding. The State is also expected to justify the amount of time it has needed to process

¹²⁴ Cfr. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, par. 91 and *Case of Vereda La Esperanza Vs. Colombia*, par. 184.

¹²⁵ Cfr. *Case of Velásquez Rodríguez v. Honduras. Merits*, par. 177, and *Case of Vereda La Esperanza v. Colombia*, par. 185.

¹²⁶ Cfr. *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C No. 99, par. 127, and *Case of Vereda La Esperanza v. Colombia*, par. 185.

¹²⁷ Cfr. *Case of the Serrano-Cruz Sisters v. El Salvador. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C No. 120, par. 83, and *Case of Vereda La Esperanza v. Colombia*, par. 185.

¹²⁸ Cfr. *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, par. 145, and *Case of Vereda La Esperanza v. Colombia*, par. 193.

the case, based on these criteria.¹²⁹

106. In general terms, when the Court examines the reasonable length of time for an investigation and proceeding, it must consider the overall time elapsed in a process until a final verdict is given,¹³⁰ but in certain particular situations, it may be relevant to weigh the different stages more specifically.¹³¹ Thus, and considering that the primary point of discord on the length of time taken to process and investigate the murder of Nelson Carvajal focuses essentially on actions taken after 2001, the Court will now proceed to analyze the period from 2001 to the present, in light of the factors that constitute a reasonable period, as outlined above.

i. The complexity of the matter

107. This Court has identified several criteria in its case law for gauging how complex a matter is. These include: (i) the complexity of the evidence;¹³² (ii) the number of parties to the proceedings¹³³ or the number of victims;¹³⁴ (iii) the time that has passed since the breach;¹³⁵ (iv) the nature of remedies available under domestic law,¹³⁶ and (v) the context in which the case occurred.¹³⁷

108. In the instant case, the Court finds that: (a) the events that occurred involved a single direct victim; (b) the facts could presumably be attributable to a variety of potential suspects (*supra* par. 54 to 75), some of whom could be members of a gang in Pitalito, or high-level municipal authorities, and (c) some of the hypotheses developed by the authorities suggest that illegal armed groups of the FARC could be implicated. Moreover, nearly 20 years have elapsed since the crime occurred, and in the framework of the investigations, threats were made against the parties to the process.

109. The Court finds therefore that the features of the instant case are sufficiently numerous to conclude that the investigation of the facts does pose certain complexity, although it is equally necessary to consider other points of analysis to determine whether the time taken for the investigation and the process was fact excessively long. As the Commission stated, furthermore, the Court feels that the complexity resulting from the climate of threats, as

¹²⁹ Cfr. *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, par. 156, and *Case of Dismissed Employees of Petroperú et al. v. Peru*, par. 182.

¹³⁰ Cfr. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, par. 71, and *Case of Dismissed Employees of Petroperú et al. v. Peru*, par. 182.

¹³¹ Cfr. *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2013. Series C No. 270, par. 403, and *Case Vereda La Esperanza v. Colombia*, par. 194.

¹³² Cfr. *Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs*. Judgment of January 29, 1997. Series C No. 30, par. 78, and *Case of Pacheco León et al. v. Honduras. Merits, Reparations and Costs*. Judgment of November 15, 2017. Series C No. 342, par. 122.

¹³³ Cfr. *Case of Acosta Calderón v. Ecuador. Merits, Reparations and Costs*. Judgment of June 24, 2005. Series No. 129, par. 106, and *Case of Pacheco León et al. v. Honduras*, par. 122.

¹³⁴ Cfr. *Case of Furlan and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2012. Series C No. 246, par. 156, and *Case of Pacheco León et al. v. Honduras*, par. 122.

¹³⁵ Cfr. *Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 12, 2008. Series C No. 186, par. 150, and *Case of Pacheco León et al. v. Honduras*, par. 122.

¹³⁶ Cfr. *Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits*. Judgment of May 6, 2008. Series C No. 179, par. 83, and *Case of Vereda La Esperanza v. Colombia*, par. 195.

¹³⁷ Cfr. *Case of Genie Lacayo v. Nicaragua. Preliminary Objections*. Judgment of January 27, 1995. Series C No. 21, par. 78, and *Case of Pacheco León et al. v. Honduras*, par. 122.

recognized by the State itself, could be attributed to the Colombian authorities, who are under obligation to adopt all measures necessary to protect witnesses and investigate the facts of this case without undue delay.

ii. Procedural activity by the interested parties

110. The Court will consider this second factor by evaluating whether the interested parties performed actions that were reasonably required of them during the different stages of the procedure.¹³⁸ The Court finds that in the instant case, the interested parties lent momentum to the process and intervened as required during the stages of the procedure when they were given the opportunity to participate and express their position and their arguments in the judicial proceedings. In this sense, such actions were not intended to cause unjustified delay of the process, but to protect their rights to uncover procedural truth and their right of access to justice, so the interventions they described could reasonably have been expected of them.

iii. The conduct of judicial authorities

111. Regarding the conduct of judicial authorities, the Court has understood that, as directors of the process, they have the duty to manage and develop the judicial proceedings such as to avoid sacrificing justice and due process in favor of formalities.¹³⁹

112. The Court notes in the case at hand that: (a) the Fourth Special Prosecutor's Office of Neiva took cognizance of the preliminary work and ordered the DAS to gather evidence on the case of Nelson Carvajal on February 17, 2003, that is, nearly two years after the April 6, 2001 verdict (*supra* par. 68); (b) no activity was recorded in the following years until November 1, 2005, when the Prosecutor General reassigned the investigation to the National Unit on Human Rights and IHL, and the 18th Office of the Special Prosecutor took over the preliminary investigation on December 20, 2005 (*supra* par. 71); (c) in March and October, 2006, statements were taken from Pablo Emilio Bonilla, a demobilized member of the FARC, who was killed in May, 2007 (*supra* par. 71); (d) in August, 2008, the Office of the Prosecutor added several people to the process as suspected perpetrators of the crime and requested a study of the possibility of lodging a motion for review of the acquittals of the suspects (*supra* par. 72); (e) on April 1, 2009, the Criminal Chamber of the Supreme Court declined to hear the motion for review (*supra* par. 73); (f) on September 7, 2010, the Prosecutor General reassigned the investigation to a prosecutor from the Human Rights Unit, who took over the case on November 5, 2010, and on February 21, 2011, ordered the examination of the evidence (*supra* par. 75), and (e) by July 23, 2013, three reports had been received from the judicial police, and the Office of the Prosecutor brought two more people, alleged members of the FARC, into the process as suspects for the crimes of sedition and aggravated homicide. The Prosecutor issued warrants for their arrest on these grounds (*supra* par. 75).

113. All this reveals several periods of inactivity by the Colombian authorities in the investigations and procedures, which caused undue delay in the process. The State did not prove that it could not have acted otherwise to develop the investigations and the process more expeditiously.

iv. Harm to the legal situation of the person involved in the proceeding

114. The Court has sustained on this point that the determination of whether the amount of

¹³⁸ Cfr. *Case of Fornerón and daughter v. Argentina. Merits, Reparations and Costs*. Judgment of April 27, 2012. Series C No. 242, par. 69, and *Case of Vereda La Esperanza v. Colombia*, par. 198.

¹³⁹ Cfr. *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, par. 211, and *Case of Vereda La Esperanza v. Colombia*, par. 200.

time is reasonable needs to consider the adverse effect of the duration of the proceedings on the legal situation of the person involved, bearing in mind, among other elements, the matter in dispute. Accordingly, this Court has held that if the passage of time has a relevant impact on the legal situation of the individual, the proceedings should be carried out more promptly so that the case is decided as soon as possible.¹⁴⁰ Regarding the harm that the duration of the proceedings wreaked on the legal situation of persons involved, this Court finds that the Commission and the representatives offered no arguments or explanations demonstrating that the authorities should have handled this proceeding with greater haste than in other proceedings for similar cases. The Court therefore feels that it does not have sufficient arguments to rule on this criterion.

v. Conclusion

115. In conclusion, the Court notes that the time taken for the investigation and process can be explained partly by the complexity of this case. Nonetheless, the relative dimensions of this complexity and the conduct of the authorities in charge of the investigations since 2001 reveal that the State is largely responsible for the extraordinary delay in the matter, and that nearly 20 years after the murder of Nelson Carvajal, and 16 years after the acquittal in 2001, there is not yet any judicial determination regarding responsibility for the facts of the case, which remain unpunished. The Court therefore finds grounds to conclude that this case entails a breach of the right to a fair trial within a reasonable time, as set forth in article 8(1) of the Convention, in injury of the family members of Nelson Carvajal Carvajal,¹⁴¹ due to the excessive duration of the investigation and process related to his murder.

B.2. The alleged lack of due diligence in gathering and preserving evidence

116. The representatives and the Commission argued that failures of due diligence had taken place in gathering and preserving evidentiary material on the homicide of Nelson Carvajal.¹⁴² The State, in turn, gave a detailed account of the content of the report on removal of the body and added its view, with regard to the collection of other evidence, that the purpose of urgent actions is to safeguard evidence and collect whatever clues are most pressing for the investigation; the type of actions taken depends on the nature of the crime under investigation. It clarified that in cases such as the one at hand, in which the cause of death is long-range bullet wounds, officers concentrate on collecting the type of material that is inherent to this kind of violence.

117. With respect to gathering and preserving evidence, the Court notes that within its supportive and ancillary jurisdiction, it is empowered to examine domestic investigation

¹⁴⁰ *Cfr. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 192, par. 155, and *Case of Pacheco León et al. v. Honduras*, par. 120.

¹⁴¹ These individuals are named in footnote number 1.

¹⁴² The agent said in particular that procedures followed at the time the body was inspected and at the crime scene were not consistent with international standards. Specifically: (a) the report on inspection of the body does not include observations showing whether the scene had been examined to collect clues of criminalistic interest such as articles found on Nelson Carvajal's body, or where such items were located in relation to the body; (b) the report does not indicate whether the scene was examined to collect and preserve all evidence, such as blood samples, hair, fibers, threads or fingerprints; (c) it is not clear whether a detailed sketch of the scene was prepared to record the location of the body, vehicles, nearby buildings and articles found on the scene; (d) the inspection report on corpse No. 042 does not clearly state what vehicles were present nearby or whether the area had been blockaded for this purpose; (e) material collected at the scene included "1 bullet nose and six shell casings around the body" of Nelson Carvajal Carvajal, but these items were not submitted for ballistics testing, according to the report that the TIU produced in February, 2000, which clearly shows that they were not received for ballistics analysis, and (f) three statements from witnesses whose identity was protected were thrown out.

procedures,¹⁴³ which could lead it to identify flaws in investigative due diligence.¹⁴⁴ This would be in order, however, if it were clear that the defects being claimed could have impinged on the overall investigation, such that "...as time passes, the possibility of collecting and presenting evidence in order to clarify the facts and determine the corresponding responsibilities is unduly limited."¹⁴⁵ It should not be assumed, in this sense, that flaws in specific investigative techniques had a negative impact on the overall process if, despite such flaws, the investigation yielded a result that was effective for elucidating the facts.¹⁴⁶

118. Similarly, this Court has held that "procedures to investigate the facts should be assessed overall, and it is not up to the Court to determine the appropriateness of investigative measures."¹⁴⁷ Indeed, "It is not the responsibility of this Court to replace 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 outcome; instead, its role is to find whether or not, in the steps actually taken domestically, the State's international obligations embodied in [...] the Convention have been violated."¹⁴⁸

119. The Court also recalls that the effective determination of the facts as part of the obligation to investigate a death should be displayed with all due meticulousness starting with the first procedures performed. In the investigation of the violent death of a person, the very early stages of the investigation are crucial, and any omissions or irregularities at this stage can have a very real and concrete negative impact on clearing up the facts.¹⁴⁹ This Court has therefore set out the main guiding principles that must be followed in the investigation of a violent death, as deduced from the facts of the instant case. Governmental authorities conducting an investigation of this kind must, at the very least: (i) identify the victim; (ii) gather and preserve evidence pertaining to the death so as to help in possible investigation of those responsible; (iii) identify possible witnesses and obtain their statements regarding the death; (iv) determine the cause, manner, place and time of death, as well as any pattern or practice that might have caused the death, and (v) distinguish among natural death, accidental death, suicide and homicide. The autopsies and analysis of human remains must be performed rigorously by competent professionals using the most appropriate procedures.¹⁵⁰

120. The Court has also discussed the crime scene and has stated throughout its case law that investigators should, at the very least: (i) photograph the scene, any other physical evidence, and the body as it was found and after it has been moved; (ii) gather and preserve samples of blood, hair, fibers, threads and other clues; (iii) examine the area to look for footprints or any other trace that could be used as evidence, and (iv) prepare a detailed report

¹⁴³ Cfr. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, par. 222, and *Case of Vereda La Esperanza v. Colombia*, par. 186.

¹⁴⁴ Cfr. *Case of Yarce et al. v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 22, 2016. Series C No. 325, par. 282, and *Case of Vereda La Esperanza v. Colombia*, par. 186.

¹⁴⁵ Cfr. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010. Series C No. 217, par. 172, and *Case of Vereda La Esperanza v. Colombia*, par. 186.

¹⁴⁶ Cfr. *Case of Luna López v. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269, par. 167, and *Case of Vereda La Esperanza v. Colombia*, par. 186.

¹⁴⁷ Cfr. *Case of Castillo González et al. v. Venezuela. Merits*. Judgment of November 27, 2012. Series C No. 256, par. 153, and *Case of Vereda La Esperanza v. Colombia*, par. 186.

¹⁴⁸ Cfr. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits*. Judgment of November 28, 2006. Series C No. 161, par. 80, and *Case of Vereda La Esperanza v. Colombia*, par. 186.

¹⁴⁹ Cfr. *Case of Servellón García et al. v. Honduras*, par. 120, and *Case of Ortiz Hernández et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of August 22, 2017. Series C No. 338, par. 157.

¹⁵⁰ Cfr. *Case of Juan Humberto Sánchez v. Honduras*, par. 127, and *Case of Pacheco León et al. v. Honduras*, par. 79.

with any observations regarding the scene, measures taken by the investigators, and the assigned storage for all evidence collected.¹⁵¹ The Court has held that during investigation, the crime scene should be safeguarded to protect all evidence.¹⁵²

121. In the instant case, the Court takes note that the report on removal of the body: (a) indicated the exact spot where Nelson Carvajal Carvajal was killed; (b) recorded the evidence found, including a bullet nose and six shell casings around the body, how they were positioned by cardinal directions, description of the position of the body and whether it had been moved, position of the head, trunk, arms and legs; (c) recorded a description of the victim's outer and inner clothing and objects on his person; (d) narrated the external examination of the body; (e) ordered post-mortem fingerprints, X-rays and a sketch; (f) had an autopsy performed on the body, and (h) judicial investigators also kept a record of preliminary inquiries as to a possible perpetrator.¹⁵³

122. The body of evidence contains a ballistics report revealing that the items listed as a bullet nose and six shell casings were not received for ballistics testing, although, according to a report from the Office of the Prosecutor, an analysis of these items was not relevant for compatibility tests with the weapon under study because "the pieces collected were caliber 9 mm for use in a semi-automatic pistol." The report also indicates that the *Indumil* weapon seized and sent in for technical ballistics tests, using comparison and microscopic analysis for comparing it with the pieces collected, is a 38 caliber revolver, which is a different gauge, and in this sense a 9 mm caliber projectile cannot be fired from a 38 caliber revolver. It also stated that "the ammunition for a 38 caliber weapon is fired through a cylinder, and therefore it cannot release shell casings." It went on to say, "a comparison was made between this device and 17 cartridges suitable for a 38 caliber, but results were negative."¹⁵⁴

123. Finally, concerning the decision to dismiss the statements of two witnesses whose identity was withheld, it is clear, first, that under the guarantee of the right to due process, parties in the process must be allowed to contest evidence submitted against them.¹⁵⁵ The file also reveals that one of the three witnesses waived identity protection, and the resulting statement was therefore admitted.¹⁵⁶ There is no evidence that the other two testimonies

¹⁵¹ Cfr. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, par. 301; *Case of Pacheco León et al. v. Honduras*, par. 80, and "Minnesota Protocol" or model protocol on the forensic investigation of extra-legal, arbitrary and summary executions, United Nations, Economic and Social Council of the UN, resolution 1989/65 of May 24, 1989, E/ST/CSDHA/12 (1991).

