

REPORT No. 21/15
CASE 12.462
MERITS
NELSON CARVAJAL CARVAJAL AND FAMILY
COLOMBIA
MARCH 26, 2015

I. SUMMARY

1. On June 21, 2002, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition from the Inter American Press Association (hereinafter “the IAPA,” or “the petitioner”) against the Republic of Colombia (hereinafter “Colombia” or “the State”) concerning the murder of journalist Nelson Carvajal Carvajal (hereinafter also “the alleged victim”).

2. According to the petitioner, on April 6, 1998 journalist Nelson Carvajal Carvajal was murdered for reasons related to the practice of his profession. The petitioner alleged that the State failed to comply with its duty to guarantee the rights of the alleged victim and to act with due diligence to investigate, prosecute, and if appropriate, punish the perpetrators of the journalist’s murder. It stated that the investigations conducted were plagued by irregularities, as well as threats and attempts on the lives of witnesses, justice system officials, and relatives of Carvajal Carvajal, and that there was therefore a denial of justice. It stated that nine of the victim’s relatives had to leave the country because of those threats. In this regard, it alleged that the State violated the rights to life, a fair trial, freedom of thought and expression, and judicial protection, enshrined at Articles 4, 8, 13, and 25 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), in conjunction with the general obligation to respect the rights provided for in Article 1(1) thereof, to the detriment of Carvajal Carvajal and his relatives.

3. The State argued that it is not internationally responsible for the death of Nelson Carvajal Carvajal, as it has not been proven that state agents were involved in the murder. The State indicated that the domestic proceedings did not determine with certainty that Carvajal’s murder was related to the practice of his profession and that his death does not automatically amount to a violation of freedom of expression. With regard to this right, the State maintained that neither the journalist’s right to express his opinions nor the results of his journalistic investigations were restricted, and that he was able to exchange ideas and opinions with his colleagues and with the community. The Colombian State asserted that it met the obligations derived from Articles 8 and 25 of the Convention, because the criminal investigation was conducted seriously, with a view to establishing the facts and identifying, prosecuting, and punishing the perpetrators of an act it considered extremely complex.

4. On October 13, 2004, the IACHR approved Report No. 54/04 declaring the admissibility of the petition in relation to Articles 4 (right to life), 8 (right to a fair trial), 13 (freedom of thought and expression), and 25 (judicial protection), of the American Convention, in conjunction with Article 1(1) thereof.

5. Upon examining the merits of the case, the Commission concluded that the State is responsible for the violation of the rights enshrined in Article 4 (right to life) and Article 13 (right to freedom of thought and expression) of the American Convention, in relation to article 1(1) of the treaty, to the detriment of Mr. Nelson Carvajal Carvajal, as well as of Articles 5 (right to humane treatment), 8 (the right to a fair trial), 22 (freedom of movement and residence), and 25 (judicial protection) of the Convention, to the detriment of his relatives, in relation to the obligation to guarantee the rights enshrined in Articles 1(1) and 13(1) of the American Convention.

II. PROCEEDINGS BEFORE THE COMMISSION SUBSEQUENT TO THE ADMISSIBILITY REPORT

6. On November 11, 2004, the Commission notified the parties of the Admissibility Report; it gave them two months to present their additional observations on the merits of the petition, and placed itself at the parties' disposal in order to facilitate a friendly settlement.

7. On January 20, March 1, and April 19, 2005, the petitioner asked the IACHR for extensions of the deadline to submit its observations on the merits and its reply regarding a potential friendly settlement. The IACHR granted a 30-day extension on each occasion.

8. On August 25, 2005, the petitioner presented observations on the merits of the petition and expressed its interest in the friendly settlement process. On September 7, 2005, the IACHR forwarded the petitioner's observations to the State and asked it to present its observations within two months. On September 20, the IACHR called the petitioner and the State to a working meeting on October 19, 2005 in order to address matters concerning this case. In a communication dated October 19, 2005, the State expressed its willingness to engage in friendly settlement proceedings. In a communication dated May 13, 2009, the petitioner informed the IACHR of its decision to end the friendly settlement process and forwarded additional information.¹ On May 14, 2009, the Commission forwarded the information to the State and informed the petitioner and the State of Colombia that it was terminating the attempted friendly settlement stage pursuant to Article 41(4) and (6) of its Rules of Procedure. In a communication dated July 15, 2009, the State presented observations on the merits of the petition, which were forwarded to the petitioner on October 26, 2009.

9. On May 29 and July 25, 2013, the IACHR requested that the petitioner provide information relating to the case, and the petitioner did so. In a communication dated August 22, 2013, the Commission forwarded the pertinent parts to the State. On October 7, 2013, the State asked the IACHR for an extension and on November 19 it submitted additional information on the merits of the petition, which was forwarded to the petitioner on December 5, 2013.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

The work of journalist Nelson Carvajal Carvajal and the motive for his murder

10. The petitioner alleged that journalist Nelson Carvajal Carvajal was murdered for reasons related to the practice of his profession. The journalist was working as the director of the news program "Momento Regional" and the radio magazine programs "Mirador de la Semana," "Amanecer en el Campo," and "Tribuna Médica" of the *Radio Sur* radio station in the municipality of Pitalito, department of Huila. The petitioner stated that in addition to his journalistic work, Mr. Carvajal was a teacher and the principal of the Los Pinos School and also served on the Pitalito town council during the 1992-1994 and 1995-1997 terms.

11. The petitioner stated that Nelson Carvajal Carvajal was murdered on April 16, 1998, as he was leaving the Los Pinos School. The petitioner indicated that Carvajal was shot seven times by an individual who then escaped on a motorcycle with another person who had been waiting for the shooter.

12. The petitioner indicated that Carvajal had been conducting investigative journalism into acts of political corruption in the area. According to the IAPA, Carvajal Carvajal had been reporting on a businessman and politician's involvement with the construction of housing in a high-risk area with improper

¹ With regard to the termination of the friendly settlement phase with the Colombian State, the petitioner expressed the opinion that they had failed to reach a favorable outcome that would allow for the establishment of the facts of the crime or reduce the degree of impunity.

building materials. It further stated that just days prior to his murder, Mr. Carvajal Carvajal had reportedly obtained documents showing that the businessman had ties to a drug and weapons trafficking network in the area. In addition, the petitioner stated that the journalist had a meeting scheduled for the day after his death with the Municipal Ombudsman in order to lodge a complaint against the mayor of Pitalito for the violation of state procurement laws in the purchase of a piece of land.

Legal proceedings and threats to Nelson Carvajal's relatives, witnesses, and investigators in the criminal cases

13. The petitioner alleged that the State failed to comply with its duty to guarantee the rights of the alleged victims and to act with due diligence to investigate, prosecute, and if appropriate, punish the perpetrators of the journalist's murder. It stated that the investigations conducted were plagued by irregularities, as well as threats and attempts on the lives of witnesses, justice system officials, and relatives of Carvajal Carvajal, and that there was therefore a denial of justice.

14. The petitioner indicated that the attorneys in the case were fearful, and that Nelson Carvajal Carvajal's relatives were therefore unable to act as civil plaintiffs in the criminal case. According to the petitioner, this prevented Carvajal's relatives, as victims in the case, from requesting the examination of evidence to prove the acts in question, confirm the identity of the perpetrators and the participants and their responsibility, and to determine the nature and amount of damages or the potential for appealing the court decisions.

15. The IAPA stated that the Fourth Special Prosecutor of Huila, who was handling the case, received threats. It further stated that several participating witnesses whose identities were protected during the proceedings were threatened and their identities were revealed. It also noted that some individuals who had knowledge of the events were threatened in an attempt to keep them from giving statements.

16. The petitioner stated that Judith Carvajal, Nelson Carvajal's sister, received death threats that were meant to prevent her from providing evidence in the case. It also noted that two attempts were made on her life. The IAPA indicated that those threats were duly reported to the Office of the Public Prosecutor, that she entered into the Victim and Witness Protection Program of the Prosecutor's Office in April 1999, and that she is now in exile.