¹⁵² Cfr. *Case of Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 27, 2014. Series C No. 281, par. 254 and *Case of Pacheco León et al. v. Honduras*, par. 80. Similarly, *Case of González et al. ("Cotton Field") v. Mexico*, par. 301, quoting the "Minnesota Protocol."

¹⁵³ Cfr. Judgment of April 20, 1998, Prosecutor General, Criminal File Volume I, folios 13-30 (evidence file, folios 3521 to 3549); Letter No. 1556, July 8, 1998. Criminal File, Volume II, Folio 290-311 (evidence file, folios 4156 to 4172), and Letter No. 20161700040971, Prosecutor General, June 20, 2016 (evidence file, folios 12697 to 12702).

¹⁵⁴ Cfr. Letter No. 20161700040971, Prosecutor General, June 20, 2016 (evidence file, folio 12699).

¹⁵⁵ At the same time, the trial judge stated that, in keeping with Colombian Constitutional Court judgment T-008 of January 22, 1998, when statements are taken from identity-protected witnesses, several formalities need to be followed, including that a separate report should be written up that does identify the declarant, and that the judge should know the identity of the declarant so as to weigh the statement correctly, but if any of these formalities is not fully respected, the evidence is discarded on the grounds that the right to due process has been breached. Cfr. Lower court judgment No. 0119, Single Criminal Court of the Specialized Circuit of Neiva, December 15, 2000. Criminal File, Volume 12 B, folio 47 (evidence file, folio 8775).

¹⁵⁶ Cfr. Lower court judgment No. 0119, Single Criminal Court of the Specialized Circuit of Neiva, December 15, 2000. Criminal File, Volume 12 B, folio 24 (evidence file, folio 8729).

would not also have been evaluated subsequently, without identity protection.¹⁵⁷ The Court lacks sufficient information to take a position concerning these two witnesses.

124. As to the other arguments, the Court notes that the first actions taken by the authorities at the crime scene were generally consistent with the minimum procedures this Court has required and instructed in similar cases. Furthermore, neither the representatives nor the Commission has explained how any additional procedures that may have been neglected could have had an impact on the development of the investigation. To the contrary, the State offered a satisfactory explanation as to why the ballistics tests were not performed and the investigative procedures that were not followed, emphasizing that the type of investigative actions taken depends on the nature of the crime under examination, and in a case such as this, in which death was caused by long-distance weapons fire, the officers opted to collect probatory material that was pertinent to this type of violence. It should be remembered, finally, that it is not the responsibility of the Court "to replace 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 outcome."¹⁵⁸ It could appropriately undertake such an analysis only in the presence of manifest, flagrant neglect of the minimum procedures needed in a situation of this kind and required under domestic laws or regulations and constituting a breach of the obligation of due diligence, a situation which is not clearly seen in the instant case.

B.3. The alleged failure to investigate and adopt measures of protection for the parties to the process and the family members of Nelson Carvajal

125. On this point, the Commission and the representatives claimed that the investigation took place in a climate of fear in the population of Pitalito and among those who cooperated in shedding light on the facts. They added that during the investigation, serious, recurring threats and acts of intimidation were made against the people of Pitalito, witnesses and family members of the journalist Nelson Carvajal and that the State learned of these threats and was under obligation to adopt all necessary measures of protection and investigation to guarantee that the processes would be fully effective.¹⁵⁹

¹⁵⁷ Cfr. Record of opening envelopes, November 28, 2000. Criminal File, Volume 12 A, folio 250 to 252 (evidence file, folio 8545 to 8549).

¹⁵⁸ Cfr. *Case of Nogueira de Carvalho et al. v. Brazil*, par. 80, and *Case of Vereda La Esperanza v. Colombia*, par. 187.

¹⁵⁹ They claimed specifically that: (a) the authorities responsible for the investigation observed that in Pitalito, "because of the lack of protection," several people refused to give their names when they offered statements, "due to the climate of fear in the region." This fear also affected the people responsible for intelligence work in Pitalito, who, according to regional authorities, "did not sign any document for reasons of safety;" (b) as a result of her actions to further the investigation, the victim's sister Judith Carvajal was targeted by a complaint of criminal defamation and verbal abuse lodged by the public official who was being investigated in the process, which remained pending for a year, despite the clear lack of any grounds; (c) Judith Carvajal also received death threats on several occasions and was surveilled by unknown men who approached her and her home with strongly worded, intimidating messages. Judith Carvajal reported these threats to the authorities; (d) in early 1999, Judith Carvajal was apparently registered in the Prosecutor General's Victim and Witness Protection and Assistance Program. However, the record does not show that she received protection, because she needed to abandon Pitalito and move temporarily to another part of the country, and in October 1999, she left Colombia because of the threats she was receiving from "people who were suspects in the investigation into the death" of her brother; (e) the record shows no evidence that any investigation took place to identify the source of the reported threats or punish the culprits; (f) the threats and intimidation also affected key witnesses, and although the State adopted certain measures allowed by domestic law at the time of the crime, such as protecting the identity of witnesses, they were neither suitable nor sufficient; (g) during the investigation, a key witness for the prosecution was murdered after having delivered a statement that the Prosecutor would use for considering whether to request a judicial review of judgments to acquit Fernando Bermúdez and others and reopen the investigation against him; (h) procedural confidentiality was violated during the investigation and proceedings on the homicide of Nelson Carvajal, and (i) in August 2008, Diana Calderón, representative of the petitioning organization (IAPA), received a slip of paper with a skull drawn alongside a

126. The Court recalls that, to guarantee due process, the State must provide all necessary means to protect court workers, investigators, witnesses and family members of the victims from harassment and threats intended to obstruct the process, prevent elucidation of the facts or cover up the perpetrators; otherwise, this would have the effect of dissuading and intimidating the people who are investigating or who could serve as witnesses, clearly undermining the effectiveness of the investigation.¹⁶⁰

i) Regarding Pablo Emilio Bonilla

127. In the case of Pablo Emilio Bonilla, the evidence file shows: (a) he made a statement in the proceedings for the murder of Nelson Carvajal on March 29 and October 11 and 12;¹⁶¹ (b) he served as a witness in other criminal proceedings, and as a result, starting on May 23, 2003, prior to his statements in the case of Nelson Carvajal's murder, the Prosecutor's Protection and Assistance Program had already assessed the situation of threat and risk facing Pablo Bonilla Betancur and had duly offered protection; however, the would-be beneficiary declined and advised that he could enter the protection program only as of June 15 of the same year, because he was already being protected through his support for the work of the GAULA in city of Neiva, and that only on that date would he indicate where he could be relocated;¹⁶² (c) on February 5, 2007, the Prosecutor's Protection Program reassessed the risk facing Pablo Bonilla and found no cause-and-effect link between his effective cooperation with the administration of justice for the murder of Nelson Carvajal, and the factors of risk and/or threat, which made it impossible to design any sort of protection plan, and the decision was made not to include him in the program;¹⁶³ (d) Pablo Emilio Bonilla was murdered on April 19, 2007 in the municipality of Pitalito-Huila; (e) the Office of the Prosecutor of Pitalito-Huila, in charge of investigating the murder of Pablo Emilio Bonilla, found no evidence linking Pablo Emilio Bonilla's death to the statements he had given in the Nelson Carvajal Carvajal case; (f) on September 4, 2007, the TIU of the Office of the Prosecutor reported to the Prosecutor on the Nelson Carvajal case about findings obtained from the evidentiary material found in the possession of Pablo Emilio Bonilla, that could be of interest to the investigation of the journalist's murder,¹⁶⁴ and (g) on November 29, 2007, the investigative file on the murder of Pablo Bonilla was shelved.¹⁶⁵

gravestone bearing the name of Nelson. The paper also showed five more graves, each one alluding to a relative of Nelson Carvajal's, and the message, "keep investigating and you too will go to rest." Diana Calderón claimed that the process of intimidation in her case took the form of anonymous notes and calls, inscribed books, people circling her then-home and even calls to the home offices of the IAPA in the United States.

¹⁶⁰ Cfr. Case of *Myrna Mack Chang v. Guatemala*, par. 199, and Case of *Vereda La Esperanza v. Colombia*, par. 113.

¹⁶¹ Cfr. Record of the statement by Pablo Emilio Bonilla, March 29, 2006, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 13, folios 45 to 47 (evidence file, folios 9033 to 9037); Record of the supplemental statement by Pablo Emilio Bonilla, October 11, 2006, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 13, folios 74 to 83 (evidence file, folios 9087 to 9105), and Record of the supplemental statement by Pablo Emilio Bonilla, October 12, 2006, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 13, folios 84 to 84 (evidence file, folios 9107 to 9117).

¹⁶² Cfr. Office of the Prosecutor General, Letter No. 20161100065581, June 8, 2016 (evidence file, folios 2340 and 2341).

¹⁶³ Cfr. Office of the Prosecutor General, Letter No. 20161100065581, June 8, 2016 (evidence file, folio 2341).

¹⁶⁴ Cfr. Report No. 360004, September 4, 2007, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 13 (II), folios 218 to 222 (evidence file, folios 9359 to 9367).

¹⁶⁵ Cfr. Office of the Prosecutor General, Letter No. 20161700040561, Friday, June 17, 2016 (evidence file, folio 12636).

128. In view of the above information, this Court finds that, first, there are no concrete indicators that would establish a connection between the murder of witness Bonilla and his participation in the investigation of Nelson Carvajal, and second, the State conducted a risk assessment several weeks prior to his death and concluded that there was no causal nexus between his effective cooperation with the administration of justice for the murder of Nelson Carvajal, and the factors of risk and/or threat. Moreover, the representatives and the Commission submitted no information or material that would lead this Court to conclude that this risk assessment was performed incorrectly, or that the witness may have advised the authorities of new factors that could have made them aware of clear and present danger to his safety.

ii) Regarding Diana Calderón

129. The record showed that the following threats were received by Diana Calderón: (a) on November 26, 2007, the then-Ministry of the Interior and Justice notified the Victim and Witness Protection Program of the Office of the Prosecutor General that it was awaiting a technical study on the level of risk and degree of threat for the journalist, as requested from the DAS; (b) it was reported that the Committee for Risk Assessment and Regulation (CRER) of the Program for the Protection of Journalists had approved a team to escort her whenever she went out, but she declined because she had no vehicle to transport them; (c) on August 21, 2008, the head of the National Unit on Human Rights and International Humanitarian Law of the Office of the Prosecutor General requested special measures of protection for journalist Diana Calderón, in the belief that the risk to her life and personal safety had increased; (d) the Committee for Risk Assessment and Regulation recommended that an emergency personalized security plan be assigned to her, including a civilian vehicle, two escort teams and two means of communication; (e) on September 18, 2008, journalist Diana Calderón asked the Ministry of the Interior for a mobile telephone ("Avantel") for one of the escorts assigned to accompany her whenever she went out because only one of them had communication equipment, and (f) on February 10, 2009, the DAS submitted the study on level of risk and degree of threat for journalist Diana Calderón to the Ministry of the Interior, classifying it as medium and suggesting protection measures (*supra* par. 89).

130. The Court notes that neither the representatives nor the Commission submitted any additional information to counter these facts. Based on the above, it can be concluded that the Court lacks sufficient information to infer that the State failed to take responsibility for assessing the risk conditions reported by the journalist, or that the measures it did take failed to be implemented as concrete actions.

iii) Regarding Judith Carvajal and her family members

131. The evidence file sets forth the following information about the risk conditions and threats received by Judith Carvajal as a consequence of her active participation in the charges and investigations for the murder of Nelson Carvajal: (a) the Prosecutor General's Protection and Assistance Program reported that it had provided protection to Judith Carvajal and her immediate family starting on April 16, 1999, and (b) on October 11, 1999 a commitment was signed to relocate her abroad, together with her son.¹⁶⁶

132. The Court therefore takes note of the information submitted on the case of Judith Carvajal showing that the State took several measures that were necessary to protect her personal safety and that of her family members from the threats and safety risks. Moreover, no arguments or other items of information were submitted to show that the authorities could

¹⁶⁶ Cfr. Office of the Prosecutor General, Letter No. 20161100065581, June 8, 2016 (evidence file, folios 2339 and 2340).

have proposed other security plans that might be less burdensome for the lives of Judith Carvajal and her family.

133. The Court also takes note of charges lodged by a private person against Judith Carvajal for criminal defamation and verbal abuse, and that the action did not advance beyond the early stages, when it was terminated.¹⁶⁷ Therefore, the Court cannot give an opinion on this point. Nonetheless, the Court would note that it cannot properly hold a State liable for the mere fact of having allowed a private citizen to lodge a complaint with the competent bodies. Here as in other cases, the Court has stated that a judicial proceeding does not constitute, in itself, an unlawful attack on the honor or dignity of a person. The proceeding serves to settle a dispute, even though it may indirectly and almost inevitably cause annoyance to those who are subject to the prosecution. To claim otherwise would totally preclude the practice of contested lawsuits. At the same time, the punishment applied at the end of such a proceeding is not designed to disparage human values, in other words, it does not mean to discredit the defendant.¹⁶⁸

134. Finally, despite the explanations of the measures of protection that were adopted on behalf of Judith Carvajal, the Court concludes that the information submitted by the State does not conclusively establish whether the authorities effectively undertook investigative steps to detect the source of the threats against her.

iv) Regarding other family members of Nelson Carvajal

135. The representatives and the Commission argued that the State is responsible for having failed to protect the family members of Nelson Carvajal, in view of the fact that they apparently received threats against their lives and physical integrity for having urged investigations into the homicide of the journalist. The State countered that it had indeed offered protection to the family members of Nelson Carvajal in the context of the investigations into his murder.

136. The information in the case file shows: (a) in addition to the situation of Judith Carvajal and her immediate family, other relatives of Nelson Carvajal were also considered for inclusion in the Prosecutor's Protection and Assistance Program, although on November 25, 1999 the decision was made not to place the Carvajal family under the program, as they had not consented to avail themselves of the security plans being offered;¹⁶⁹ (b) nevertheless, the National Unit on Human Rights and International Humanitarian Law, taking note of the danger to family members of journalist Nelson Carvajal when the murder investigation was reopened, requested the DAS and the Municipal Police of Pitalito to take whatever measures were necessary to protect Jairo Carvajal Cabrera, Ana Francisca Carvajal de Carvajal, Saúl Carvajal Carvajal, Ruth Dary Carvajal Carvajal and Luz Eny Carvajal Carvajal;¹⁷⁰ (c) Prosecutor 25 of the Pitalito-Huila unit asked the SIJIN to provide security to Gloria Mercedes Carvajal and her family and to conduct inquiries into the source of the reported threats,¹⁷¹ and (d) the Huila Police Department visited the residence of Ana Francisca Carvajal, where Saúl Carvajal

¹⁶⁷ Cfr. Brief of April 12, 1999, 22nd Office of the Prosecutor, Local Unit, Filing No. 3609. Criminal File, Volume 11, folio 11 (evidence file, folio 7146).