17. The petitioner transcribed a statement by Juan Ángel Ortiz, an "absolute trusted friend" of Nelson Carvajal Carvajal's who had allegedly received multiple threats. Ortiz reportedly stated that he had attempted to testify in the case but was unable to do so because he was being threatened and was not given any protection in order to testify with peace of mind. The petitioner also transcribed a statement given by Lucas Chavarro, a friend of the journalist who stated that he had been threatened by a builder and former town councilman, who had learned of his statement before the Prosecutor's Office—in spite of the fact that the criminal investigation was confidential. According to the petitioner's transcription of the complaints alleged by Judith Carvajal, the attorneys for the defendants implicated in the journalist's murder turned their telephones on so their clients could hear the examination of the witnesses. According to the transcription, the detainees were thus able to identify the witnesses and subsequently threaten them.

18. The IAPA stated that on May 8, 2007 the Prosecutor's Office acknowledged that Pablo Emilio Bonilla Betancurt, a key witness in the investigation, had been murdered. The Prosecutor's Office told them that the Witness Protection Office had denied protection to Bonilla Betancurt because he did not meet the requirements. Bonilla Betancurt reportedly would have provided testimony in the review of the acquittals in the case of Nelson Carvajal before the Supreme Court of Justice.

19. The petitioner stated that nine relatives² of Carvajal's were granted refugee status and the right to asylum. It indicated that the departure of Carvajal's relatives from the country was due to "persecution as a result of demanding justice for the murder." The petitioner also affirmed that the Office of the Prosecutor General acknowledged the persecution and threats against Judith Carvajal Carvajal and her brother Fernando Augusto Carvajal Carvajal. According to the petitioner, the Prosecutor's Office was of the opinion that Judith Carvajal Carvajal and her immediate family faced serious risk, given her brother's journalistic work. The Prosecutor's Office specified that the defendants were politically and economically powerful, and that they had ties to paramilitary and drug trafficking organizations. It also stated that the Office of the Prosecutor General documented the threats against Nelson Carvajal's sister Ruth Dary Carvajal in the case file, and asked the National Police to provide security measures to the family members. According to the IAPA, the acts of intimidation increased following the arrest and detention of one of the defendants on August 29, 2008.

20. In addition, the petitioner stated that the competent authorities committed several irregularities during the case, both in the prosecution's investigation and in the court's assessment of the evidence that prevented the judicial proceedings from leading to the identification and punishment of the perpetrators. The petitioner stated that the lead prosecutor in the case was changed up to four times and that the personnel in charge of conducting the crime scene analysis were neither diligent nor thorough in the collection of evidence. It alleged that the report submitted by those investigators was routine and that the only evidence they gathered was a bullet nose and six shell casings that were found near the body. Similarly, the petitioner stated that law enforcement officials lost contact with the only person identified in a lineup as the alleged direct perpetrator of the murder—in spite of the fact that he was initially named as a suspect—and the investigation against him was later dropped.

21. The petitioner further indicated that the Technical Unit of the Prosecutor's Office failed to explore various theories regarding the perpetration of the homicide. The IAPA cited the statements of a judicial employee and a Special Prosecutor indicating that the persons in charge of the investigation failed to pursue other avenues that also should have been exhausted. According to the petitioner, the Prosecutor's Office did not give credence to the theory that the FARC was involved.

22. For all of the above reasons, they asked the IACHR to declare that the State violated the rights to life, a fair trial, freedom of thought and expression, and judicial protection, enshrined in Articles 4, 8, 13, and 25 of the American Convention, in conjunction with the general obligation to respect rights provided for in Article 1(1) thereto, to the detriment of Carvajal Carvajal and his relatives.

B. Position of the State

Alleged violation of Articles 8(1) and 25 of the Convention

23. The Colombian State asserted that it has complied with the obligations derived from Articles 8 and 25 of the Convention. It stated that the criminal investigation was conducted seriously, with a view to establishing the facts and identifying, prosecuting, and punishing the perpetrators, and with full respect for the due process guarantees enshrined in Articles 8 and 25 of the Convention.

24. The State indicated that once the events took place, an investigation was opened by a District Office of the Public Prosecutor in Pitalito, and later forwarded for jurisdictional reasons to the Terrorism Unit of the Office of the Prosecutor General. It stated that just eight months after the acts occurred, an order was issued on December 29, 1998 naming 3 individuals as the masterminds of the crime, and 2 individuals as the direct perpetrators. It was ordered that of the defendants be held in pretrial detention.

² Paola Andrea Carvajal Bolaños and María Alejandra Carvajal Bolaños (daughters); Luz Stella Bolaños Rodríguez (spouse); Judith Carvajal Carvajal, Gloria Mercedes Carvajal Carvajal, Ruth Dary Carvajal Carvajal, and Fernando Augusto Carvajal Carvajal (siblings); Cristhian Camilo Motta Carvajal and César Augusto Meneses Carvajal (nephews).

25. Colombia indicated that once the pretrial phase of the criminal proceedings was concluded, the investigation was closed in December 1999, and an indictment was issued in January 2000 against 1 individual as mastermind and 2 individuals as direct perpetrators. The same order closed the investigation against the other 2 individuals that were under investigation, and that decision became final after being affirmed on appeal. It stated that the case was removed to the Single Criminal Court of the Specialized Circuit of Neiva. It stated that, after weighing the evidence in the case file, the court issued a decision on December 15, 2000 to acquit the defendants according to the principle of *in dubio pro reo*. It asserted that the Prosecutor's Office filed an appeal, which was adjudicated by the Superior Court for the Judicial District of Neiva. It indicated that the Court upheld the lower court's judgment in a decision dated April 6, 2001.

26. The State indicated that the Prosecutor's Office asked the Public Ministry to examine the possibility of filing a motion before the Supreme Court for the reconsideration of the acquittal handed down by the Single Criminal Court of the Specialized Circuit of Neiva. It reported that in a decision dated April 1, 2009, the Criminal Cassation Division of the Supreme Court ruled inadmissible the motion for reconsideration of the acquittal filed by the 161st Office of the Criminal Prosecutor II.

27. The Colombian State indicated that the Prosecutor's Office continues to investigate the matter in order to establish the facts of the case and identify the perpetrators. It also claimed that the State has no international responsibility for the case of Nelson Carvajal, in view of the "absence of results with respect to the indictment, prosecution, and eventual punishment of the perpetrators," given that it has complied with its obligation to seek justice.

28. The Colombian State asserted that Nelson Carvajal Carvajal's case was pursued at different levels with the participation of various judicial authorities, in accordance with Colombian criminal procedure and in observance of the legal and constitutional guarantees in force at the time of the events. It maintained that the fact that "the outcome of a criminal investigation fails to yield the effects desired by the petitioners cannot be understood as the result of a series of irregularities on the part of the judicial authorities in charge of directing the case." In addition, it indicated that this cannot be considered a violation of the American Convention.

29. Colombia indicated that, in view of the complexity of this matter, the procedural steps taken by the interested party, and the conduct of judicial authorities established by the Inter-American Court, the criminal investigation was not subject to improper delays. It explained that, although Carvajal's relatives did not act as civil plaintiffs in the criminal proceedings, they also did not delay the investigations. With regard to the conduct of the investigating authorities, it stated that they were diligent and consistent in terms of their initiative and management of what it considered to be the investigation of some extremely complex facts.

30. With regard to the complexity of the case, Colombia indicated that "it lies in the threats that have plagued this case, which have been directed against witnesses and relatives who might be able to contribute valuable information for the successful development of the investigation. This fear has hindered the investigative work of the Prosecutor's Office, which has repeatedly had to reschedule court proceedings in view of the impossibility of obtaining information from witnesses because of the threats they have received." It states that the consequences of these circumstances on the case were reflected in the time invested in the investigation, which exceeded the "working timelines previously established by the prosecutor and her team."

Alleged violation of Article 4 of the American Convention

31. Colombia indicated that in the case of Nelson Carvajal both the State and the petitioner agree that the acts related to the alleged violation of the right to life are not attributable to State agents. As such, it maintains that it would be inadequate to evaluate alleged responsibility for the violation of the right to life according to the negative obligation set forth in Article 4 of the Convention that stipulates that no one shall be arbitrarily deprived of his or her life.

32. The State indicated that the act of practicing the profession of journalism cannot *per se* be considered a real and immediate risk. It stated in this regard that the "risk" that must exist in order to presume State responsibility for the acts of third parties must be individual, real, and imminent, and that this was not the situation in Mr. Carvajal's case. It further stated that there is no record of any complaints of threats filed by Nelson Carvajal or his relatives, or any indication that the competent authorities had prior knowledge of the supposed real, imminent, and individual threat posed by third parties.

Alleged violation of Article 13 of the American Convention

33. The Colombian State asserted that there was no violation of Article 13 in its individual aspect, since Carvajal had all the appropriate means and guarantees to state his opinions and the results of the journalistic investigations he was conducting, without any restriction or limitation. As for the societal aspect of the right to freedom of expression, the State contended that Carvajal had the opportunity in his work to exchange ideas and opinions with his colleagues in the practice of his profession as a journalist and to engage with the community and his radio audience. The State affirmed that the violent death of a journalist does not automatically entail the violation of the right to freedom of thought and expression. Additionally, it stated that the outcomes of the domestic proceedings did not provide "certainty with respect to the assertion that Mr. Carvajal's death was directly related to his journalistic activities."

IV. ESTABLISHED FACTS

34. In application of Article 43(1) of its Rules of Procedure, the Commission the IACHR will examine the arguments and evidence provided by the petitioner and the State, as well as publicly available information.³ The latter may include laws, orders, and other regulatory acts in force in Colombia at the time of the events at issue in this case.

35. The Commission notes that the State has maintained that it is not responsible for the violations alleged by the petitioner. The parties submitted consistent information on the death, and the initial facts are not in dispute.

36. The Commission additionally observes that, as the Inter-American Court has established since its first judgment, the criteria for the weighing of evidence by an international body are less formal than in domestic legal systems. The Court has held that, due to the special seriousness of attributing human rights violations to a State Party to the Convention, the human rights protection bodies must apply a standard of proof that takes account of that seriousness and, without prejudice thereto, is capable of establishing the truth of the allegations in a convincing manner.⁴ Along these lines, the Court has established that "The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts."⁵ The Court has further stated that "In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation."⁶

³ Rules of Procedure of the IACHR, Article 43(1). "The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge."

⁴ 1/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4. Para. 128 et seq.; IACHR Report No. 37/10. Case 12.308. Manoel Leal de Oliveira (Brazil). March 17, 2010. Para. 56.

⁵ 1/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4. Para. 130; *Case of Godínez Cruz v. Honduras*. Merits. Judgment of January 20, 1989. Series C No. 5. Paras. 133-36; *Case of Fairén Garbi and Solís Corrales v. Honduras*. Merits. Judgment of March 15, 1989. Series C No. 6. Paras. 130-33; *Case of Gangaram Panday v. Suriname*. Merits, Reparations and Costs. Judgment of January 21, 1994. Series C No. 16. Para. 49.

⁶ 1/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4. Para. 135; *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194. Para. 98; [continues ...]

37. The Commission reiterates that the purpose of this report is to examine the alleged international responsibility of the State for the violation of rights enshrined in the American Convention. In this regard, the Inter-American Court has explained repeatedly that “The objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of the States responsible.”⁷

A. The murder of Nelson Carvajal Carvajal

38. On April 16, 1998, Mr. Carvajal Carvajal was murdered as he was leaving the Los Pinos School. According to the case file, a man shot Carvajal Carvajal seven times and then escaped on a motorcycle with another man who was waiting for him.⁸

39. Nelson Carvajal Carvajal was the director of the news program “Momento Regional” and the radio magazine programs “Mirador de la Semana,” “Amanecer en el Campo,” and “Tribuna Médica” of the *Radio Sur* radio station in the municipality of Pitalito, department of Huila. He reported on issues of local interest, particularly on irregularities in the management of public funds, allegations of corruption, and the laundering of money from drug trafficking in the area.⁹

40. In addition to his journalistic work, Mr. Carvajal was a teacher and the principal of the Los Pinos School¹⁰ and also served on the Pitalito town council during the 1992-1994 and 1995-1997 terms.¹¹

41. As stated in the case file, Nelson Carvajal Carvajal was married to Luz Stella Bolaños Rodríguez and had three daughters: Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños, and Yaneth Cristina Carvajal Ardila. He had five sisters: Judith, Gloria Mercedes, Ruth Dary, Luz Eny, and Miriam Carvajal Carvajal; and two brothers, Fernando Augusto and Saúl Carvajal Carvajal; as well as two nephews, Crithian Camilo Motta Carvajal and César Augusto Meneses Carvajal. His father was Jairo Carvajal Cabrera, and his mother was Ana Francisca Carvajal de Carvajal.

[... continuation]

Case of Chaparro Álvarez and Lapo Ñiquez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 154.

⁷ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4. Para. 134; *Case of Suárez Rosero v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35. Para. 37; *Case of Boyce et al. v. Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169. Footnote 37; *Case of Yvon Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180. Para. 37.

⁸ *Attachment 3*. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000. Attachment to the petitioner’s communication of October 17, 2002; *Attachment 4*. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. Attachment to the petitioner’s communication of October 17, 2002; *Attachment 25*. Office of the Prosecutor General. Supplemental statement of Mrs. Carmenza Raigosa Raigosa. August 9, 1999. Attachment to the petitioner’s communication of August 25, 2005; *Attachment 22*. Regional Prosecutor’s Office Terrorism Unit. Santa Fe de Bogotá. Statement of Mr. Luis Alberto España Rojas. May 6, 1998. Attachment to the petitioner’s communication of August 25, 2005.

⁹ *Attachment 1*. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. p. 1. Attachment to the petitioner’s communication of August 25, 2005; *Attachment 16*. Office of the Prosecutor General. Regional Office of the Public Prosecutor. Intake Section. Supplemental affidavit. Rafael Hernando Chaux Carvajal. April 12, 1999. p. 2. Attachment to the petitioner’s communication of August 25, 2005; *Attachment 12*. 22nd Office of the Prosecutor assigned to the Criminal Courts of the Pitalito Circuit. Statement of Judith Carvajal Carvajal. April 28, 1998. p. 1. Attachment to the petitioner’s communication of August 25, 2005.

¹⁰ *Attachment 1*. Order of the Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C., January 18, 1999.

¹¹ *Attachment 9*. Office of the Prosecutor General. Judicial Police. Huila District. Corpse Inspection Certificate. Number 042. April 16, 1998. Attachment to the petitioner’s communication of August 25, 2005.

B. Legal proceedings

1. Pretrial Phase of the Criminal Proceeding (Case 33.744)

42. On April 16, 1998, following Nelson Carvajal Carvajal's murder, a deputy police officer reported to the scene of the crime¹² and the corpse removal group from the Technical Investigations Unit (hereinafter "TIU") of the Prosecutor's Office reported to the scene to conduct the judicial inspection of the body.¹³ The corpse inspection certificate was issued on the same day, "with the respective description and the dactyloscopic search"¹⁴.

43. According to the report of the Regional Prosecutor of 18 January 1999 (*infra* para. 49) a Judicial Inspection was carried out on the site of the events with the presence of experts and witnesses. The inspection was accompanied by an album of photos and fingerprint review. Also, the report referred to photographs taken at the site of the facts and to the corpse of Nelson Carvajal by the office by Criminalistics Section Pitalito, Huila. The report also indicated that the autopsy report made by the South Regional Unit of the Institute of Legal Medicine found "probable cause of death was homicide"¹⁵. The Commission does not have copies of the above actions.

44. On April 17, 1998, the TIU drafted a report addressed to the Office of the Joint Secretary of The Offices of the Public Prosecutor assigned to the Criminal Courts of the Pitalito Circuit, Huila. That report indicated that an individual witnessed the events and identified the alleged direct perpetrator by the alias of "Bermúdez." The report stated that the investigators were able to identify Carlos Correa as the alleged direct perpetrator.

45. That same day, the investigation was assigned to the 22nd District Office of the Public Prosecutor assigned to the Criminal Courts of the Pitalito Circuit (hereinafter "22nd District Office of the Public Prosecutor"). Based on the TIU's report and the corpse inspection certificate, that Prosecutor's Office formally opened a criminal investigation against Correa.¹⁶ A number of steps were taken under the responsibility of the 22nd District Office of the Public Prosecutor during the first week after the journalist's murder, including the taking of witness statements and the identification of suspects in a lineup. The case file, states that two eyewitnesses to Nelson Carvajal's murder, whose identities were protected, identified Correa in the lineup as the direct perpetrator.¹⁷

¹² *Attachment 4*. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. p. 4. Attachment to the petitioner's communication of October 17, 2002.