¹⁶⁸ Cfr. *Case of Cesti Hurtado v. Peru. Merits*. Judgment of May 31, 2001. Series C No. 78, par. 177, and *Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs*. Judgment of December 1, 2016. Series C No. 330, par. 184.

¹⁶⁹ Cfr. Office of the Prosecutor General, Letter No. 20161100065581, June 8, 2016 (evidence file, folio 2340).

¹⁷⁰ Cfr. Judgment of August 27, 2008, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 14, folio 79 (evidence file, folio 9655).

¹⁷¹ Cfr. Judgment of September 4, 2006, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 13, folio 121 (evidence file, folio 9181).

Carvajal was also present, and recommended several security measures they could take at home and when they went out, and did the same at the home of Ruth Dary Carvajal.¹⁷²

137. Based on this summary, the Court asserts that the State effectively provided measures of protection on behalf of the other members of Nelson Carvajal's immediate family. The Court also lacks sufficient additional information to establish or conclude that the State failed to abide by its duty to protect in these cases, or to ascertain whether these measures were sufficient. Nor did it receive arguments regarding additional measures of protection that the State would have needed to adopt to guarantee their safety.

138. Nonetheless, the Court notes that insufficient information was submitted regarding any investigative procedures that the authorities may have undertaken to identify the source of these threats.

v) Alleged violation of the right to procedural confidentiality

139. The Commission and the representatives claimed that the defense attorneys for the accused in Nelson Carvajal's case had violated procedural confidentiality by delivering copies of some of the pretrial work in the criminal investigation to various persons in Pitalito who were not defendants in the case. They added that this seriously undermined the identity protection of witnesses and key persons in the investigation. The evidence further shows that in 1999, the Regional Prosecutor's Office ordered an investigation of the possible violation of procedural confidentiality reported by Judith Carvajal, but there is no indication of concrete measures taken in response, or that any outcome was achieved. They added that according to what they were told, as a consequence of this, at least two key witnesses in the case, who had observed the homicide of Nelson Carvajal and identified one of the perpetrators, received threats in this context.¹⁷³

140. The Court cautions in this regard that the State argued that the Neiva District Office of the Judicial Council responded appropriately to the complaint of alleged irregularities by judicial officials responsible for investigating the homicide of Nelson Carvajal in its finding that the irrevocable legal deadline for submitting the complaint to the disciplinary judges had lapsed. While it is true that neither the representatives nor the Commission explained how this procedural confidentiality posed an obstacle to the investigation into the death of Nelson Carvajal, it is also the case that the State submitted no information showing that it had taken any measure of protection or undertaken any actions to address the consequences of the situation created by the breach of procedural confidentiality.

vi) Regarding the alleged impossibility of serving as civil plaintiffs

141. The representatives argued that the members of the Carvajal family could not take part as civil plaintiffs in the criminal proceedings for the death of Nelson Carvajal for nearly 18 years. They explained that the climate of widespread fear in the community of Pitalito about speaking out against people suspected of involvement in the murder of Nelson Carvajal caused many attorneys either to refuse to represent the family as civil plaintiffs in the process, or to charge higher fees because they claimed their lives would be in danger, and the Carvajal family was unable to pay them. They concluded that this situation, combined with the pressure on several family members because of the threats they were receiving, led them to waive

¹⁷² Cfr. Letter from the National Police of December 7, 2006, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 13, folio 152 (evidence file, folio 9181).

¹⁷³ Cfr. Brief of January 18, 1999, Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD.- 210-209 (evidence file, folios 5 a 41).

their right to participate as civil plaintiffs.¹⁷⁴ The State replied by arguing that the procedural confidentiality practiced in criminal proceedings would have protected their identity as civil plaintiffs from third parties, and that there would have been no difference between participating as a declarant or as a civil plaintiff in terms of revealing their identity during the proceedings.

142. The Court holds in this regard that the State's argument is reasonable and that insufficient evidence is available to examine whether the participation as civil plaintiffs in the procedure for the murder of Nelson Carvajal would have posed greater risk to his family members than their participation as declarants in the process.

vii) The alleged failure to investigate threats against Gloria Mercedes Carvajal

143. The Court notes that the case file contains the following information on this point: (a) On November 16, 2005, Gloria Mercedes Carvajal lodged a complaint with the Office of the Prosecutor General, stating that she and her two daughters had received threats from unknown persons who approached her on several occasions;¹⁷⁵ (b) the Office of the Prosecutor General initiated action to identify the individuals who were making these threats;¹⁷⁶; (c) as a result of the investigation, the Prosecutor's agents reported, inter alia, that: "[n]o further cooperation was obtained from Gloria Mercedes Carvajal Carvajal, as she missed her appointments for telephone calls and visits;" that Gloria Carvajal claimed that she could not recognize the people who were threatening her and could not help produce a police sketch, and that the allegations appeared to be isolated events;¹⁷⁷ (d) on October 9, 2006, the Office of the Prosecutor declared that it was unable to proceed with the investigation, as it had not been possible to identify the perpetrator; (e) on October 25, 2006, the National Unit on Human Rights and International Humanitarian Law, citing connectedness of actions, decided to attach the investigation underway for the crime of threats against Gloria Carvajal Carvajal to the homicide file already open, "given that the threats were presumably the result of public knowledge that the homicide investigation of journalist Nelson Carvajal Carvajal has been reopened,"¹⁷⁸ and (f) on September 4, 2006, the prosecutor in charge of the case asked SIJIN to provide protection for Gloria Mercedes Carvajal and her family and gather information leading to the source of the alleged threats.¹⁷⁹

144. Based on the above, the Court concludes that the representatives and the Commission did not submit sufficient arguments or evidence to infer that the actions taken by the State may have been inadequate or insufficient. More particularly, they did not explain why these measures did not fully satisfy the State's obligation to investigate, nor did they mention further concrete measures other than the ones that were ordered, that could have been implemented to meet this purpose.

¹⁷⁴ Cfr. Procedural statement by Jairo Carvajal Cabrera of September 18, 2003. Record Number 683. First Civil Law Notary of Pitalito. Department of Huila (evidence file, folios 148 and 149).

¹⁷⁵ Cfr. Complaint lodged by Gloria Mercedes Carvajal with the Office of the Prosecutor General of November 16, 2005 (evidence file, folios 9137 to 9141).

¹⁷⁶ Cfr. Report of May 2, 2006, Office of the Prosecutor General. Criminal File, Volume 13 (I), folios 60 and 61 (evidence file, folios 9060 to 9061).

¹⁷⁷ Cfr. Report No. 992 of June 8, 2006, Office of the Prosecutor General. Criminal File, Volume 13 (I), folios 111 and 112 (evidence file, folios 9161 to 9163).

¹⁷⁸ Cfr. Judgment of October 25, 2006, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 13 (I), folio 96 (evidence file, folio 9131).

¹⁷⁹ Cfr. Judgment of September 4, 2006, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 13 (I), folio 121 (evidence file, folio 9181).

B.4. Logical lines of investigation

145. Here the representatives and the Commission said that: (a) the State has not demonstrated that it launched investigations to shed light on the relationship between the threats received by family members of Nelson Carvajal and witnesses, and the persons involved in the commission of the crime; (b) there is no evidence suggesting that, in order to identify all the guilty parties, possible links have been explored between the violent death of witness Pablo Emilio Bonilla, which occurred after he had delivered statements during the process for review of the acquittals, and the murder of journalist Carvajal; (c) there is no evidence that the authorities followed up on the body of evidence that suggested the involvement of the mayor of Pitalito as the person who committed or abetted the crime, and (d) the courts arbitrarily dismissed key witnesses who confirmed the responsibility of the suspects, and at the same time, they accepted fraudulent testimony to steer the investigations toward possible responsibility of the FARC.¹⁸⁰ On the same subject, the State sustained that it had probed various lines of investigation conscientiously and exhaustively, as could be seen in the body of case evidence that was gathered. It added that this, in turn, had brought judicial authorities closer to an identifying the responsibilities of the perpetrators of the crime.

146. Based on the information in the evidence file, the Court finds, with respect to the lines of investigation followed in this case, that:

(a) There is no question that the Office of the Prosecutor followed the lines of investigation linking the murder of Nelson Carvajal to his work as a journalist,¹⁸¹ and that from the outset of the investigation, the Prosecutor on the case questioned several declarants on the relationship between the homicide and his profession;¹⁸²

(b) the line of investigation on alleged involvement by state agents was explored and led to an investigation of two former town council members and a former mayor of Pitalito as aiders or abettors, along with two other people as the actual perpetrators (*supra* par. 58);

(c) the procedures finalized with the prosecution of one of the former members of the town council and a former mayor of Pitalito-Huila, as well as another alleged perpetrator, resulting in acquittal that was upheld on appeal;¹⁸³

(d) another hypothesis explored during the process was that the FARC guerrilla group was responsible for the murder of Nelson Carvajal. Indeed, the judge concluded that the line

¹⁸⁰ The Commission stated that, as the case file shows, even the Prosecutor described the hypothesis linking the FARC to the death of journalist Nelson Carvajal as inconsistent and a "setup" whose purpose was to exempt the suspects from criminal liability and make it possible to have them acquitted. It added that nonetheless, the authorities in charge the pretrial case had continued to investigate the alleged responsibility of the FARC guerrillas and to date, are still including two members of the guerrilla forces in the case, having achieved no material results after more than a decade of investigation and six years after bringing them into the process. It emphasized that this line of investigation did not appear to be corroborated by any evidence and is clearly inconsistent with conclusions that can be drawn from the threats and the stories told by most of the witnesses.

¹⁸¹ *Cfr.* Report No. 388 of April 17, 1998. Office of the Prosecutor General. Criminal File, Volume I, folios 13 and 14 (evidence file, folios 3508 to 3509); Order of April 21, 1998, Office of the Prosecutor General. Criminal File, Volume I, folio 29 (evidence file, folio 3548); Order of May 10, 1998, Office of the Prosecutor General. Criminal File, Volume I, folios 171 to 193 (evidence file, folios 3732 to 3754), and lower court judgment No. 0119, Single Criminal Court of the Specialized Circuit of Neiva, December 15, 2000. Criminal File, Volume 12 B, folio 16 to 56 (evidence file, folios 8713 to 8793).

¹⁸² *Cfr.* Procedural statement by Rafael Chaux Carvajal of April 23, 1998. Criminal File, Volume I, folios 76 and 77 (evidence file, folios 3611 to 3614), and record of the statement by Fernando Manrique Álvarez, April 27, 1998. Criminal File, Volume I, folios 97 and 98 (evidence file, folios 3639 to 3642).

¹⁸³ *Cfr.* Lower court judgment No. 0119, Single Criminal Court of the Specialized Circuit of Neiva, December 15, 2000. Criminal File, Volume 12 B, folio 54 (evidence file, folio 8789).

of investigation on the possible responsibility of members of the FARC in the murder of the journalist should be explored in more depth;¹⁸⁴

(e) the Office of the Prosecutor, having dropped this line from its investigations, appealed the decision and reiterated that it had insufficient evidence to point the investigation toward further exploration of this hypothesis;¹⁸⁵

(f) when the acquittal was upheld on appeal, the Office of the Prosecutor continued to investigate this new line of inquiry and took several procedural steps in that direction;¹⁸⁶

(g) Pablo Emilio Bonilla Betancur, a demobilized combatant from the 13th Front of the FARC whose area of influence included the municipality of Pitalito, stated on March 29, 2006 that the Secretariat of the FARC had given the order to execute Nelson Carvajal, and members of the 13th Front had consequently committed the murder of the journalist; he also said that several politicians from the southern region of Huila had met with members of the FARC guerrillas to plan the murder of Nelson Carvajal;¹⁸⁷

(h) later, in a supplemental statement on October 11, 2006, Pablo Bonilla declared that the people who committed the murder of Nelson Carvajal included the former mayor of Pitalito-Huila and a former town council member, who had been acquitted in 2001;¹⁸⁸ he completed this statement and added more details on October 12, 2006;¹⁸⁹

(i) the Prosecutor conducted the procedures and ordered the evidence to identify fully each of the persons named by Pablo Emilio Bonilla in his statements;¹⁹⁰

(j) Pablo Emilio Bonilla was killed on April 19, 2007, although the investigations based on the information taken in his statements continued;¹⁹¹

(k) the Office of the Prosecutor of Pitalito investigated the murder of Pablo Emilio Bonilla and particularly considered the hypothesis of a possible link between his death and his statements in the investigation for the death of Nelson Carvajal, and was unable to verify these suspicions;¹⁹²

¹⁸⁴ Cfr. Lower court judgment No. 0119, Single Criminal Court of the Specialized Circuit of Neiva, December 15, 2000. Criminal File, Volume 12 B, folio 16 to 56 (evidence file, folios 8713 to 8793).

¹⁸⁵ Cfr. Judgment of April 6, 2001, Superior Court for the Judicial District, Criminal Judgment Division. Criminal File, Volume 15, folios 1 to 42 (evidence file, folios 10055 to 10137).

¹⁸⁶ Cfr. Brief of February 21, 2006, Office of the Prosecutor General. Criminal File, Volume 13 (I), folio 7 (evidence file, folio 8955), and Brief of February 24, 2006, Office of the Prosecutor General. Criminal File, Volume 13 (I), folio 17 (evidence file, folio 8975).

¹⁸⁷ Cfr. Record of the statement by Pablo Emilio Bonilla, March 29, 2006, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 13, folios 45 to 47 (evidence file, folios 9033 to 9037).

¹⁸⁸ Cfr. Record of the statement by Pablo Emilio Bonilla, October 11, 2006, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 13, folios 74 to 83 (evidence file, folios 9087 to 9105).

¹⁸⁹ Cfr. Record of the statement by Pablo Emilio Bonilla, October 12, 2006, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 13, folios 84 to 89 (evidence file, folios 9107 to 9117).

¹⁹⁰ Cfr. Brief of October 20, 2006, Office of the Prosecutor General (evidence file, folios 9119 to 9121).

¹⁹¹ Cfr. Brief of August 23, 2007, Office of the Prosecutor General. Criminal File, Volume 13 (II), folio 216 (evidence file, folio 9355), and Report No. 360004 of September 4, 2007, Office of the Prosecutor General. Criminal File, Volume 13 (II), folios 218 to 222 (evidence file, folios 9359 to 9367).

¹⁹² Cfr. Record of the statement by Pablo Emilio Bonilla, March 29, 2006, Office of the Prosecutor General, National Unit on Human Rights and International Humanitarian Law. Criminal File, Volume 13, folios 45 to 47 (evidence file, folios 9033 to 9037).

(l) Judith Carvajal delivered a statement on August 25, 2008, revealing details about the alleged involvement of the FARC,¹⁹³ which gave grounds to open an investigation and target the people named in her statement, and arrest warrants were issued;¹⁹⁴

(m) on September 4, 2008, the Office of the Prosecutor ordered preventive detention against a former commander of the Pitalito-Huila fire department, also a former member of the town council, under suspicion for instigation of the crime of aggravated murder;¹⁹⁵ nevertheless, the following September 25, 2009, the Office of the Prosecutor decided to invoke the statute of limitations on the investigation in favor of this individual, stating, "it has been demonstrated that the accused did not commit the crime of homicide for which he was questioned,"¹⁹⁶ and

(n) the Office of the Prosecutor ordered evidence to be taken to determine the responsibility of the FARC members,¹⁹⁷ and on October 30, 2013, added two FARC members to the investigation on the strength of a missing-person declaration.¹⁹⁸ On December 22, 2015, they were formally charged with the crimes of aggravated homicide and sedition, and arrest warrants were duly issued.¹⁹⁹

147. Based on the above, the Court concludes that: (a) the lines of investigation that guided the procedures gave due consideration to the profession of the murder victim as a journalist; (b) throughout the process, several lines of investigation were pursued as new evidence arose and was gathered, some of it provided by the family members of the victims; (c) the acquittal and the later ruling to uphold it were duly reasoned, and no evidence suggests that these judgments arose from fraudulent motives or collusion with the parties; (d) the record shows that the relationship between the homicide of Pablo Bonilla and the murder of Nelson Carvajal was investigated, and no such link was established, and (e) the investigation involving the possible participation of the FARC in the homicide of Nelson Carvajal was triggered by the statements of Pablo Bonilla, confirmed two years later by Judith Carvajal, Nelson Carvajal's sister.

148. On the latter point, the Court must caution that there is an inconsistency between the claims of the representatives and the findings of the investigation into the homicide of Nelson Carvajal. It would be contradictory to hold the State responsible for mistakenly following lines of investigation that the victim's family members themselves helped to strengthen, regarding the responsibility of the FARC in the homicide. Nor is it reasonable to sustain that the State found no link between the death of Pablo Bonilla, a witness who revealed the role of the FARC in the homicide, and that of Nelson Carvajal, while at the same time the representatives assert that the State mistakenly tried to blame the FARC for the journalist's death.

149. Regarding the logical lines of investigation, the Court reiterates that it is not a higher

¹⁹³ *Cfr.* File on the statement of Judith Carvajal of August 25, 2008, Office of the Prosecutor General. Criminal File, Volume 14, folios 6 to 7 (evidence file, folios 9637 to 9647).

¹⁹⁴ *Cfr.* Brief of August 26, 2008, Office of the Prosecutor General. Criminal File, Volume 14, folios 73 to 75 (evidence file, folios 9649 to 9651).

¹⁹⁵ *Cfr.* Order of September 4, 2008, Office of the Prosecutor General. Criminal File, Volume 14, folios 162 to 181 (evidence file, folios 9805 to 9843).

¹⁹⁶ *Cfr.* Order of September 25, 2009, Office of the Prosecutor General. Criminal File, Volume 19 (I), folios 61 to 74 (evidence file, folios 12189 to 12202).

¹⁹⁷ *Cfr.* Order of June 7, 2012, Office of the Prosecutor General. Criminal File, Volume 19 (I), folio 147 (evidence file, folio 12283).

¹⁹⁸ *Cfr.* Order of October 30, 2013, Office of the Prosecutor General. Criminal File, Volume 19 (II), folios 203 to 206 (evidence file, folios 12342 to 12345).

¹⁹⁹ *Cfr.* Order of December 22, 2015, Office of the Prosecutor General. Criminal File, Volume 19 (II), folios 256 to 275 (evidence file, folios 12393 to 12412).

court of appeal, and it is not responsible for judging the appropriateness of any particular investigation strategy or the specific way an investigation should be developed. Such an analysis would be in order only in the presence of conspicuous, flagrant departure from any logical lines of investigation contravening the duty of due diligence or the right to a fair trial protected by the American Convention,²⁰⁰ which does not appear with any clarity to be the case here. The Court is of the opinion in this matter that the representatives and the Commission did not submit sufficient evidence to be able to conclude that these arguments are true.

150. In summary, the Court concludes that the State is not responsible for violating the right to a fair trial due to lack of due diligence in developing the logical lines of investigation in the proceedings conducted for the homicide of Nelson Carvajal.

B.5. The institutional design for properly investigating acts of violence against journalists

151. The representatives stated that at the time this case occurred, the State of Colombia was under obligation to create specialized units with sufficient resources and proper training to take effective and efficient action in crimes against journalists, and that only in 1999 did the State create a sub-unit for investigation of the murder of journalists, as part of the Human Rights Unit of the Office of the Prosecutor General. The representatives note that this international obligation was created by the 2012 Joint Declaration on Crimes Against Freedom of Expression. The State, in turn, pointed out that the obligation to create specialized units to investigate crimes against journalists did not yet exist at the time of this case and that it could not have arisen from a joint declaration of this kind, which is not sufficiently binding to create such a duty. It also said that it presently has a specialized structure to conduct proper, effective investigations of crimes against journalists.

152. The Court holds, regarding this argument, that aside from the question of whether the Joint Declaration is binding, it was adopted 14 years after the facts of the instant case, and the representatives themselves noted that the State had created a sub-unit for the investigation of homicides of journalists attached to the Human Rights Unit of the Office of the Prosecutor General in 1999, before the 2012 declaration was adopted, and concurrent with the early years of the investigation into the death of Nelson Carvajal. The Court therefore sees no need to give an opinion on this argument by the representatives, and it will hold its comments on the relevance of the mechanisms that Colombia adopted for this purpose, to be discussed in the chapter on reparations.

B.6. Conclusion

153. In view of the above, the Court deems that the State did not comply with its obligation to conduct an investigation and proceedings for the homicide of Nelson Carvajal Carvajal within a reasonable time, as established in article 8(1) of the American Convention, in injury of his family members.²⁰¹ The State is also responsible for failing to pursue investigations into the threats made against several family members of Nelson Carvajal Carvajal, and for not having taken suitable measures to counteract the impact on the investigation stemming from the breach of procedural confidentiality during the development of the homicide case of Nelson Carvajal, in injury of the family members of Nelson Carvajal Carvajal.²⁰²

²⁰⁰ See *Case of Vereda La Esperanza v. Colombia*, par. 231 for a similar argument.

²⁰¹ These individuals are named in the footnote on page 1.

²⁰² These individuals are named in the footnote on page 1.

VII.2 RIGHT TO LIFE²⁰³ AND FREEDOM OF EXPRESSION²⁰⁴ OF NELSON CARVAJAL CARVAJAL

A. Arguments of the parties and of the Commission

154. The *Commission* and the *representatives* argued that Nelson Carvajal had been killed because of his work as a journalist, and that the case file contains information suggesting participation by agents of the State in the events. The Commission and the representatives noted that an additional consequence of the State's failure in its duty to investigate the death of Nelson Carvajal and the alleged threats leveled over the course of the investigation was that his rights to life and freedom of expression were also violated because the obligation to guarantee rights was not fulfilled. The Commission added that the collective dimension of the right to freedom of expression was also breached because in this case, the State's conduct not only had implications for this journalist's right to freedom of expression, but also because society's right to be duly informed was undermined.

155. The representatives further sustained that the climate of impunity surrounding crimes against journalists and news media employees in Colombia, along with weak mechanisms for investigation and the lack of a competent organization to investigate and safeguard evidence, made the State responsible for failing to fulfill its duty to guarantee Nelson Carvajal's right to life.²⁰⁵ They noted that following the murder of Nelson Carvajal, the community felt threatened by corruption and inhibited from continuing to report and critically discuss the work of agents of the State. The failure to investigate and the impunity in this case also fostered self-censorship and recurrence of similar crimes against other journalists. The State of Colombia therefore also violated article 13(1) of the American Convention in injury of Nelson Carvajal Carvajal.

156. The *State* explained, with regard to the arguments on its responsibility for shirking its duty to respect the right to life and the right to freedom of expression for Nelson Carvajal, that: (a) the Colombian investigative system explored and dismissed the hypothesis that agents of the State had been involved; (b) in any case, only one of the four individuals who qualified as agents of the State during the investigation was actually in government employ at the time of this case, ruling out any potential responsibility of the State for acts committed by the other three, and (c) it added the subsidiary argument that "a State is not responsible for the actions of its employees in their capacity as private citizens, that is, when they are completely removed from their official role," arguing that the Court "holds the State responsible for the actions of its agents, limited only to their actions pursuant to their official position."

157. The State also responded to the arguments concerning its responsibility for an alleged failure in its obligation to guarantee, noting that Colombian authorities were not apprised of, nor could have had any knowledge about, the alleged situation of real, immediate danger facing Nelson Carvajal in the days prior to his murder, and therefore, it was not the task of the State to deploy measures of prevention and protection as a way to guarantee these rights.

²⁰³ Article 4(1) of the Convention states: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

²⁰⁴ Article 13(1) of the Convention states: "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."

²⁰⁵ They concluded, in this regard, that the State had failed to take necessary measures to stop the cycle of impunity for violence against journalists that Colombia was experiencing at the time of this case and that persists today.

Finally, it reiterated that the competent authorities took all steps necessary to elucidate the facts of the case and identify the guilty parties, and therefore it complied with its duty to investigate in accordance with inter-American standards on the investigation of crimes against journalists.

B. Considerations of the Court

B.1. The right to life of Nelson Carvajal

158. The Court has heard the arguments by the representatives and Commission to the effect that the State breached article 4 of the Convention in injury of Nelson Carvajal for: (a) possible participation by public officials in committing the murder, and (b) an alleged failure in the duty to guarantee, as the State did not fulfill its obligation to investigate and prosecute those who committed the journalist's murder.

159. In reply to the first argument, this Court notes that it is impossible to determine with absolute certainty whether public officials were involved in the facts of this case. The Commission and the representatives refer only to circumstantial evidence of participation by agents of the State in the actions described in the case file. However, as was explained in the chapter on the facts of the case, this circumstantial evidence was not held by the domestic courts to be sufficiently convincing, so they ruled that the investigation be dropped and so far have dismissed that possibility. This Court has already stated that these rulings were duly reasoned, and no evidence suggests that the judgments arose from fraudulent motives or collusion with the parties to the case (*supra* par. 147). In the regard, it should also be recalled that this Court can never serve as a higher court of appeal, and its role is not to review the legality of domestic judicial decisions. An analysis of this kind would be in order only in the presence of conspicuous, flagrant departure from the provisions of domestic law.²⁰⁶ The case at hand did not hold sufficient evidence to conclude that such might be the case. This Court therefore has no grounds to draw any other conclusion on the matter.

160. The Court does stipulate, however, that this view on the matter applies exclusively to judicial findings demonstrated in the instant international litigation based on the evidence and pleadings submitted by the parties. This conclusion also needs to be read in light of the fact that the Inter-American Court is not a higher court of appeals created to settle disputes among the parties concerning the particular scope of evidence or the application of domestic law to matters not directly related to compliance with international human rights obligations,²⁰⁷ and that "courts of the State are expected to examine the facts and evidence submitted in particular cases."²⁰⁸ This does not mean in any sense that Colombian authorities, in the framework of criminal proceedings, may not adopt different decisions in subsequent rulings.

161. Nor does the Court have information to infer that the State may have breached Nelson Carvajal's right to life by neglecting its duty to guarantee, when it failed to take measures of protection to prevent his death. Indeed, neither the representatives nor the Commission mentioned a situation of real, immediate danger to his life that was known or should have been known to the authorities. It is worth recalling on this point that the convention-based obligations of the State to guarantee rights do not entail an unlimited responsibility for any

²⁰⁶ *Case of Vereda La Esperanza v. Colombia*, par. 223.

²⁰⁷ *Cfr. Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 15, 2017. Series C No. 331, par. 33, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, par. 16. Also, *Case of Pacheco León et al. v. Honduras*, par. 59.

²⁰⁸ *Cfr. Case of Nogueira de Carvalho et al. v. Brazil*, par. 80, and *Case of Ortiz Hernández et al. v. Venezuela*, par. 128.

action or move by private citizens, as the duties to adopt measures of prevention and protection are conditioned to knowledge of a situation of real, immediate risk to a person or group of persons and to the reasonable possibilities of preventing or avoiding this risk.²⁰⁹

162. As for the second argument regarding failure of the duty to guarantee, this Court reiterates that States have the obligation to guarantee the creation of conditions required for violations of this basic right not to occur and, in particular, the duty to prevent its agents from violating it, because this right plays a critical role as the essential foundation for the exercise of the other rights. Compliance with Article 4 in conjunction with Article 1(1) of the American Convention not only presumes that no person shall be deprived of his life arbitrarily (negative obligation), but also requires the States to take all necessary measures to protect and preserve the right to life (positive obligation) as part of the duty to guarantee full and free exercise of the rights of all persons under their jurisdiction.²¹⁰

163. In this regard, the Court has repeatedly held that the State has the legal duty to “take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”²¹¹ This includes, among other measures, establishing an effective system of justice able to investigate, punish and redress the taking of life, whether by agents of the State or private persons.²¹²

164. Similarly, this Court stressed that investigating cases of violations of the right to life is a keystone for assessing the State’s international responsibility, that this obligation is drawn from the guarantee given in the Convention’s article 1(1), and any demonstrable deficiency or fault in the investigation affecting the ability to determine the cause of death or to identify the actual perpetrators or masterminds of the crime will constitute failure to comply with the obligation to protect the right to life.²¹³ The Court has also said in this regard that in the absence of effective mechanisms for investigating violations of the right to life, and in situations of justice systems too weak to confront such violations, a climate of impunity for such violations can take root in the States, which in certain contexts and circumstances may eventually engender widespread of serious patterns of impunity, thus encouraging and perpetuating repeated violations.²¹⁴

165. It is relevant in the instant case to recall that the Court held, in the above chapter on the right to a fair trial and the right to judicial protection, that the State had violated its obligation to investigate and prosecute the murder of Nelson Carvajal (*supra* par. 153). The Court has also warned about the seriousness of impunity in the instant case because, 20 years later, the investigation is not yet complete and the culprits for the death of Nelson Carvajal have not been identified (*supra* par. 115). On this point, the Court has stated that deficiencies

²⁰⁹ Cfr. *Case of the Pueblo Bello Massacre v. Colombia*, par. 123, and *Case of Pacheco León et al. v. Honduras*, par. 159.

²¹⁰ Cfr. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*, par. 144, and *Case of Pacheco León et al. v. Honduras*, par. 144.

²¹¹ Cfr. *Case of Velásquez Rodríguez v. Honduras. Merits*, par. 174, and *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 30, 2016. Series C No. 329, par. 207.

²¹² Cfr. *Case of the Pueblo Bello Massacre v. Colombia*, par. 120, and *Case of Sánchez et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of April 17, 2015. Series C No. 292, par. 260.

²¹³ Cfr. *Case of Baldeón García v. Peru. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147, par. 97, *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, par. 83.

²¹⁴ Cfr. *Case of Anzualdo Castro v. Peru*, par. 179 and *Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 19, 2014. Series C No. 277, par. 183.

in the domestic investigation or its failure to conclude are no barrier for the Court to hold that the State is in breach of the right to life, so long as there are sufficient criteria to uphold such a conclusion. This is why the Court has judged in other cases that the right to life was violated based on circumstantial evidence suggesting that agents of the State had taken part in the case, and when domestic investigations had not controverted this claim.²¹⁵

166. The Court would also warn that the above chapter on the Facts discusses the surrounding context of homicides against journalists that were occurring and continued to occur at the time Nelson Carvajal was killed (*supra* Chapter VI.A.1). The same section shows that this context of murders of journalists existed alongside high rates of impunity and investigations that failed to culminate in the identification or prosecution of the offenders and therefore remained in impunity (*supra* Chapter VI.A.2). This body of facts and contextual background was not challenged by the State of Colombia in its pleadings before this Court. Quite the contrary, the State acknowledged this situation in its arguments on the case (*supra* par. 25).