¹³ *Attachment 10*. Technical Investigations Unit. Investigative Unit. Pitalito Huila. Report No. 388. Reference: Corpse Inspection Certificate of Nelson Carvajal Carvajal Certificate No. 042. April 17, 1998. Attachment to the petitioner's communication of August 25, 2005.

¹⁴ *Attachment 9*. Office of the Prosecutor General. Judicial Police. Huila District. Corpse Inspection Certificate. Number 042. April 16, 1998. Attachment to the petitioner's communication of August 25, 2005; *Attachment 1*. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner's communication of August 25, 2005.

¹⁵ *Attachment 1*. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner's communication of August 25, 2005.

¹⁶ *Attachment 9*. Office of the Prosecutor General. Judicial Police. Huila District. Corpse Inspection Certificate. Number 042. April 16, 1998. Attachment to the petitioner's communication of August 25, 2005; *Attachment 10*. Technical Investigations Unit. Investigative Unit. Pitalito Huila. Report No. 388. Reference: Corpse Inspection Certificate of Nelson Carvajal Carvajal Certificate No. 042. April 17, 1998. Attachment to the petitioner's communication of August 25, 2005; *Attachment 4*. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. p. 4. Attachment to the petitioner's communication of October 17, 2002.

¹⁷ *Attachment 1*. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner's communication of August 25, 2005.

46. On April 21, 1998 the 22nd District Office of the Public Prosecutor indicated that the evidence gathered led to the conclusion that the journalist was murdered because of his profession, and that based on Article 324(8) of the Criminal Code and Article 71 of the Code of Criminal Procedure,¹⁸ the regional court system would have jurisdiction over the investigation.¹⁹

47. The investigation was later reassigned to the Regional Office of the Public Prosecutor assigned to the Specialized Criminal Judges of the Bogotá Circuit (hereinafter “Regional Prosecutor’s Office”). In an order dated May 10, 1998, that office issued measures to ensure Correa’s appearance during the criminal investigation. In addition, the Prosecutor’s Office undertook “intelligence” work, took new witness statements, and gathered documentary evidence.²⁰

48. On December 28, 1998, the Regional Prosecutor’s Office evaluated the evidence produced during investigation and closed the investigation against Carlos Correa, because “the circumstantial evidence linking him to the crime has disappeared in light of the new evidence.”²¹ Accordingly, on December 29, 1998, the Regional Prosecutor’s Office issued arrest warrants for four individuals, including the former mayor of Pitalito and a businessman and former council member, because it had “sufficient evidence against them to show that they were the masterminds and direct perpetrators” of the crime.²²

49. On January 18, 1999, the Regional Prosecutor’s Office issued an order referencing the facts, the identity of the defendants, the evidence, and the respective legal proceedings, and made some statements concerning the “materiality of the act,” the definition of the criminal conduct, and the responsibility of the defendants. In this regard, it stated that a murder was committed against Nelson Carvajal Carvajal and the interests of his family. It specified that said conduct was defined in Article 323 of the Criminal Code and aggravated pursuant to Article 324(3) and (8) due to the fact that it was committed against “a person who was a candidate for public office and a journalist.”²³ In addition, it ordered measures to ensure the suspects’ appearance during the criminal investigation, consisting of the pretrial detention without bail of the alleged masterminds, and the alleged direct perpetrator of the murder. It further ordered the examination of evidence, the taking of additional statements from various persons, and ordered the Regional Prosecutor’s Office of Neiva “to conduct intelligence work to verify the events or theories put forward by the defendants with respect to the potential perpetration of the crime by the 13th Front of the FARC, which was operating in southern Huila, as well as by the armed criminal group from the Porvenir district of Pitalito [under the command of alias] Gallina.”²⁴

¹⁸ Executive Order 100 of 1980. Official Gazette No. 35.461 of February 20, 1980. “Article 324. <Order repealed by Law 599 of 2000> <Replaced by Article 30 of Law 40 of 1993. The new text is as follows: Punitive aggravating circumstances: The penalty shall be between forty (40) and sixty (60) years in prison, if the act described in the preceding article is committed: [...] 8 against a person who is or has been [...] a journalist.” Legal provision in force on April 21, 1998.

According to the Code of Criminal Procedure in force on April 21, 1998 “Article 71. [Text amended by Law 81 of 1993 and supplemented by Law 365 of 1997. Order repealed by Law 600 of 2000] Jurisdiction of Regional Judges. Regional judges shall hear and decide: At the first instance: [...] 5. The offenses of aggravated kidnapping and kidnapping for ransom, but virtue of clauses 6, 8, and 12 of Article 3 of Law 40 of 1993, and murder, according to Article 324(8) of the Criminal Code.” Order No. 2700 of 1991. Official Gazette No. 40.190, of November 30, 1991.

¹⁹ *Attachment 11*. Office of the Prosecutor General. 22nd District Office of the Public Prosecutor assigned to the Criminal Courts of the Pitalito Circuit, Huila. April 21, 1998. Attachment to the petitioner’s communication of August 25, 2005.

²⁰ *Attachment 4*. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. p. 3. Attachment to the petitioner’s communication of October 17, 2002. p.2.

²¹ *Attachment 4*. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. Attachment to the petitioner’s communication of October 17, 2002.

²² *Attachment 4*. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. Attachment to the petitioner’s communication of October 17, 2002. p. 2-3.

²³ *Attachment 1*. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner’s communication of August 25, 2005.

²⁴ *Attachment 1*. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner’s communication of August 25, 2005.

50. On February 19, 1999, another individual was arrested, and he gave a formal statement at his initial appearance on March 13, 1999. As the alleged direct perpetrator of the murder, he was ordered to remain in pretrial detention to ensure his appearance during the criminal investigation.²⁵

51. On March 1, 1999, Judith Carvajal Carvajal sent a complaint to the Regional Office of the Public Prosecutor alleging that the defense attorneys in her brother's case had violated the confidentiality of the pretrial phase of the criminal proceeding by turning over copies of some of the proceedings conducted during that phase to various individuals in Pitalito who were not defendants in the case. She indicated that this seriously jeopardized the confidentiality of the identity of witnesses and key individuals in the investigation. She also maintained that the order determining the legal status of the defendants began to circulate "as if it were some kind of public press release" and that it was "used to create anxiety and panic among the witnesses and the general public so they would retract their statements or decline to cooperate with the justice system in the development of the case."²⁶

52. On March 29, 1999, the Regional Prosecutor's Office ordered that a certified copy of the case file be forwarded to the competent authority in order for it to investigate the possible violation of confidentiality that was the subject of Judith Carvajal's complaint.²⁷ The file before the IACHR contains no record of the outcome of that investigation.

53. On May 6 and June 18, 1999, the Regional Prosecutor's Office denied requests to lift the pretrial detention measures imposed against two defendants in the case. On August 12, 1999 it denied the request to lift the pretrial detention measures against the former mayor of Pitalito.²⁸

54. On August 24, 1999, in Order 00566, the Office of the Prosecutor General reassigned the investigation from the Unit of the Office of the Public Prosecutor assigned to the Specialized Criminal Judges of the Bogotá Circuit to the National Unit of Human Rights Prosecutors.²⁹ Nevertheless, according to what was stated by the Criminal Judgment Division of the Superior Court for the Judicial District, on September 7, 1999 jurisdiction over the case was once again assumed by the Regional Prosecutor's Office assigned to the Specialized Criminal Judges of the Circuit.³⁰

55. On November 2, 1999, the Criminal Division to Clear Case Backlog of the Unit assigned to the Bogotá Court adjudicated the appeal of the denial of the request to lift the pretrial detention measures imposed against the former mayor of Pitalito. The Division ruled to lift the pretrial detention measures against the mayor, and ordered his release.³¹ According to the statements of the Public Ministry at the public adjudication hearing on November 29, 2000, the former mayor was granted pretrial release because of the possibility "that the journalist may have been murdered by members of the Revolutionary Armed Forces

²⁵ *Attachment 4*. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. p. 3. Attachment to the petitioner's communication of October 17, 2002.

²⁶ *Attachment 15*. Complaint filed with the Regional Office of the Public Prosecutor regarding risk to Judith Carvajal Carvajal. March 1, 1999. Received by the Regional Prosecutor's Office on March 3, 1999. Attachment to the petitioner's communication of August 25, 2005.