167. The Court further recalls a statement from the chapter on Facts, asserting that in 1998, Colombia was in first place worldwide on the list of murders of journalists, and classified as “the most deadly place for the press in the world.” Colombian journalists killed for their work numbered 152 from 1977 to 2015, and over one-third of these homicides took place from 1996 to 2005 (*supra* par. 26). The chapter on Facts also stated that in the 1990s, the armed conflict and a wave of criminal violence instilled in the press a climate of growing fear and intimidation in which multiple parties to the conflict targeted journalists who published criticism and exposés or who reported on sensitive subjects, especially drug-related violence (*supra* par. 27). It showed that regional and local reporters in Colombia have been closer to the armed clashes and violent operators, enmeshed in areas where illegal groups battled the State for territorial dominance, often for drug trafficking routes or freer movement by organized crime (*supra* par. 31). The resulting view is that, because they were in close proximity to the contexts of intense political and armed violence, local and regional media were more vulnerable to aggression, pressure or persecution by operators in the conflict and the war (*supra* par. 32).

168. It also stated (*supra* par. 34) that Colombian justice had experienced considerable difficulty investigating the perpetrators of acts of aggression against journalists, and the excessive amount of time they took heightened the effect of impunity for these acts of violence. It made reference to the fact that 99% of the 152 cases of murdered journalists from 1977 to 2015 had gone unpunished because not all the people responsible for these crimes have been convicted (*supra* par. 34).

169. It should be recalled in the instant case that neither the State nor the representatives challenged the premise that the death by murder of Nelson Carvajal was associated with his work as a journalist. Instead, this hypothesis was taken up by the Office of the Prosecutor from the very beginning of the investigation into the murder of Nelson Carvajal (*supra* pars. 54 and 146). In a related point, it is worth recalling that the 22nd District Office of the Public Prosecutor in charge of investigating the murder said, “...what has been outlined thus far suggests that the murder of journalist [...] Nelson Carvajal Carvajal resulted from or was associated with his profession, especially the type of exposés he reported.” (*supra* par. 54).

170. For these reasons, the Court finds that the murder of Nelson Carvajal Carvajal fits into a widespread context of impunity for homicide against journalists at the time the instant case occurred in Colombia. Thus, and especially against this backdrop, the flawed investigation of the murder of Nelson Carvajal by the Colombian authorities is per se a violation of the

²¹⁵ Cfr. *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, pars. 95 to 99, and *Case of Pacheco León et al. v. Honduras*, par. 149.

obligation to guarantee the right to life of Nelson Carvajal. Therefore, the State of Colombia is responsible for failing in its duty to guarantee the right to life, contained in article 4(1) of the American Convention, in conjunction with articles 1(1), 8 and 25 thereof, in injury of Nelson Carvajal Carvajal.

B.2. Freedom of Expression

171. The Court's case law on freedom of expression offers extensive content on this right enshrined in article 13 of the Convention. The Court has held that the article protects the right to seek, receive and impart information and ideas of all kinds, as well as to know and receive information and ideas disseminated by others.²¹⁶ In addition, it has indicated that freedom of expression has both an individual dimension and a social dimension and thus has concluded that a series of rights are protected under this article.²¹⁷ This Court has said that both dimensions are of equal importance and should be guaranteed simultaneously in order to give total effect to the right to freedom of expression in the terms of Article 13 of the Convention.²¹⁸

172. The first dimension of freedom of expression includes the right to use any appropriate method to disseminate thought and allow it to reach the greatest number of persons. In this respect, expression and dissemination are indivisible, so that a restriction of the possibilities of dissemination represents directly, and to the same extent, a limit on the right to free expression. Regarding the second dimension of the right to freedom of expression, the social element, the Court has held that freedom of expression also implies everyone's right to know opinions, reports and news produced by others. For the ordinary citizen, the right to know about other opinions and the information that others have is as important as the right to impart their own. In light of the two dimensions, therefore, freedom of expression requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual, but it also implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.²¹⁹

173. The Court has also emphasized that "the profession of journalism [...] involves, precisely, the seeking, receiving and imparting of information. The practice of journalism consequently requires a person to engage in activities that define or embrace the freedom of expression which the Convention guarantees." The practice of professional journalism "cannot be differentiated from freedom of expression. On the contrary, both are obviously intertwined, for the professional journalist is not, nor can he be, anything but someone who has decided to exercise freedom of expression in a continuous, regular and paid manner."²²⁰

174. The Court has insisted that freedom of expression, particularly on matters of public interest, "is a cornerstone upon which the very existence of a democratic society rests."

²¹⁶ Cfr. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights)*. Advisory opinion OC-5/85 of November 13, 1985. Series A No. 5, par. 30, and *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 5, 2015. Series C No. 302, par. 166.

²¹⁷ Cfr. *Case "The Last Temptation of Christ" (Olmedo Bustos et al. v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73, par. 64, and *Case of López Lone et al. v. Honduras*, par. 166.

²¹⁸ Cfr. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74, par. 149, and *Case of López Lone et al. v. Honduras*, par. 166.

²¹⁹ Cfr. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*, par. 146, and *Case of López Lone et al. v. Honduras*, par. 166.

²²⁰ Cfr. Advisory opinion OC-5/85, par. 72 to 74, and *Case of Fontevecchia and D'Amico v. Argentina. Merits, Reparations and Costs*, par. 46, and *Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2015. Series C No. 293, par. 138.

Without an effective guarantee of freedom of expression, the democratic system is weakened and there is a breakdown of pluralism and tolerance; the mechanisms of control and complaint that citizens have may become inoperable and, indeed, a fertile ground is created for authoritarian systems to take root.²²¹

175. The Court has noted that violations of article 13 of the American Convention may range from excessive restriction of freedom of expression to outright suppression.²²² One of the most violent forms of suppressing the right to freedom of expression is through the murder of journalists and other news reporters. Such acts of violence against journalists could even have a negative impact on other journalists who would cover events of this type but may fear suffering similar acts of violence.²²³

176. Therefore, this Court believes that respect for and guarantees of the right to life and the right to freedom of expression for journalists and other news reporters are closely interwoven. In the instant case, the Court cautions that the arguments of the representatives and the Commission concerning the State's responsibility for infringing Nelson Carvajal's freedom of expression are indistinguishable from their arguments on violation of his right to life. Nelson Carvajal's freedom of expression was in fact undermined specifically when he was rendered unable to continue enjoying it because of his death and the failure to investigate it. Under the particular circumstances of this case, therefore, the establishment of the State's responsibility for an alleged violation of this right should necessarily derive, among other things, from the State's responsibility for violating Nelson Carvajal's right to life.

177. In the view of the Court, it was thus proven that: (a) Nelson Carvajal was a journalist, (b) his murder took place due to his professional practice, (c) his murder remains unpunished 20 years after it occurred, (d) his murder took place in a context of homicides of journalists marked by high rates of impunity and (e) this was asserted by the judicial authorities who conducted investigative measures on the murder of Nelson Carvajal. As also noted *supra*, it is of special note that the combination of violence against journalists and impunity has a highly negative impact, first, for the journalists themselves and their families, and second, because it has prevented communities in Colombia from receiving information on issues of importance to them, such as the armed conflict, organized crime, the drug trade and political corruption. In the particular case at hand, journalist Nelson Carvajal had reported alleged irregularities in the management of public funds, alleged acts of corruption and the laundering of proceeds from drug trafficking in the region (*supra* par. 38).

178. For all the above reasons, and given the very close link between this case and first, the right to a fair trial and the right to judicial protection, and second, the right to life and the right to freedom of expression, the Court holds that the State is also responsible for violating the duty to guarantee freedom of expression as contained in article 13(1) of the Convention, in conjunction with articles 1(1), 8 and 25 thereof, in injury of Nelson Carvajal Carvajal.

²²¹ Cfr. *Advisory opinion OC-5/85*, par. 70, and *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Court Costs*, par. 105, and *Case of López Lone et al. v. Honduras*, par. 165.

²²² Cfr. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*, Judgment of November 22, 2005, Series C No.135, par. 68, and *Case of Vélez Restrepo and family v. Colombia*, par. 139.

²²³ Cfr. *Case of Vélez Restrepo and family v. Colombia*, par. 148.

VII.3
RIGHT TO HUMANE TREATMENT,²²⁴ RIGHT TO PRIVATE FAMILY LIFE,²²⁵ RIGHTS
OF THE FAMILY,²²⁶ RIGHTS OF THE CHILD²²⁷ AND RIGHT TO FREEDOM OF
MOVEMENT AND RESIDENCE,²²⁸ FOR THE FAMILY MEMBERS OF NELSON CARVAJAL
CARVAJAL

A. Arguments of the Commission and of the parties

179. The *Commission* argued that the State's responsibility for failing to investigate the homicide of Nelson Carvajal with due diligence had affected the psychological and moral well-being of the family members identified in this case, in addition to the suffering and distress caused by the fact that over 20 years after the facts of the case, there is still no judicial finding on what happened. It also noted that the family members apparently had received repeated threats and harassment which, compounded by the lack of measures of protection and guarantees of an independent investigation, would prove frightening and intimidating for them. It claimed that the lack of protection for the family members continued for a long time.

180. In such circumstances, according to the Commission, the family members of Nelson Carvajal had to leave Colombia due to a well-founded fear that their safety was in jeopardy. It said that the State had offered no evidence whatsoever to demonstrate that it had taken action to protect the members of this family, prevent their displacement or help them repatriate. It believed that the decision to emigrate was to be expected as a consequence of the threats they were receiving, the lack of State protection and the impunity that has been ever present in the case, and this constituted a de facto restriction on the right to freedom of movement and residence for the family members of Nelson Carvajal. The Commission did not express an opinion on the alleged violation of articles 11, 17 and 19 of the Convention.

181. The *representatives* agreed with the Commission's arguments and added that the Court should consider the procedures undertaken by the Nelson Carvajal family to obtain justice, as well as the existence of close-knit family ties that were broken, not only by the murder of one of the family members, but also by the subsequent rupture of this closeness when several of them went into exile. They stated that the threats against the victims' family members are themselves a form of inhumane treatment and could undercut the right to humane treatment for family members. The representatives also addressed the alleged violations of the rights of the child, the right to privacy and the rights of the family, asserting that the State was responsible for a lack of due diligence in its investigation of the facts surrounding the murder of Nelson Carvajal, for the failure to investigate threats against family members, and for the failure by the State to provide family members with effective measures of protection, which caused a "breakdown of the family structure" because "the exile of nine members of the family, four of them minors, ripped apart the family and its dynamics and they were forced to adapt to an environment and a culture utterly unlike their own."

²²⁴ Article 5(1) of the Convention states: "Every person has the right to have his physical, mental and moral integrity respected."

²²⁵ Article 11(2) of the Convention states: "No one may be the object of arbitrary or abusive interference with his private life, his family, his home or his correspondence, or of unlawful attacks on his honor or reputation."

²²⁶ Article 17(1) of the Convention states: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the state."

²²⁷ Article 19 of the Convention states: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

²²⁸ Article 22(1) of the Convention states: "Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law."

182. The *State* sustained that the proceedings for the murder of Nelson Carvajal have moved along diligently from the time it occurred until the present; that the family members of Nelson Carvajal have been able to expedite it and take part in it, and that the threats they reported were addressed by the State, whether by evaluating the danger, investigating it, or providing actual measures of protection, and that therefore the family members experienced no particular harm as a result of actions or omissions by the State, and consequently, the State could not be held responsible for violating their right to humane treatment. It added that the death of Nelson Carvajal “does not constitute a serious human rights violation,” and therefore, no violation of article 5 of the Convention can be inferred. The State made reference to numerous actions taken to protect Judith Carvajal and her son from physical harm, including cooperation in their relocation abroad. The State pointed to the case of other family members, commenting that they had not given their consent to be beneficiaries of the measures of protection it offered, but that even so, the DAS and the Pitalito police had been asked to provide protective measures.

183. The State then commented on the right to freedom of movement, pointing out that the State had set in place the conditions for enjoyment of this right by instituting measures of protection for Judith Carvajal and her son when they received threats and that the other family members did not consent to be protected. It further explained that, while one important factor of the general obligation for guaranteeing the right to freedom of movement and residence is indeed the aforementioned duty to provide measures for safe return when people have been displaced from their usual residence, under the Court’s case law, the burden of proof is on the legal representatives of the alleged victim, who must demonstrate that he or she has been unable to return to the usual place of residence, not only due to conditions of overall insecurity, but also for reasons that can be attributed to the State. It noted that the representatives had not shown grounds for such a claim.

184. The State went on to reply to the alleged breach of the rights of the child and the rights of the family, arguing that the situation as described did not reflect an autonomous violation of these rights and identified no particular assault on any of them, but instead the arguments drew only on the experience of displacement. It added that the claims for these rights “depend entirely on an alleged violation of the right to freedom of movement and residence,” and asked the Court to consider the arguments made on this point and hold that Colombia was not responsible for violating them. With respect to the alleged violation of the right to privacy, it drew the Court’s attention to the same arguments that the State was not responsible for breaching the rights of the family and the rights of the child.

B. Considerations of the Court

B.1. The right to humane treatment for the family members of Nelson Carvajal

185. The Court notes the argument by Commission and the representatives that the State was responsible for breaching the right to humane treatment of the family members of Nelson Carvajal for: (a) the impact that Nelson Carvajal’s death had on them; (b) the fact that the murder of Nelson Carvajal had not been investigated and no court had adjudicated responsibilities nearly 20 years after the crime occurred, and (c) the repeated threats and harassment they had experienced, compounded by the lack of measures of protection or guarantees of investigation.

186. On the first two points, the representatives submitted statements by family members of Nelson Carvajal concerning the suffering they had experienced because of his death and the impact it had on their lives.²²⁹ Judith Carvajal addressed this point in the hearing when

²²⁹ Cfr. Affidavits by Luz Estela Bolaños Rodríguez; Yaneth Cristina Carvajal Ardila; Gloria Mercedes Carvajal Carvajal, Ruth Dary Carvajal Carvajal, Fernando Augusto Carvajal Carvajal, Luz Eny Carvajal Carvajal, Miriam

she said, “[t]he impact has been so severe, so vast [...] we were a very close family, the fact that they killed Nelson, the fact that everyone had to leave, one by one. The pain of those poor parents, mother and father, older people, to see how their son was killed [...], the hope that justice would be done, cooperating and helping, it has all taken them so much by surprise, [...] the impact has been so great [...] so terrible, so painful for every one of us and for the whole family.”²³⁰

187. The Court would note that in this judgment, it concluded that the State was responsible for violating the right to a fair trial for the family members of Nelson Carvajal, particularly for not having investigated the threats and harassment against some of them (*supra* Chapter VII.1). Furthermore, the Court held that the State was responsible for having violated the right to life of Nelson Carvajal (*supra* Chapter (VII.2)). Therefore, having seen the various statements by the members of the Nelson Carvajal family, and in view of the above, this Court finds that the State is also responsible for violating the right to humane treatment set forth in article 5(1) of the Convention, in injury of the family members of Nelson Carvajal,²³¹ for their suffering due to the death and the impunity surrounding the murder, and because there was no investigation of the threats and harassment several of them experienced in the framework of the proceedings.

B.2. Freedom of movement and residence, right to private and family life, rights of the family and rights of the child

188. The representatives and the Commission argued that these rights were breached in view of the following: (a) several of the family members of Nelson Carvajal had to leave the country to protect their lives and safety; (b) the family fell apart, and (c) the children’s rights would have been undermined as a result of migration. The representatives built their arguments partly on the assertion that they had been given status as refugees and asylum-seekers abroad, although they did not submit copies of official orders on refugee or asylum status “based on safety concerns.” The Court notes, first, that the alleged violations are closely tied to the circumstance that Nelson Carvajal’s family members had to emigrate or go into exile to ensure their safety. In sum, the breach of the right to private and family life, the rights of the family, and the rights of the child would be tied to and dependent on violation of freedom of movement and residence.

189. With respect to this right, the Court has held that the right to freedom of movement and residence, protected by article 22(1) of the American Convention, is an essential condition for the free development of the person, and includes, *inter alia*, the right of those who are legally inside a State to move about freely and to choose their place of residence.²³² This right may be violated either formally or through de facto restrictions when the State has not created the conditions or provided the means for exercising it.²³³ De facto breaches of this kind may occur if a person is the victim of threats or harassment and the State does not provide the guarantees necessary for moving about and residing freely in the territory in question. The Court has also held that the failure to conduct an effective investigation of acts of violence

Carvajal Carvajal, Ana Francisca Carvajal de Carvajal, Jairo Carvajal Cabrera, Saúl Carvajal Carvajal, and Christian Camilo Motta Carvajal (evidence file, folios 13368 to 13380; 13399 to 13481). Also, statement by Judith Carvajal in the public hearing on the instant case.

²³⁰ Statement by Judith Carvajal in the public hearing.

²³¹ These individuals are named in footnote number 1.

²³² *Cfr. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs.* Judgment of August 31, 2004. Series C No. 111, par. 115, and *Case of Yarce et al. v. Colombia*, par. 117 and 214.

²³³ *Cfr. Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs.* Judgment of June 15, 2005. Series C No. 124, par. 119 and 120, and *Case of Yarce et al. v. Colombia*, par. 215.

may foster or perpetuate exile or forced displacement.²³⁴

190. This Court has reaffirmed “that the obligation of guarantee for the States [of origin] to protect the rights of displaced persons carries with it not only the duty to adopt measures of prevention, but also to ... provide the necessary conditions for a [voluntary,] dignified and safe return to their habitual place of residence or voluntary resettlement in another place in the country. As such, their full participation in the planification and manner in which they should return or be reintegrated, should be guaranteed.”²³⁵

191. Similarly, article 17 of the American Convention recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state. In view of the importance of the rights of the family, the Court has held that the State is under the obligation to favor the development and strengthening of the family unit.²³⁶ It has also asserted that this entails the right of everyone to receive protection from arbitrary or illegal interference in his or her family,²³⁷ and also that States have positive obligations in favor of effective respect for family life.²³⁸ The Court has recognized that mutual enjoyment of harmonious relations between parents and children is a fundamental component of family.²³⁹ The Court has established that under certain circumstances, the separation of children from their families constitutes a violation of the rights of the family enshrined in article 17 of the American Convention.²⁴⁰

192. The provisions of the Convention on the Rights of the Child, which are part of the *corpus juris* of childhood rights, reveal the obligation to prevent family separation and preserve family unity.²⁴¹ In addition, the State must not only abstain from unduly interfering in the child’s private or family relations, but also, according to the circumstances, must take positive steps to ensure exercise and full enjoyment of those rights.²⁴² The State, given its responsibility for

²³⁴ Cfr. *Case of the Moiwana Community v. Suriname*, pars. 119 and 120, and *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, par. 174.

²³⁵ Cfr. *Case of Chitay Nech et al. vs. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 25, 2010. Series C No. 212, par. 149, and *Case of 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, par. 175.

²³⁶ Cfr. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, par. 66, and *Case of Yarce et al. v. Colombia*, par. 246.

²³⁷ Cfr. Advisory Opinion OC-17/02, par. 71, and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile. Merits, Reparations and Costs*. Judgment of May 29, 2014. Series C No. 279, par. 404.

²³⁸ Cfr. *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*, par. 189, and *Case of Vélez Restrepo and family v. Colombia*, par. 225.

²³⁹ Cfr. Advisory Opinion OC-17/02, par. 72, and *Case of Rochac Hernández et al. v. El Salvador. Merits, Reparations and Costs*. Judgment of October 14, 2014. Series C No. 285, par. 104.

²⁴⁰ Cfr. Advisory Opinion OC-17/02, par. 71, *Case of Fornerón and daughter v. Argentina*, par. 246.

²⁴¹ Convention on the Rights of the Child, article 9(1): “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.” Cfr. Committee on the Rights of the Child (CRC), General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (article 9, paragraph 1), CRC/C/CG/14, May 29, 2013, par. 60. Cfr. *Rights and guarantees of children in the context of migration and/or in need of international protection*. OC-21/14, par. 273, and *Case of expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No. 282, par. 415.

²⁴² Cfr. *Case of expelled Dominicans and Haitians v. Dominican Republic*, par. 415, and *Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs*. Judgment of August 31, 2011. Series C No. 232, par. 107.

the common weal, must likewise safeguard the prevailing role of the family in protection of the child; and it must also provide assistance to the family by public authorities, by adopting measures that promote family unity.²⁴³

193. By the same token, this Court has understood that, pursuant to Article 19 of the American Convention, the State is obliged to promote special measures of protection in keeping with the principle of the best interests of the child,²⁴⁴ assuming its position as guarantor with increased care and responsibility,²⁴⁵ based on their special condition of vulnerability. The Court has established that children have special rights that correspond to specific duties for the family, society, and the State. Furthermore, their condition demands special due protection by the State that must be understood as an additional right, complementary to the other rights that the Convention recognizes to every individual. The State also has the obligation to adopt all positive measures to ensure the full exercise of the rights of the child.²⁴⁶

194. The Court in the instant case has held that the State was responsible for failing in its duty to investigate several of the threats and acts of harassment against certain family members of Nelson Carvajal, in connection with his murder (*supra* Chapter VII.1). As a result of these threats, nine members of Nelson Carvajal's family,²⁴⁷ including four children,²⁴⁸ have needed to leave Colombia and begin a new life.

195. The Court deems that the instant case presents a picture of de facto restrictions on the right to freedom of movement and residence for nine members of the Nelson Carvajal family because the State's failure to guarantee several of them the right to humane treatment by investigating the threats (*supra* par. 153) aroused in them a sense of great insecurity and a well-founded fear that their lives and safety were in danger of injury if they remained in Colombia, which led them to leave the country.²⁴⁹ Moreover, while the State argued that it had offered several safety measures in response to the threats received by certain members of Nelson Carvajal's family prior to their departure from the country, the evidence file does not indicate whether the State had taken specific measures, following their emigration, to allow for a voluntary, decent and safe return to their usual places of residence.

196. In conclusion, given that some of the members of the Nelson Carvajal family were forced to leave their regular places of residence and move away because of the dangers they were facing and the fear they felt, and that the State failed to abide by its obligation to investigate the threats several of them had received and to provide the conditions necessary to facilitate a voluntary, decent and safe return to their regular places of residence or a voluntary

²⁴³ Cfr. *Case of Rochac Hernández et al. v. El Salvador*, par. 107, and *Case of the "Las Dos Erres" Massacre v. Guatemala*, par. 190.

²⁴⁴ Cfr. Advisory opinion OC-17/02, par. 60, and *Case of Vélez Restrepo and family v. Colombia*, par. 226.

²⁴⁵ Cfr. *Case of "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 2, 2004. Series C No. 112, par. 160, and *Case of Vélez Restrepo and family v. Colombia*, par. 226.

²⁴⁶ Cfr. Advisory opinion OC-17/02, pars. 53, 54, 60, 86, 91, and 93, and *Case of Vélez Restrepo and family v. Colombia*, par. 226.

²⁴⁷ They are: Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños (daughters); Luz Estela Bolaños Rodríguez (spouse); Judith Carvajal Carvajal, Gloria Mercedes Carvajal Carvajal, Ruth Dary Carvajal Carvajal, Fernando Augusto Carvajal Carvajal (siblings); Cristhian Camilo Motta Carvajal, and César Augusto Meneses Carvajal (nephews).

²⁴⁸ Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños, Cristhian Camilo Motta Carvajal, and César Augusto Meneses Carvajal.

²⁴⁹ In this regard, see *Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Court Costs*, par. 201, *Case of Fleury et al. v. Haiti. Merits and Reparations*, par. 94 and 95, and *Case of Vélez Restrepo and family v. Colombia*, par. 221.

resettlement somewhere else in the country for all those who had to leave Colombian territory, the Court declares violation of article 22(1) in conjunction with article 1(1) of the American Convention in injury of the family members of Nelson Carvajal Carvajal who needed to emigrate and take refuge abroad.²⁵⁰ Because evidence on the victims of displacement has proven that Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños, Cristhian Camilo Motta Carvajal and César Augusto Meneses Carvajal were children at the time of these events, the violations should also be held to have taken place in conjunction with article 19 of the Convention.

197. Furthermore, in the framework of this process, many statements were submitted regarding the effect wreaked on the intactness of the Carvajal family²⁵¹ and on the life of each member thereof, when several of the family members needed to emigrate and be scattered outside of Colombia, and the State was unable to provide safe conditions for their return. The Court therefore concludes that the State is also responsible for violating the rights of the family contained in article 17(1) of the Convention, in conjunction with article 1(1) thereof, in injury of the family members of Nelson Carvajal,²⁵² and for having violated the right to special protection for children, set forth in article 19 of the American Convention, in injury of Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños, Cristhian Camilo Motta Carvajal, and César Augusto Meneses Carvajal.

198. Finally, the Court has heard the arguments on the right to protection from arbitrary interference in family life enshrined in article 11(2) of the Convention, in injury of the family members of Nelson Carvajal, and deems that they were sufficiently addressed in the analysis on the rights of the family contained in article 17 thereof. Therefore, in view of the circumstances of the instant case, the Court does not declare violation of this right.

VIII. REPARATIONS (application of article 63(1) of the American Convention)

199. Pursuant to the provisions of article 63(1) of the Convention,²⁵³ the Court has held that every violation of an international obligation which results in harm creates a duty to make adequate reparation²⁵⁴ and that this provision reflects a customary norm that constitutes one

²⁵⁰ These people are: Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños (daughters); Luz Estela Bolaños Rodríguez (spouse); Judith Carvajal Carvajal, Gloria Mercedes Carvajal Carvajal, Ruth Dary Carvajal Carvajal, Fernando Augusto Carvajal Carvajal (siblings); Cristhian Camilo Motta Carvajal, and César Augusto Meneses Carvajal (nephews).

²⁵¹ *Cfr.* Affidavits by Luz Estela Bolaños Rodríguez; Yaneth Cristina Carvajal Ardila; Gloria Mercedes Carvajal Carvajal, Ruth Dary Carvajal Carvajal, Fernando Augusto Carvajal Carvajal, Luz Eny Carvajal Carvajal, Miriam Carvajal Carvajal, Ana Francisca Carvajal de Carvajal, Jairo Carvajal Cabrera, Saúl Carvajal Carvajal, and Christian Camilo Motta Carvajal (evidence file, folios 13368 to 13380; 13399 to 13481). Also see the statement by Judith Carvajal Carvajal in the public hearing on the instant case.

²⁵² These individuals are named in footnote number 1.

²⁵³ Article 63(1) of the American Convention states: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

²⁵⁴ *Cfr. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs.* Judgment of July 21, 1989. Series C No. 7, par. 25, and *Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of February 5, 2018. Series C No. 346, par. 182.

of the fundamental principles of contemporary international law on State responsibility.²⁵⁵ This Court has also established that reparations must have a causal nexus with the facts of the case, the alleged violations, the proven damages, as well as with the measures requested to repair the resulting damages. Therefore, the Court must observe such coincidence in order to adjudge and declare according to law.²⁵⁶

200. Accordingly, and without detriment to any form of redress that may be agreed to subsequently between the State and the victim, and in accordance with the considerations set forth on the merits and the violations of the Convention as declared in this Judgment, the Court will proceed to examine the petitions made by the Commission and the representatives of the victims, as well as the responses offered by the State, in light of the tenets established in its case law in connection with the nature and scope of the obligation to make reparations and thus adopt the measures required to redress the damage.²⁵⁷

A. Injured Party

201. The Court, under the terms of article 63(1) of the American Convention, holds as an injured party anyone who has been declared the victim of violation of a right recognized therein. The Court therefore assigns as injured parties the direct victim, Nelson Carvajal Carvajal, and the members of his family,²⁵⁸ who will be included as beneficiaries of Court-ordered reparations.

B. Obligation to investigate the facts and, if applicable, prosecute and sanction all those responsible

202. The *Commission* asked that the State be ordered to conduct a thorough, impartial, and effective investigation, within a reasonable period of time, to shed light on the circumstances of Nelson Carvajal's murder and to identify all those responsible. It also asked the Court to order the adoption of "all necessary measures to ensure the safety of the witnesses and Nelson Carvajal's relatives over the course of these investigations and proceedings." The *representatives* asked for similar redress, specifying that the findings of the investigation should be "made public to all of Colombian society." It also requested that the State be ordered to take immediate measures for the identification, prosecution and sanction of all public officials responsible for obstructing the investigation and order the opening of a conscientious, effective investigation into the sources of the threats against members of the Carvajal family.

203. The *State* said that its investigations into the murder of Nelson Carvajal were progressing impartially and effectively, and that the State was currently studying the feasibility, based on the Report on Merits of the Inter-American Commission, of lodging a motion for review of the criminal proceedings that led to the acquittal of F.B., and the investigation that had lapsed under the statute of limitations for two other individuals. The State replied to the request by the representatives to investigate public officials by stating that "no public officer has interfered with the investigation into the murder of Mr. Carvajal" and that, quite the contrary, they had performed diligently to identify the parties responsible

²⁵⁵ Cfr. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, par. 24, and *Case of the Xucuru Indigenous People and its members v. Brazil*, par. 182.

²⁵⁶ Cfr. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, par. 110, and *Case of the Xucuru Indigenous People and its members v. Brazil*, par. 184.

²⁵⁷ Cfr. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, par. 25 and 26, and *Case of the Xucuru Indigenous People and its members v. Brazil*, par. 185.

²⁵⁸ These individuals are named in footnote number 1.

for the case. The State also addressed the request to adopt all measures necessary to guarantee safety for the family members of Nelson Carvajal and the witnesses, noting that such a measure would not be appropriate given that these family members had not demonstrated any continuing risk to their lives or personal safety. It added, nonetheless, that “if such a risk did arise, the State is willing to provide the alleged victims with available government programs to protect persons at special risk,” which would proceed to assess the situation and take any relevant measures suited to each case.

204. In view of the conclusions of Chapter VII.1 of this Judgment, the Court orders the State to continue with the investigations and judicial proceedings already underway as may be necessary to identify and, if relevant, prosecute and sanction everyone responsible for the murder of Nelson Carvajal. This obligation must be fulfilled within a reasonable period, in view of the fact that over 20 years have already elapsed since the facts of the case occurred.