²⁷ *Attachment 17*. Office of the Prosecutor General. File: 33744. Bogotá. March 29, 1999. Attachment to the petitioner's communication of August 25, 2005.

²⁸ *Attachment 4*. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. p. 3-4. Attachment to the petitioner's communication of October 17, 2002.

²⁹ *Attachment 23*. Order 00566 of the Office of the Prosecutor General, August 24, 1999. Attachment to the petitioner's communication of August 25, 2005.

³⁰ *Attachment 4*. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. p. 4. Attachment to the petitioner's communication of October 17, 2002.

³¹ *Attachment 4*. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. p. 4. Attachment to the petitioner's communication of October 17, 2002.

[FARC].”³² Two of the alleged masterminds were granted pretrial release on December 10, 1999 and January 6, 2000.³³

56. On January 17, 2000, the Regional Prosecutor’s Office evaluated the evidence produced during investigation and issued an indictment against a businessman as alleged mastermind, and two individuals as perpetrators. In addition, it revoked the pretrial release granted and closed the investigation against the former mayor of Pitalito.³⁴

2. Theories of investigation on the masterminds and motives for Nelson Carvajal Carvajal’s murder

57. At the beginning of the pretrial phase of the criminal proceeding, the 22nd District Office of the Public Prosecutor indicated that “from what has been outlined thus far, we can infer that the murder of journalist and educator Nelson Carvajal Carvajal was because of, or for reasons relating to, his profession, especially given the type of exposé reporting he did”³⁵ (*supra* para. 46). The Regional Prosecutor’s Office came to the same conclusion based on “the intelligence reports, direct and confidential witness statements, and documentary evidence” gathered during the pretrial phase of the criminal proceeding (*supra* para. 49).

58. Indeed, according to the statements provided by various witnesses during the investigation conducted in this case, prior to his death, Carvajal Carvajal had reported on corruption in local politics and was working on a report about money laundering related to arms and drug trafficking in the area. Witnesses also said that Carvajal had a meeting scheduled for the day after his death with the Municipal Ombudsman in order to give a statement on acts of municipal government corruption reported on his radio program.

59. According to the statement given by a coworker from the *Radio Sur* radio station, Carvajal’s murder “was on account of his journalistic work, as the public figures who have committed irregularities against the interests of the municipality viewed him as an obstacle.”³⁶ The journalist’s sister Judith Carvajal stated in her affidavit with respect for the motives for her brother’s murder that she believed “it all stems from Nelson’s work as a journalist, because he denounced corruption. It turned out that when Nelson began serving on the town council he started realizing a lot of things that were not okay, and also a lot of people looked to him for support to be able to denounce things and make them public.”³⁷ In this same regard, Carvajal’s brother stated in his affidavit that he believed that Nelson’s death was a result of his journalistic work, especially because of the criticism he leveled.³⁸ A member of the Pitalito town council gave a statement indicating that “Nelson had a lot of problems because of his work as a journalist, because he exposed irregularities committed by the government led by the mayor [...] and by the Council’s majority coalition.”³⁹

³² Attachment 18. Criminal Court of the Specialized Circuit of Neiva, Huila. Public hearing in Case No. 2000-0090. Prosecution of Fernando Bermúdez Ardila, Víctor Félix Trujillo, and Alfaro Quintero Alvarado, for the offense of murder. Hearing No. 047. November 29, 2000. p. 31. Attachment to the petitioner’s communication of August 25, 2005.

³³ Attachment 4. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. p. 4. Attachment to the petitioner’s communication of October 17, 2002.

³⁴ Attachment 4. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. pp. 4-5. Attachment to the petitioner’s communication of October 17, 2002.

³⁵ Attachment 11. Office of the Prosecutor General. 22nd District Office of the Public Prosecutor assigned to the Criminal Courts of the Pitalito Circuit, Huila. April 21, 1998. Attachment to the petitioner’s communication of August 25, 2005.

³⁶ Attachment 1. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner’s communication of August 25, 2005.

³⁷ Attachment 12. 22nd Office of the Prosecutor assigned to the Criminal Courts of the Pitalito Circuit. Statement of Judith Carvajal Carvajal. April 28, 1998. p. 1. Attachment to the petitioner’s communication of August 25, 2005.

³⁸ Attachment 1. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner’s communication of August 25, 2005.

³⁹ Attachment 1. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner’s communication of August 25, 2005.

60. During the pretrial phase of the criminal proceeding and at trial, at least four (4) working theories were proposed regarding the possible masterminds and motives for the crime against Mr. Carvajal Carvajal: (a) the mayor of Pitalito and others as masterminds; (b) a businessman and former town councilmember and others as masterminds; (c) the Revolutionary Armed Forces (FARC) as masterminds; and (d) members of a criminal gang led by alias “Gallina” as masterminds.

a. The then-mayor and others as masterminds

61. During the investigation, the authorities handling the case worked with the theory that the then-mayor of Pitalito, Ramiro Falla, had masterminded the crime. According to the January 18, 1999 report by the Regional Prosecutor’s Office (*supra* para. 49), weeks prior to his murder, Carvajal had reportedly denounced irregularities in the purchase of a piece of land called El Topacio by Pitalito’s Mayor. This land was reportedly meant to be used for the construction of an environmental park.⁴⁰ On April 17, 1998, the day after he was killed, Carvajal was supposed to give a statement to the Municipal Ombudsman concerning his reporting on these events.

62. According to witness statements, the mayor was annoyed by Carvajal’s reporting. Fernando Augusto Carvajal Carvajal, the journalist’s brother, indicated in his statement that he ran into the mayor of Pitalito, on the street in January 1998, and that he told him, “Say hello to that son-of-a-bitch brother of yours, Nelson. Tell him that’s from Ramiro Falla.”⁴¹ According to the January 1999 report of the Prosecutor’s Office, a member of the Pitalito town council said in his statement that the phone calls Nelson Carvajal had been receiving were to get him to keep quiet, since they knew that Carvajal was scheduled to give a statement to the Ombudsman regarding irregularities in the purchase of El Topacio.⁴² According to the report of the Technical Investigations Unit, the “Municipal Ombudsman of Pitalito had summoned Nelson Carvajal to appear on April 16, 1998, but Nelson called the Office of the Ombudsman’s Secretary on the evening of April 15 to say that he would not be able to appear at the scheduled time because he was working, and that he would go on the morning of Friday the 17th. According to the information provided by the Office of the Ombudsman, the scheduled proceeding was pursuant to a writ issued by the 5th Departmental Office of the Prosecutor of Huila, dated March 18, 1998, to take statements from the deceased and from journalists Manuel Castro Tovar and Rafael Chaux Carvajal concerning the purchase of the El Topacio property by the prior municipal government, which was going to be used for a recreational center.”⁴³

63. In addition, in a supplemental statement, Judith Carvajal Carvajal indicated that an individual who identified himself as a member of the guerrilla told her that he knew of a meeting attended by the mayor and other individuals. The alleged guerrilla member told her that “they planned Nelson’s death at that meeting, and split the total amount they were going to pay the hit men.”⁴⁴

64. As previously explained, the investigation against the former mayor of Pitalito was closed in 1999. Nevertheless, the case file reflects that during the investigation conducted in 2006 a witness who was a

⁴⁰ Attachment 1. Order of the Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C., January 18, 1999, p. 2.

⁴¹ Attachment 1. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner’s communication of August 25, 2005.

⁴² Attachment 1. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner’s communication of August 25, 2005.

⁴³ Attachment 10. Technical Investigations Unit. Investigative Unit. Pitalito Huila. Report No. 388. Reference: Corpse Inspection Certificate of Nelson Carvajal Carvajal Certificate No. 042. April 17, 1998.