C. Measures of rehabilitation, satisfaction, restitution and guarantees of non-recurrence

C.1. Measure of Rehabilitation

205. The *representatives* asked the Court to order the State to lend medical and psycho-social care to the members of the Carvajal family. They said this treatment should be provided for as long as necessary and should include the cost of any medications prescribed as part of the care. The medical facility to provide the care should be selected by common accord with the beneficiaries, taking into account the particular circumstances and needs of each one. For the family members who currently reside abroad as a result of exile, the representatives asked the Court to set a fair amount that would allow them to cover the expenses of the medical and psycho-social treatment. The *State* held that such a measure was out of order as it was not responsible for the facts attributed to it. Notwithstanding this argument, it noted that if it were deemed appropriate to order measures of physical and psycho-social rehabilitation for Nelson’s family members, that it be done through mechanisms available in Colombia for offering this kind of treatment, particularly the Program for Psycho-social and Comprehensive Health Care for Victims (PAPSIVI) under the Ministry of Health and Social Protection.

206. The Court sees the need to provide a reparation measure that will assure proper care for the psychological troubles experienced by the victims of violations identified in the instant judgment.²⁵⁹ This Court orders the State to provide, free of charge and as a top priority, the psychological or psychiatric treatment needed by any of the victims who need it, at their prior request. Insofar as it is consistent with this order, as has occurred in other cases,²⁶⁰ the Court deems that the State may provide this treatment through the national health services, including the PAPSIVI. The victims specified must have immediate, high-priority, cost-free access to psychological services, regardless of any time periods set in domestic legislation for this purpose, and all obstacles of any kind must be removed.

207. The particular treatments given should be provided for as long as necessary, in a place that is accessible to the victims of this case. In providing the treatment, consideration must also be given to the particular circumstances and needs of each victim so they can receive group, family and individual counseling, depending on the needs of each one and following an

²⁵⁹ Cfr. *Case of Barrios Altos v. Peru. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, pars. 42 and 45, and *Case of Vereda la Esperanza v. Colombia*, par. 278.

²⁶⁰ Cfr. *Case of Yarce et al. v. Colombia*, par. 340, and *Case of Vereda la Esperanza v. Colombia*, par. 278.

individual assessment by a health-care professional.²⁶¹ Victims requesting this measure of redress, or their legal representatives, have six months from the date of notification of this judgment to inform the State of their intention to receive psychological or psychiatric care.²⁶²

208. For the family members of Nelson Carvajal who are living outside of Colombia, the Court rules in equity that the State should pay the amount of USD 10,000 (ten thousand United States dollars) to each one to cover the expenses of psychological or psychiatric counseling. Victims requesting this measure of reparation, or their legal representatives, have six months from the date of notification of this judgment to inform the State of their intention to receive psychological or psychiatric treatment and to receive this compensation.

C.2. Measures of satisfaction

a) Publication and dissemination of the judgment

209. The *representatives* asked that a summary of the judgment handed down on the instant case be published in the Official Gazette and another widely read national newspaper, and that the full text of the judgment be posted for at least one year on an official website of the State that is a fitting place for the type of publication being ordered. The *State* held that such a measure was out of order as it was not responsible for the facts attributed to it.

210. The Court rules, as it has in other cases,²⁶³ that the State must publish, within six months of the notification of the judgment: (a) the official summary of this judgment, written by the Court, one time only, in the Official Gazette and in another newspaper of nationwide circulation, printed in a typeface that is suitable and legible, and (b) the full text of this judgment available for at least one year on an official State website, accessible to the public from the relevant home page. The State should report to this Court as soon as it has proceeded with each of the publications ordered, regardless of the one-year term to submit its first report as ordered in operative paragraph 16 of the instant judgment.

b) Public act of recognition of international responsibility

211. The *representatives* asked for a public act to be held in the municipality of Pitalito, where Nelson Carvajal was executed, to acknowledge responsibility for the facts of the instant case. They requested that high-level representatives of the national government of Colombia take part in the event, that the conduct and other details of the public ceremony be duly consulted in advance with the members of the Carvajal family, and that the State cover the expenses for attending the ceremony. The *State* held that such a measure was out of order as it was not responsible for the facts attributed to it.

212. As it has done in the past,²⁶⁴ the Court, desirous of redressing the damage caused to the victim and preventing cases such as the one at hand from recurring, rules that the State must conduct a public act to acknowledge its international responsibility for the facts of this case. The act should make express reference to the human rights violations articulated in this judgment. It should take the form of a public ceremony in the presence of high-level State officials and the victims. The State must agree with the victims or their representatives on

²⁶¹ Cfr. *Case of 19 Tradesmen v. Colombia. Merits, Reparations and Costs*. Judgment of July 5, 2004. Series C No. 109 par. 278, and *Case of Vereda la Esperanza v. Colombia*, par. 279.

²⁶² Cfr. *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216, par. 253, and *Case of Vereda la Esperanza v. Colombia*, par. 279.

²⁶³ Cfr. *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, par. 79, and *Case of the Xucuru Indigenous People and its members v. Brazil*, par. 199.

²⁶⁴ Cfr. *Case of Cantoral Benavides v. Peru*, par. 81, and *Case of Favela Nova Brasília v. Brazil*, par. 305.

the method for complying with this public act of recognition and the details desired, such as the venue and date for it to take place. The State has one year to comply with this measure, as of the date of notification of this judgment.

C.3. Measures of Restitution

213. The *representatives* asked the Court to order the State to guarantee safe conditions for the return of Nelson Carvajal's family members who had been displaced.²⁶⁵ The *State* held that such a measure was out of order as it was not responsible for the facts attributed to it.

214. The Court asserts regarding this request that, in the first place, the State was responsible for violating the right to freedom of movement and residence in injury of nine family members of Nelson Carvajal who needed to emigrate abroad due to their security situation (*supra* par. 196).

215. The Court holds that the State should contribute to reparation for the members of the Nelson Carvajal family who are currently displaced and are victims of the instant case by guaranteeing sufficiently safe conditions for them to return to their places of residence, if such be the case and if they so desire, without any additional costs to the beneficiaries of this measure. The individuals have one year, as of the date of notification of this judgment, to inform the State of their intention to return. If the victims express a desire to return to their country of origin within this period, the State and the victims will have two years to agree on the details so that the State can comply with this measure of reparation, including payment of moving expenses for the members of the family and any customs charges they may incur.

C.4. Guarantees of non-recurrence

216. The *representatives* requested that measures of protection and prevention for journalists be strengthened in Colombia.²⁶⁶ In this regard, the *Commission* asked that effective protection measures continue to be adopted to guarantee the safety of journalists who are particularly at risk on account of the practice of their profession, whether the threats are from State agents or private individuals. The *State* of Colombia replied to this request by explaining that the National Protection Unit already offered a variety of measures to guarantee the safety of journalists and reporters throughout the country, and therefore this recommendation was out of order. It added that it "has robust nationwide measures to protect journalists and reporters, headed by the National Protection Unit, as well as the formulation

²⁶⁵ They explained that because of the amount of time that had elapsed since their exile, combined with the fact that safety conditions in Pitalito were still uncertain, several members of the family felt that a return to Colombia would be difficult, and it would depend largely on whether they could be certain that their lives would not once again be in jeopardy due to the events associated with this case. In the case of Ruth Dary Carvajal, who is currently in exile abroad with her son César Augusto Meneses Carvajal, they requested "that she be reincorporated into the teaching position she held in Pitalito in the same circumstances and under the same employment conditions she had until she was forced to leave the country and lose the position she had held for 21 years and 13 days."

²⁶⁶ They asked that the State strengthen implementation of the "Program for Prevention and Protection of the rights to life, freedom, humane treatment and safety for persons, groups and communities" and enact it as law to make the duty to protect binding on all branches of public power, ensure effective dialog among government bodies at all different territorial levels, guarantee measures that will prioritize prevention and investigation of acts involving risk, and recognize the differential treatment needed for the practice of journalism. They said it was crucial for the State to adopt measures beyond merely guaranteeing personal safety, and to improve conditions in the local and regional settings where journalists work, as a guarantee of the effective exercise of their right to freedom of expression. They also asked that the State be ordered to build up its investigative capacities so that crimes against journalists, including the threats they receive for their work, will not go unpunished and the source of risk can be eliminated. Finally, they noted that whenever a risk assessment is conducted to decide whether to assign protection to journalists, consideration must be given to factors such as the type of information they publish, any recent journalistic investigations they may have conducted, the type of news media they use and their location.

of the Public Policy on Freedom of Expression spearheaded by the Ministry of the Interior.”²⁶⁷

217. The Court values the progress made so far by the State to adopt measures of protection that will guarantee safety for journalists who are at special risk due to the practice of their profession. With respect to strengthening measures of prevention and protection for journalists in Colombia, the Court notes that information had been submitted on public policies that the State had adopted following the events of this case to address actions of this very kind. However, given the nature of the violations found herein, this Court deems it necessary to order the State to submit copies of the regular reports it sends to specialized agencies of the OAS and the United Nations regarding prevention and protection measures implemented for journalists in Colombia, so the Court can assess its compliance with the other measures of reparation ordered in this judgment.

D. Other measures of reparation requested

218. The *representatives* asked the Court to: (a) order a special report to be prepared on the institutional failures in investigating and solving the Nelson Carvajal murder case, and (b) order an educational infrastructure project to be developed in the Nelson Carvajal campus of the National Municipal Educational Institution of Pitalito. They stated that the State should strengthen implementation of the “Program for Protection and Prevention of the rights to life, freedom, integrity, and security of persons, groups, and communities” to benefit regional journalists, particularly those who practice the profession in rural areas of Colombia.

219. In general terms, the *State* made reference to the measures of satisfaction, rehabilitation and non-recurrence requested by the representatives, stating that they were out of order because it was not responsible for the facts attributed to it.

220. As for the measure of redress requested by the *representatives* to write up a special report on the institutional failures in investigating and solving the Nelson Carvajal murder case, this Court finds that the other measures of investigation and reparation ordered herein are sufficient to meet the objectives envisaged for such a document. This measure of reparation therefore will not be necessary.

221. Finally, the Court deems that the request to develop an educational infrastructure project at the Nelson Carvajal campus of the National Municipal Educational Institution of Pitalito has no causal nexus with any of the human rights violations declared herein. This measure of reparation therefore will not be necessary.

E. Compensatory Damages

E.1. Arguments of the parties and the Commission

²⁶⁷ The State drew attention to the affidavit filed by Miguel Emilio La Rota Uprimny, the Prosecutor General’s Director of Public Policy, describing the current status of the prosecutors’ programs and policies for managing cases of crimes against journalists. It mentioned the creation of the Gender and Differential Approach Team, whose lines of action included vulnerable populations as well as a line on violence against journalists and reporters as a result of their work. It pointed out that in 2015, the National Department of Public Policies and Planning had carried out a program of actions and strategies including a thematic focus specifically on the population of journalists and reporters. It explained that in the framework of this thematic focus, one group of officials was assigned to further the processes involving violence against journalists, and another was tasked with coordinating and developing the Prosecutor General’s public policies on this subject. The Working Group on Access to Justice for Journalists and Reporters who were Victims of Violence because of their Work had been consolidated in 2014. Finally, it noted that that in 2013, the then-National Department of Prosecutorial Offices ordered joinder of cases involving journalists and reporters murdered for their work and set up a direct contact line with the Freedom of the Press Foundation to monitor, analyze and expedite cases involving this type of violence. *Cfr.* Sworn statement before a public attestor, Emilio La Rota Uprimny, August 11, 2017 (evidence file, folios 13556 to 13581).

222. The *Commission* asked the Court to order the State to provide appropriate pecuniary and non-pecuniary redress for the human rights violations identified in the Merits Report. The *State* replied, that compensatory measures were out of order because it is not internationally responsible for the facts of the case.

223. The *representatives* asked the Court more particularly that, if it deemed the State of Colombia to be responsible for the facts of the instant case and ordered it to pay the consequent reparations, then the amounts to be paid to the Carvajal family in compensation be held in reserve. This was in view of the need to protect the family's safety and peace of mind.

224. They also requested compensation for pecuniary damage, asking the Court set in equity the amount the State must pay for consequential damages and lost earnings. For consequential damages, they explained that the Nelson Carvajal family had needed to cover a number of extra-procedural expenditures, including: (a) funeral expenses for Nelson Carvajal Carvajal,²⁶⁸ (b) payment of psychological counseling for several family members²⁶⁹ and (c) payment of airfare for family members who were forced into exile abroad.²⁷⁰ Under lost earnings, they described the income that Nelson Carvajal Carvajal ceased to earn as principal and teacher at the "Los Pinos" elementary school in Pitalito. They also drew attention to the fact that he had been the director and host of the radio programs "Mirador de la Semana," "Amanecer en el campo" and "Tribuna Médica" on the Sur Radio Station of Pitalito, affiliated with the national RCN Radio network. They recalled that Nelson had won election to serve as a member of the Pitalito town council for two terms, 1992-1994 and 1995-1997. Finally, they pointed out that the facts of the instant case had wreaked direct financial damage for Luz Estela Bolaños Rodríguez, Judith Carvajal Carvajal, Gloria Mercedes Carvajal Carvajal, Ruth Dary Carvajal Carvajal and Fernando Augusto Carvajal Carvajal, who needed to give up their jobs and set aside other economic activities when they were forced to leave Colombia.²⁷¹

²⁶⁸ They specified that the 1998 cost of the burial vault was COP 400,000 (four hundred thousand Colombian pesos), but added that they no longer had a copy of the invoice.

²⁶⁹ These costs were incurred for Cristhian Camilo Motta Carvajal, totalling EUR 495 (four hundred ninety-five Euro) and Paola Andrea Carvajal Bolaños, for EUR 300 (three hundred Euro).

²⁷⁰ They made reference to an amount of EUR 8269.31 (eight thousand two hundred sixty-nine Euro and thirty-one cents) in airfare for Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños, Luz Estela Bolaños Rodríguez, Gloria Mercedes Carvajal, Ruth Dary Carvajal Carvajal, Yaneth Cristina Carvajal Ardila, César Augusto Meneses Carvajal, Judith Carvajal Carvajal, Fernando Augusto Carvajal Carvajal, and Cristhian Camilo Motta Carvajal. This total includes airfare for Yaneth Cristina Carvajal Ardila to return to Colombia after she renounced asylum.