⁴⁴ Attachment 2. Office of the Prosecutor General. Technical Investigations Unit. Regional Crimes Group. Supplemental Affidavit provided by Judith Carvajal Carvajal in Case File No. 33.744. July 29, 1999. Attachment to the petitioner’s communication of August 25, 2005.

demobilized FARC combatant (*infra* para. 55) told a Special Prosecutor that the masterminds behind Nelson Carvajal Carvajal's murder included the mayor and a local businessman.⁴⁵

b. A businessman and former member of the town council and others as masterminds

65. According to the January 18, 1999 report of the Regional Prosecutor's Office, weeks before his murder, Carvajal had exposed structural irregularities by the builder and former member of the town council⁴⁶ Fernando Bermúdez in the construction of a housing development in Pitalito known as "Las Acacias." The alleged irregularities on the part of the builder and former town council member led to the release of a statement by the housing development's community Board of Directors. The director of the program "Momento Regional," where Mr. Carvajal worked, stated in his affidavit that he had knowledge of Nelson Carvajal's criticism of the irregularities in the management of the local government and of the complaints about the housing developments built by Fernando Bermúdez. He indicated that the news program "was not trying to do harm to anyone, but rather to warn the public about anomalies that had arisen with respect to the builders, [and] with respect to the council member, his eagerness to allocate funds to himself from the Municipal budget—things that should not have been done."⁴⁷

66. During the pretrial phase of the criminal proceeding several individuals stated that journalist Nelson Carvajal had received threats from the builder. For example, one former member of the Pitalito town council stated that Carvajal once told him that Bermúdez was going to try to kill him.⁴⁸ Judith Carvajal Carvajal, Nelson Carvajal's sister, indicated in her supplemental affidavit that "approximately two (02) months prior to Nelson's murder I was with him in the doorway of the house when Bermúdez and [Marco Collazos] pulled up in a car and called Nelson. He approached them and then Bermúdez spoke to him very harshly, saying, son-of-a-bitch, we'll kill you, and then they took off in the car." Judith Carvajal stated that when she asked her brother if he knew the reasons for what had happened, he told her that it was because of "problems with the information in the news, but that [he] had to tell the truth." She also stated that Nelson told her that one of the builder's bodyguards called him to a meeting with the guerrillas. According to Judith Carvajal, Nelson Carvajal said that he knew it was not the guerrillas who wanted to meet with him, but that it was the builder, since "he was very angry with him," and that he had no trouble with the guerrillas and therefore was not going to attend that meeting.⁴⁹ Luz Stella Bolaños Rodríguez, Nelson Carvajal's wife, stated in her supplemental affidavit that Nelson once told her that Bermúdez was going to "shut him up."⁵⁰ In addition, a former member of congress and resident of Pitalito Huila, indicated in his statement that "in the days prior to his death, [Nelson] told me, with great concern and clear distress, that he had run into Mr. Fernando Bermúdez at the opening ceremony for some public works at a school—the name of which I do not recall—and that he had called him aside and said, 'Son-of-a-bitch, I'm going to have you killed.'"⁵¹

⁴⁵ Attachment 27. Supreme Court of Justice. Criminal Cassation Division. Case No. 30689. April 1, 2009. Attachment to the petitioner's communication of May 13, 2009.

⁴⁶ According to Fernando Bermúdez's testimony in a public hearing, he was a member of the Pitalito town council for 3 consecutive terms, from 1990 to 1998, and in 1998 he was elected to the Chamber for the 98-2002 term. Attachment 18. Criminal Court of the Specialized Circuit of Neiva, Huila. Public trial proceedings in Case No. 2000-0090. Prosecution of Fernando Bermúdez Ardila, Víctor Félix Trujillo, and Alfaro Quintero Alvarado, for the offense of murder. Hearing No. 047. November 29, 2000. Attachment to the petitioner's communication of August 25, 2005.

⁴⁷ Attachment 19. Office of the Prosecutor General. Statement of Manuel Antonio Castro Tovar. July 16, 1999. p. 1. Attachment to the petitioner's communication of August 25, 2005.

⁴⁸ Attachment 1. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner's communication of August 25, 2005.

⁴⁹ Attachment 2. Office of the Prosecutor General. Technical Investigations Unit. Regional Crimes Group. Supplemental Affidavit provided by Judith Carvajal Carvajal in Case File No. 33.744. July 29, 1999. p. 1-2. Attachment to the petitioner's communication of August 25, 2005.

⁵⁰ Attachment 1. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner's communication of August 25, 2005.

⁵¹ Attachment 24. Office of the Prosecutor General. District Unit. Technical Investigations Unit Pitalito. Statement of Dr. Héctor Polonia Sánchez. Pitalito, Huila. August 27, 1999. p.2. Attachment to the petitioner's communication of August 25, 2005.

67. In her statements, Judith Carvajal maintained that the day before his murder Carvajal had told her that “Mr. Bermúdez had offered [him] two million pesos a month to keep quiet [and] that he had said that he would not accept it because his honesty did not have a price.”⁵² Similarly, in a supplemental statement, Luz Stella Bolaños said that Mr. Bermúdez “had offered [Nelson] the sum of two million pesos per month to keep quiet, and then came the threats—the whole family knew about it.”⁵³ One of the confidential witnesses indicated that he was with Nelson Carvajal the day before his murder, and that Carvajal told him that “he had received a death threat from Bermúdez as a consequence of reporting these events [irregularities in one of the housing developments], and after he refused to take a bribe, saying that his conscience was non-negotiable. He was offered money or a house as a bribe, in exchange for staying out of the affairs concerning the housing development.”⁵⁴ Another confidential witness indicated that Carvajal told him “that what he [Bermudez] wanted was for him to shut his mouth, and that [Nelson] told him [they] would have to kill him to shut him up, but that he was not going to allow himself to be bought off. [Nelson] also told him that Mr. Bermúdez had offered him two million pesos per month to stop talking and to mind his own business, but that he wasn’t going to be bought off.”⁵⁵

68. In addition, the Director of the program “Momento Regional,” said in his statement that “people [were talking] about threats, especially in the neighborhood where he [Nelson Carvajal] was a school teacher, and so on the day of his death all of the neighborhood’s residents attributed the crime to Bermúdez and Falla.”⁵⁶ One of the affiants in the case also indicated that, 20 minutes prior to his murder, Nelson Carvajal said that Bermúdez had threatened him because he knew that the “Cali cartel” was giving [Bermúdez] money “to launder dollars through housing construction.” In his supplemental statement, the same affiant indicated that he heard Bermúdez threaten Carvajal and that the threat was on account of the fact that Carvajal knew about “the mafia’s money,” and had evidence consisting of the blueprints for the housing development.⁵⁷

69. Based on these statements, the Regional Prosecutor’s Office issued an order stating that it had no doubt “that the deceased, Nelson Carvajal, in his capacity as town council member and journalist, spoke out publicly on several occasions against [the defendants] about alleged irregularities committed by those individuals in various public and private acts, which directly or indirectly affected some interests.” It stated that Carvajal’s reports gave rise to some investigations, including “Marco Fidel Collazos’s acknowledgement that there is a criminal case currently pending against him for alleged embezzlement [...]; the investigation requested by Mayor Falla himself because of the controversy surrounding the negotiation of the El Topacio property [...] and with respect to Fernando Bermúdez because of the public radio reports about the irregularities brought to light in the construction of the Las Acacias housing development, in which some property owners demanded that Nelson intervene through his radio program.”⁵⁸

⁵² *Attachment 12*. 22nd Office of the Prosecutor assigned to the Criminal Courts of the Pitalito Circuit. Statement of Judith Carvajal Carvajal. April 28, 1998. p. 3. Attachment to the petitioner’s communication of August 25, 2005; *Attachment 2*. Office of the Prosecutor General. Technical Investigations Unit. Regional Crimes Group. Supplemental Affidavit provided by Judith Carvajal Carvajal in Case File No. 33.744. July 29, 1999. Attachment to the petitioner’s communication of August 25, 2005.

⁵³ *Attachment 1*. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. para. 52. Attachment to the petitioner’s communication of August 25, 2005.

⁵⁴ *Attachment 14*. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Statement given by witness whose identity has been protected. File No. 33.744. January 18, 1999. Code “Scorpion.” p.1. Attachment to the petitioner’s communication of August 25, 2005.

⁵⁵ *Attachment 20*. Office of the Prosecutor General. Unit assigned to the Specialized Criminal Judges of the Circuit. Santa Fe de Bogotá. Supplemental Affidavit. Confidential witness. Code “Tree.” August 13, 1999. p. 4. Attachment to the petitioner’s communication of August 25, 2005.

⁵⁶ *Attachment 19*. Office of the Prosecutor General. Statement of Manuel Antonio Castro Tovar. July 16, 1999. P.2. Attachment to the petitioner’s communication of August 25, 2005.

⁵⁷ *Attachment 3*. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000. p. 29. Attachment to the petitioner’s communication of October 17, 2002.