²⁷¹ They explained that: (a) Luz Estela Bolaños Rodríguez had worked as an administrative assistant at the San Antonio Departmental Hospital, earning a monthly salary of COP 750,000 (seven hundred fifty thousand Colombian pesos). She sought exile abroad in 2006 and was unable to find a job until 2007, when she took a position different from the work she had done in Colombia; (b) Judith Carvajal Carvajal, before she was displaced to Bogotá, worked as a teacher at the Jerónimo España Municipal School in the municipality of Pitalito, Huila and earned a monthly salary of COP 825,478 (eight hundred twenty-five thousand, four hundred seventy-eight Colombian pesos). Until the time she needed to join the Prosecutor's Victim Protection Program, Judith also hosted a radio program she had begun with her brother Nelson, called "Por la Civilización del Amor." After she went into exile abroad, she was unable to continue working as a teacher because her professional degree was not recognized as such. She was without work for 4 years and nine months. At the end of July, 2004, she began a job as an administrative assistant, where she worked until March, 2015. She is currently unemployed; (c) Gloria Mercedes Carvajal Carvajal worked as a bacteriologist in her clinical laboratory M&G's Asociados Limitada and had been named to the position of Secretary of Health for the Municipality of Pitalito, earning a monthly salary of COP 2,232,881 (two million, two hundred thirty-two thousand, eight hundred eighty-one Colombian pesos). She went into exile abroad in 2006. She has been unable to pursue her professional practice because the country that received her in exile has no equivalent profession. Gloria Mercedes was without work for three months. She later worked as an administrative assistant in a cleaning company until 2013, and has been without work since then. Her company, M&G's Asociados clinical laboratory, had to be shut down and she lost all the capital she had invested in it; (d) Ruth Dary Carvajal Carvajal worked as a 13th grade teacher at the Institución Educativa Municipal Normal Superior in the El Porvenir school in the municipality of Pitalito, earning a monthly salary of COP 2,064,332 (two million, sixty-four thousand, three hundred thirty-two Colombian pesos). She went into exile abroad in 2010 and was unable to work there as a teacher because her foreign degree was certified as a college credential qualifying her for further study, but not for work, and (e) Fernando Augusto

225. The representatives requested nonpecuniary damages as follows: (1) USD 80,000 (eighty thousand United States dollars) for Nelson Carvajal; (2) USD 25,000 (twenty-five thousand United States dollars) for each of the following for the pain caused to them by the murder of Nelson Carvajal, as well as the anguish and psychological suffering due to the lack of justice and the threats they received: Ana Francisca Carvajal de Carvajal (mother), Jairo Carvajal Cabrera (father), Yaneth Cristina Carvajal Ardila (daughter), Paola Andrea Carvajal Bolaños (daughter), María Alejandra Carvajal Bolaños (daughter) and Luz Estela Bolaños Rodríguez (wife); (3) USD 15,000 (fifteen thousand United States dollars) for each of the following for the pain caused by the murder of Nelson Carvajal and the anguish and psychological suffering due to the lack of justice and the threats they received: Judith, Gloria Mercedes, Ruth Dary, Luz Eny, Miriam, Fernando Augusto and Saúl Carvajal (siblings), Cristhian Camilo Motta Carvajal (nephew) and César Augusto Meneses Carvajal (nephew, minor), and (4) additionally, in consideration of the emotional shock of forced exile, the amount of USD 10,000 (ten thousand United States dollars) for each of the following: Paola Andrea and María Alejandra Carvajal Bolaños, Luz Estela Bolaños Rodríguez, Judith, Gloria Mercedes, Ruth Dary and Fernando Augusto Carvajal, as well as Cristhian Camilo Motta Carvajal and César Augusto Meneses Carvajal.

E.2. Considerations of the Court

226. Although the representatives asked that the amounts ordered in this judgment be kept in reserve, the Court feels that this is not relevant because they did not explain the specific reasons why the safety and peace of mind of the beneficiaries could be jeopardized.

227. The Court also considered measures of compensation, noting that it has developed in its case law the concept of pecuniary damage and the conditions under which it can be indemnified. This Court has held that pecuniary damage covers loss or detriment to the victims' income, the expenses incurred as a result of the facts of the case and the monetary consequences that have a causal nexus with the facts.²⁷² International case law has also held that the judgment per se constitutes a form of reparation.²⁷³ The Court's case law has further developed the concept of non-pecuniary damage, holding that it may include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other the nonpecuniary changes in the living conditions of the victim or family members.²⁷⁴

228. Similarly, in view of the circumstances of the present case, the significance, character and seriousness of the violations, the suffering caused to the victim and members of his family, and the time that has elapsed since the facts occurred, the Court deems it proper to order compensation for both pecuniary and nonpecuniary damage. The Court therefore orders the State to grant as fair compensation for pecuniary and nonpecuniary damage, the amount of USD 250,000 (two hundred fifty thousand United States dollars) for Nelson Carvajal

Carvajal Carvajal worked as a graphic designer at his Graphic Design Center, where he did the final production work for typography and lithography in Pitalito and southern Huila, with average monthly earnings of COP 850,000 (eight hundred fifty-thousand Colombian pesos) for his services. He went into exile abroad in 1999 and was unable to continue his professional services in graphic design. His graphic design studio in Pitalito had to be shut down. He has been without work for three years.

²⁷² Cfr. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, par. 43, and *Case of the Xucuru Indigenous People and its members v. Brazil*, par. 208.

²⁷³ Cfr. *Case of El Amparo v. Venezuela. Reparations and Costs*. Judgment of September 14, 1996. Series C No. 28, par. 35, and *Case of Vereda La Esperanza v. Colombia*, par. 306.

²⁷⁴ Cfr. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, par. 84, and *Case of the Xucuru Indigenous People and its members v. Brazil*, par. 209.

Carvajal, to be paid as follows: 50% equally among his children, and 50% for his spouse; USD 30,000 (thirty thousand United States dollars) for each of the family members, to wit, parents, spouses, or children; USD 20,000 (twenty thousand United States dollars) for sisters or brothers, and USD 15,000 (fifteen thousand United States dollars) for nieces or nephews. The amounts ordered for these people should be disbursed within the period set in paragraph 232 of this judgment. The Court also rules as fair compensation the amount of USD 15,000 (fifteen thousand United States dollars) for each of the following people who were displaced outside of Colombia: Paola Andrea and María Alejandra Carvajal Bolaños, Luz Estela Bolaños Rodríguez, Judith, Gloria Mercedes, Ruth Dary and Fernando Augusto Carvajal, as well as Cristhian Camilo Motta Carvajal and César Augusto Meneses Carvajal.

F. Costs and expenses

229. The *representatives* asked for reimbursement of: (a) expenses incurred by the Inter-American Press Association;²⁷⁵ (b) expenses incurred by Robert F. Kennedy Human Rights,²⁷⁶ and (c) expenses incurred by members of the Carvajal Carvajal family to attend the hearing.²⁷⁷ The *State* replied that these payments were out of order because it was not internationally responsible for the facts of the case.

230. The Court reiterates that, in keeping with its case law,²⁷⁸ legal fees and court costs are part of the body of reparations because the activities undertaken by the victims to obtain justice both nationally and internationally require outlays that should be covered when the Court judges the State to be internationally responsible. The Court also recalls that it is not enough to merely remit probative documents; rather the parties must develop the reasoning linking the evidence to the fact under consideration and, in the case of alleged financial outlays, the items of expenditure and their justification must be described clearly.²⁷⁹

²⁷⁵ They stated that IAPA had represented the victims from the beginning of the proceedings before the Illustrious Inter-American Commission in June 2002, and that since that time, it had been litigating the case in the international jurisdiction, incurring expenditures including travel, lodging, communications, office supplies, document transmission, closely monitoring the case investigation process by Colombian authorities starting in 2002, and had also run up expenses for its work of investigation, gathering and submitting evidence, preparation of briefs and legal analysis, all of which required as least 12 trips to Colombia and Washington, DC from IAPA offices in Miami. They added that since 2016, when the brief with pleadings, motions and evidence had been submitted, the IAPA had taken on additional expenditures for its participation in the public hearing of the case. Expenditures for participating in the public hearing totaled USD 1,959.11 (one thousand, nine hundred fifty-nine United States dollars and eleven cents). They asked the Court to set an amount in equity that the State should pay directly to the IAPA for legal fees and court costs.

²⁷⁶ They specified that expenses to attend the public hearing totaled USD 6,039.23 (six thousand, thirty-nine United States dollars and twenty-three cents) and that Robert F. Kennedy Human Rights had officially joined the instant case as legal representative of the victims in August, 2015. They asked that these expenses be set in equity and reimbursed directly to Robert F. Kennedy Human Rights.

²⁷⁷ They explained that five members of the Carvajal Carvajal family had attended the public hearing before the Inter-American Court, and although only Judith Carvajal had been summoned to make a statement in the hearing, they asked the Court to consider that the public hearing in and of itself had a restorative effect for human rights victims and that it therefore order the State to reimburse the expenditures incurred by all the family members who attended the hearing. They specifically asked for reimbursement of the following items: (i) EUR 794 (seven hundred ninety-four Euro) for the family's lodging in San Jose, (ii) EUR 1,605.01 (one thousand, six hundred five Euro and one cent) in airfare for Paola Andrea Carvajal Bolaños, and (iii) COP 2,846,460 (two million, eight hundred forty-six thousand, four hundred sixty Colombian pesos) in airfare for Miriam Carvajal Carvajal and Yaneth Cristina Carvajal Ardila.

²⁷⁸ *Cfr. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, par. 42, and *Case of the Xucuru Indigenous People and its members v. Brazil*, par. 214.

²⁷⁹ *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, par. 277 and *Case of the Xucuru Indigenous People and its members v. Brazil*, par. 215.

231. In view of all this, and noting the evidence submitted by the representatives, the Court deems a fair amount in total payment would be USD 33,000 (thirty-three thousand United States dollars) for legal fees and court costs incurred by the representatives of the victims in the domestic proceedings and before the international jurisdiction of the inter-American System for human rights protection. The payment must be distributed as follows: a total of USD 10,000 (ten thousand United States dollars) to the IAPA; USD 8,000 (eight thousand United States dollars) to Robert F. Kennedy Human Rights, and USD 15,000 (fifteen thousand United States dollars) to the family members of Nelson Carvajal who attended the hearing. These amounts should be paid directly to each representative organization within the term set in paragraph 232 of this judgment. The Court may also order the State to further reimburse the victims or their representatives for reasonable expenses incurred during the procedural stage of monitoring compliance with this judgment. These amounts should be paid directly to each of the representatives of the victims. The family members have a period of six months from the date of notification of this judgment to designate and inform the Court and the State of the name of the person who should receive the amount that the State must pay to family members.

G. Method of compliance with the payments ordered

232. The State must release payment of the compensation for pecuniary and nonpecuniary damage and reimbursement of legal fees and court costs ordered in the instant judgment directly to the individuals and organizations specified herein within one year of the date of notification of the judgment, in the understanding that it may also complete the payments sooner. If beneficiaries have passed away or should pass away prior to the payment of their due compensation, the money shall be distributed directly to their heirs under the terms of applicable domestic legislation.

233. The State must fulfill all its monetary obligations by means of payment in United States dollars or the equivalent in national currency, calculated according to the exchange rate in effect on the New York stock exchange, United States of America, the day prior to the payment.

234. If for causes attributable to the beneficiaries of the compensation or their heirs it should prove impossible to pay the amounts established within the required term, the State shall deposit the amount in the name of the beneficiaries into an account or certificate of deposit in a sound Colombian financial institution, in United States dollars, under the most favorable financial conditions allowed by law and by banking practice. If the compensation has not been claimed after ten years, the money shall revert to the State with interest.

235. The amounts allocated as compensation for pecuniary and nonpecuniary damage and for reimbursement of legal fees and court costs shall be disbursed in their entirety to the assigned individuals and organizations, as ordered in this judgment, with no deductions for possible fiscal fees. If the State should fall behind on these payments, it must pay interest on the amounts owed, based on overdue interest rates in effect for banks in Colombia.

**IX.
OPERATIVE PARAGRAPHS**

236. Therefore,

THE COURT

DECLARES,

Unanimously, that:

1. The State is responsible for violating the right to a fair trial enshrined in article 8(1) of the American Convention, in injury of the members of Nelson Carvajal Carvajal's family, in conjunction with article 1(1) thereof under the terms of paragraphs 101 to 153 of this judgment.
2. The State is responsible for violating the right to life enshrined in article 4(1) of the American Convention in conjunction with articles 1(1), 8 and 25 thereof, in injury of Nelson Carvajal Carvajal under the terms of paragraphs 158 to 170 of this judgment.
3. The State is responsible for violating the right to freedom of expression enshrined in article 13(1) of the American Convention in conjunction with articles 1(1), 8 and 25 thereof, in injury of Nelson Carvajal Carvajal under the terms of paragraphs 171 to 178 of this judgment.
4. The State is responsible for violating the right to humane treatment enshrined in article 5(1) of the American Convention in conjunction with articles 1(1) thereof, in injury of the family members of Nelson Carvajal Carvajal under the terms of paragraphs 185 to 187 of this judgment.
5. The State is responsible for violating the right to freedom of movement and residence enshrined in article 22 of the American Convention, in conjunction with article 1(1) thereof, in injury of Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños; Luz Estela Bolaños Rodríguez; Judith Carvajal Carvajal, Gloria Mercedes Carvajal Carvajal, Ruth Dary Carvajal Carvajal, Fernando Augusto Carvajal Carvajal; Cristhian Camilo Motta Carvajal, César Augusto Meneses Carvajal, and in conjunction with article 19 thereof in injury of Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños, Cristhian Camilo Motta Carvajal, and César Augusto Meneses Carvajal, under the terms of paragraphs 188 to 196 of this judgment.
6. The State is responsible for violating the rights of the family enshrined in article 17 of the American Convention, in conjunction with article 1(1) thereof, in injury of the family members of Nelson Carvajal Carvajal, and in conjunction with article 19 thereof, in injury of Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños, Cristhian Camilo Motta Carvajal, and César Augusto Meneses Carvajal, under the terms of paragraph 197 of this judgment.
7. The State is not responsible for violating article 11(2) of the Convention in injury of the family members of Nelson Carvajal Carvajal, under the terms of paragraph 198 of this judgment.

AND ORDERS:

Unanimously, that:

8. This judgment constitutes per se a form of reparation.
9. The State shall pursue the investigations and judicial processes already underway to identify the facts and corresponding responsibilities, under the terms of paragraph 204 of this judgment.
10. The State shall provide psychological or psychiatric treatment to the victims who so request, under the terms of paragraphs 206 and 207 of this judgment.
11. The State shall issue the publications outlined in paragraph 210 of this judgment.

12. The State shall hold a public ceremony for recognition of international responsibility for the facts of this case, under the terms of paragraph 212 of this judgment.

13. The State shall guarantee suitable conditions of safety so that the family members of Nelson Carvajal Carvajal may return to their native country, if applicable and if they so desire, without incurring any additional expenses to the beneficiaries of this measure, under the terms of paragraph 215 of this judgment.

14. The State shall submit the regular reports it sends to the specialized agencies of the OAS and the United Nations on measures implemented for prevention and protection of journalists in Colombia, under the terms of paragraph 217 of this judgment.

15. The State shall pay the amounts stipulated in paragraphs 228 and 231 of this judgment for pecuniary and nonpecuniary damage and for reimbursement of legal fees and court costs, as well as the amounts in compensation for psychological or psychiatric care of the family members of Nelson Carvajal Carvajal who are living outside of Colombia and so request under the terms of paragraph 208 of this judgment. These payments shall be made under the terms of paragraph 232 of this judgment.

16. The State shall, within one year of the date of notification of this judgment, submit to the Court a report on the measures adopted to comply therewith.

17. The Court shall monitor full compliance with this judgment, in exercise of its authority and in compliance with its obligations pursuant to the American Convention on Human Rights, and shall declare this case closed when the State has fully complied with all the measures ordered herein.

Judgment of the Inter-American Court of Human Rights. Case of Carvajal Carvajal et al. v Colombia. Merits, Reparations and Costs.

Done in Spanish in the city of San Jose, Costa Rica, March 13, 2018.

I/A Court HR. Case of Carvajal Carvajal et al. v Colombia. Merits, Reparations and Costs. Judgment of March 13, 2018.

Eduardo Ferrer Mac-Gregor Poisot
President

Eduardo Vio Grossi

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Registrar

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Registrar