⁵⁸ *Attachment 1*. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner’s communication of August 25, 2005.

70. The Regional Prosecutor's Office stated that several affidavits led to the conclusion that these individuals were the masterminds behind the murder, and that "another incriminating situation arose, which [was] the personal friendship, business, and political ties [...] among these three defendants, whereby adversely affecting one of them would adversely affect all of them; they had declared their shared political ideology, which made it possible to infer that they conspired in the decision to kill their opponent and public critic." It also cited the death threats that Bermúdez made to Nelson Carvajal. With regard to the alleged direct perpetrator, the Prosecutor's Office maintained that many situations converged to create serious circumstantial evidence of responsibility, including the statements of eyewitnesses.

71. As stated earlier, based on this conclusion, the Regional Prosecutor's Office evaluated the evidence produced during investigation and filed criminal charges against these three defendants (*supra* para. 56).

c. Perpetration by the Revolutionary Armed Forces of Colombia (FARC)

72. During the pretrial phase of the criminal proceeding, and based on defense testimony at trial (*infra* paras. 81-86), an alternative theory was asserted to suggest that the crime was masterminded by guerrillas from the Revolutionary Armed Forces of Colombia (hereinafter "FARC"). The case filed indicates that the Single Criminal Court of the Specialized Circuit accepted "the defense theory that the perpetrators of Mr. Carvajal's death were FARC members," in spite of the fact that this working hypothesis had been ruled out by the Prosecutor's Office because it was "inconsistent and a setup" by the defendants.⁵⁹

73. The Single Criminal Court of the Specialized Circuit indicated that it received the statement of defense witness Mario Enrique Rincón Contreras, "who, in a detailed, precise, in-depth, and substantiated manner, made it known that the second-in-command of the 13th Front of the FARC, [alias Oswaldo Patiño], was the person who ordered the murder of journalist Nelson Carvajal Carvajal, which was carried out by Fabio Córdoba."⁶⁰ The commander of the "Magdalena" Infantry Battalion No. 27 told the Court that Mr. Mario Enrique Rincón Contreras appeared in the records of that institution as "an occasional informant."⁶¹ For its part, the Administrative Security Department (DAS) informed the court that its records contain "an intelligence note provided by an occasional source, stating that [alias Fredy], a guerrilla supporter assigned to intelligence duties for the 'Cacique Gaitana' 13th guerrilla unit of the FARC, was apparently the direct perpetrator of the murder of journalist Nelson Carvajal Carvajal."⁶²

74. According to the judgment, upon reiterating that the accusations against him were "absolutely false," the local builder and former town council member asked the judge to hear testimony from Samboní Ortiz and Carlos Rojas "given the importance of the information, from a good source, that the crime was perpetrated by the FARC."⁶³

75. In this regard, as stated in the judgment of the Single Criminal Court of the Specialized Circuit, defense witness Samboní Ortiz testified that five days after being linked to the *Radio Sur* radio station, a phone call was received where the caller asked specifically to speak with him. He indicated that "When [he] answered the call, a voice that sounded like it belonged to a young man stated in a clear tone, verbatim,

⁵⁹ Communication from the Colombian State dated August 15, 2003. DDH.22027, pp. 5-6. Received by the IACHR on August 19, 2003.

⁶⁰ Attachment 3. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000, p. 38. Attachment to the petitioner's communication dated October 17, 2002.

⁶¹ Attachment 3. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000, p. 38. Attachment to the petitioner's communication dated October 17, 2002.

⁶² Attachment 3. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000, p. 9. Attachment to the petitioner's communication dated October 17, 2002.

⁶³ Attachment 3. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000, p. 9. Attachment to the petitioner's communication dated October 17, 2002.

“Guillermo, man, get your act together, don’t mess with us unless you want what happened to Nelson to happen to you. This is the 13th Front of the FARC.” The judgment stated that “the journalist asked the caller what he was talking about, and the caller told him, ‘knock off this bullshit of interviewing those sons-of-a-bitches members of the military, don’t be screwing around and going to the Magdalena Battalion all the time to suck up to them like Nelson used to. That son-of-a-bitch radio station supports the paramilitaries and it speaks for the military.’”⁶⁴

76. As stated in the judgment of the Single Criminal Court of the Specialized Circuit, the November 2, 1999 order lifting the pretrial detention measures imposed against the mayor stated as follows: “the possibility that the perpetrators of journalist Nelson Carvajal Carvajal’s murder may have been members of the guerrilla group that calls itself the Revolutionary Armed Forces of Colombia cannot be ruled out, as the radio station was the victim of attacks by the guerrillas as noted in the statement given by Jorge Parra Ortiz (See p. 333, File No. 5), and Orlando Gómez Valderrama, kidnapped by the 13th [Front] of the FARC (he stated that the commander alias “Edgar” told him that they were responsible for the death of journalist Nelson Carvajal, see p. 25, File No. 20).”⁶⁵

77. With regard to the possibility that the crime was committed by FARC guerrillas, Judith Carvajal Carvajal indicated in her supplemental statement that a person who self-identified as a member of the guerrilla group told her that that group had not killed her brother Nelson Carvajal.⁶⁶

78. According to the information provided by the State, as of the date of issue of this report, this theory continues to be investigated by the authorities handling the case (*infra* para.94), but has yielded no specific results.

d. Perpetration by the criminal gang led by alias “Gallina”

79. The Special Prosecutor affirmed at trial that witness statements indicated that “the murder could have been perpetrated by members of a gang of common criminals led by alias Gallina.”⁶⁷ The Colombian State transcribed a communication from the Office of the Prosecutor indicating that this theory “of minor importance” was considered and later ruled out.⁶⁸

3. Trial of a local businessman and others before the Criminal Court of the Specialized Circuit of Neiva

80. As previously stated, on January 17, 2000, the Office of the Public Prosecutor assigned to the Specialized Criminal Judges of the Circuit evaluated the evidence produced during the investigation and brought criminal charges against three individuals, including a local businessman and former member of the town council, for the murder of journalist Nelson Carvajal Carvajal.

81. On November 29, 2000, public trial proceedings were held in the Single Criminal Court of the Specialized Circuit of Neiva, which had jurisdiction over the case. The Court handed down its judgment on

⁶⁴ Attachment 3. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000. p. 38. Attachment to the petitioner’s communication dated October 17, 2002.

⁶⁵ Attachment 3. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000. p. 15. Attachment to the petitioner’s communication dated October 17, 2002.

⁶⁶ Attachment 2. Office of the Prosecutor General. Technical Investigations Unit. Regional Crimes Group. Supplemental Affidavit provided by Judith Carvajal Carvajal in Case File No. 33.744. July 29, 1999. Attachment to the petitioner’s communication of August 25, 2005.

⁶⁷ Attachment 18. Criminal Court of the Specialized Circuit of Neiva, Huila. Public trial proceedings in Case No. 2000-0090. Prosecution of Fernando Bermúdez Ardila, Víctor Félix Trujillo, and Alfaro Quintero Alvarado, for the offense of murder. Hearing No. 047. November 29, 2000. p. 19. Attachment to the petitioner’s communication of August 25, 2005.

⁶⁸ Communication from the Colombian State dated August 15, 2003. DDH.22027, pp. 5-6. Received by the IACHR on August 19, 2003.

December 15, 2000, at the end of the trial phase. It found reasonable doubt in the cases of the defendants, and acquitted them of the charges brought by the Office of the Public Prosecutor for the murder of journalist Nelson Carvajal Carvajal.⁶⁹ The Single Court held, *inter alia*, that the arguments put forward by the prosecution at trial were based solely on “theories and suppositions that, in strict legal terms, lack the scope and value to obtain a conviction under Article 247 of the Code of Criminal Procedure,” and that there was no direct or indirect convincing evidence on record to incriminate the defendants. Following its examination of the statements provided in the case, the court held that they were insufficient to overcome the “serious and conspicuous doubts” and that furthermore that “the prosecution disregarded—failed to investigate—the theory that members of the insurgency could have perpetrated the crime, in spite of the fact that investigators from the TIU of Bogotá (p. 224 File 2) made the investigating prosecutor aware of that possibility.”

82. The Single Criminal Court of the Specialized Circuit of Neiva held that “it is concluded from the testimony of numerous witnesses at trial that the violent death of the aforementioned individual was on account of his work as a journalist, as his ‘exposé’ journalism earned him the animosity of those who felt that they were adversely affected by his radio programs—to the point that there were many who filed criminal actions against him for alleged acts against moral integrity.”⁷⁰ Nevertheless, the judge held that the accusation against the local businessman was 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 no prosecution evidence of a link between the alleged direct perpetrators and masterminds. Accordingly, he indicated that the evidence presented did not lead him to “the certainty or the subjective belief that the three (3) defendants were responsible. The doubt necessarily arises and is not eliminated—and at the current stage of the proceedings it is also impossible to do so—pursuant to Article 445 of the Code of Criminal Procedure.”⁷¹

83. The Single Criminal Court ordered the defendants’ release and ordered the “Assignments Office of the Prosecutors’ Offices assigned to this Court to continue [to pursue] the perpetrators and accomplices to the murder of Nelson Carvajal Carvajal.”⁷²

84. On April 6, 2001, the Superior Court for the Judicial District of Neiva ruled on the appeal brought by the Prosecutor’s Office and the defense attorney challenging the December 15, 2000 judgment of the Single Criminal Court of the Specialized Circuit of Neiva.⁷³

85. The Superior Court’s order examined the statements provided in the case. It indicated that the argument of the Prosecutor’s Office in charge of the case was inadequate “in evaluating the evidence produced during investigation,” as it found only “circumstantial evidence of Bermúdez’s animosity toward the victim, supposedly the result of several critical reports aired by the deceased on the *Radio Sur* radio station of Pitalito regarding alleged irregularities in the Las Acacias housing development by the construction company Bermúdez Llanos y cía; this hatred was allegedly evidenced by Bermúdez’s financial solvency and his friendship—which could never be proven—with the supposed direct perpetrator.” With respect to the alleged direct perpetrators, the Court found that there were several statements on the record indicating that at the time of the murder the alleged perpetrators “were engaged in lawful activities—statements that the Court certainly cannot dispute with evidence to the contrary.”⁷⁴

⁶⁹ Attachment 3. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000. Attachment to the petitioner’s communication of October 17, 2002.

⁷⁰ Attachment 3. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000. p. 24. Attachment to the petitioner’s communication dated October 17, 2002.

⁷¹ Attachment 3. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000. p. 40. Attachment to the petitioner’s communication dated October 17, 2002.

⁷² Attachment 3. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000. p. 41. Attachment to the petitioner’s communication dated October 17, 2002.

⁷³ Attachment 4. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. p. 40. Attachment to the petitioner’s communication dated October 17, 2002.

⁷⁴ Attachment 4. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. p. 40. Attachment to the petitioner’s communication dated October 17, 2002.

86. The Superior Court additionally stated that the defense counsel “demonstrated that the Prosecutor’s Office disregarded other theories of perpetration of the crime, which pointed to the FARC and to an organization of common criminals, but especially to the FARC.”⁷⁵ On this point, the Court specified that it is necessary for the case to contain reasons to support the assertion that FARC guerrillas were involved in Nelson Carvajal’s violent death. On this basis, the Superior Court upheld the judgment of the Single Criminal Court.⁷⁶

4. New investigations by the Office of the Prosecutor

87. In view of the Single Criminal Court’s order to continue the investigations into the actors and participants in Nelson Carvajal’s murder,⁷⁷ 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 related to the case. There is no information in the case file about the proceedings undertaken by this Office of the Prosecutor during the following three years.

88. On November 1, 2005, in order No. 03815, the Prosecutor General reassigned the investigation to the National Human Rights and IHL Unit. 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.⁷⁸ As part of those proceedings, the record shows that on March 29, and October 11 and 12, 2006, a demilitarized FARC combatant named Pablo Emilio Bonilla Betancurt provided statements in Pitalito, Huila, before the Office of the Special Prosecutor, giving an account of the events that pointed to the former mayor of Pitalito and a local businessman and former council member as the masterminds behind Nelson Carvajal Carvajal’s murder.⁷⁹

89. On August 26, 2008, based on those statements, the 18th Office of the Special Prosecutor implicated Carlos Rojas, who was serving as the president of the departmental legislature of Huila, in the offenses of criminal conspiracy and murder.⁸⁰ Rojas had been a defense witness in the trial against the alleged mastermind and perpetrator.⁸¹ This time, the Prosecutor’s Office in charge of the case asked the Public Ministry to examine the possibility of filing a motion before the Supreme Court of Justice for the reconsideration of the acquittal handed down by the Single Criminal Court of the Specialized Circuit of Neiva in this case⁸² (*supra* para. 83).

90. On September 4, 2008 the Prosecutor’s Office issued a determination on the legal status of the then-president of the departmental legislature of Huila, and ordered that he be held in pretrial detention without bail during the criminal investigation.

⁷⁵ Attachment 4. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. p. 38. Attachment to the petitioner’s communication dated October 17, 2002.

⁷⁶ Attachment 4. Superior Court for the Judicial District. Criminal Judgment Division. Judgment of April 6, 2001. p. 4. Attachment to the petitioner’s communication dated October 17, 2002.

⁷⁷ Attachment 3. Single Criminal Court of the Specialized Circuit. Neiva, Huila. Judgment of December 15, 2000. p. 41. Attachment to the petitioner’s communication dated October 17, 2002.

⁷⁸ Attachment 26. Office of the Prosecutor General. Prosecutor 101 of the National Human Rights and International Humanitarian Law Unit. July 23, 2013. Attachment to the petitioner’s communication dated August 12, 2013.

⁷⁹ Attachment 27. Supreme Court of Justice. Criminal Cassation Division. Case No 30689. April 1, 2009. Attachment to the petitioner’s communication of May 13, 2009.

⁸⁰ Attachment 26. Office of the Prosecutor General. Prosecutor 101 of the National Human Rights and International Humanitarian Law Unit. July 23, 2013. Attachment to the petitioner’s communication dated August 12, 2013.

⁸¹ Attachment 1. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. Attachment to the petitioner’s communication of August 25, 2005.

⁸² Attachment 26. Office of the Prosecutor General. Prosecutor 101 of the National Human Rights and International Humanitarian Law Unit. July 23, 2013. Attachment to the petitioner’s communication dated August 12, 2013.

91. Based on the above, the II Criminal Court Representative filed a motion for reconsideration of the judgments of 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.⁸³ The Assistant Prosecutor asserted that “subsequent to the acquittal, new evidence arose that was not known at the time of trial, and which implicates the acquitted defendants, to wit: the statement given by Pablo Emilio Bonilla Betancurt (*supra* para. 88); and the supplemental affidavit provided on August 25 of the same year by Judith Carvajal Carvajal.”⁸⁴ She also referred to the IACHR’s Admissibility Report 559/2002 in this matter.

92. On April 1, 2009 the Supreme Court declined to hear the motion for reconsideration, as “neither the new evidence—which served as the basis for the National Human Rights and International Humanitarian Law Unit to order pretrial detention measures 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 on October 13, 2004 satisf[ie]d the ‘verification’ requirement referred to in Constitutional Court in Judgment C-004 of 2003.”⁸⁵ With respect to the Admissibility Report, the Court explained that circumstance will be given the appropriate consideration by this Court at the time of its final outcome.”⁸⁶

93. 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.⁸⁷

94. The record in this case reflects that the Office of the Prosecutor also implicated alias “Oswaldo Patiño,” in the offenses of rebellion and murder, as well as alias “el Corcho,” both of whom were alleged members of the FARC. The Office of the Prosecutor subsequently issued warrants for their arrest. In order 0-2067 dated September 7, 2010, the Prosecutor General of Colombia changed the assignment and appointed a prosecutor from the Human Rights Unit. The Unit took over the case on November 5, 2010, and on February 21, 2011 it ordered the examination of the evidence. By July 23, 2013, three reports had reportedly been received from the Judicial Police. According to the most recent information provided by the State, alias “Oswaldo Patiño” and alias “el Corcho” have reportedly been implicated in the investigation.⁸⁸ The State did not provide further information on the progress of this inquiry.

5. Disciplinary Investigation before the Judicial Council

95. On November 24, 2006, Diana Calderon, representative of the petitioner (AIP) sent information to the Disciplinary Chamber of the Judicial Council citing irregularities allegedly committed by the judicial authorities who handled the criminal case in Nelson Carvajal Carvajal’s murder (the 22nd District Prosecutor of Pitalito and the Single Criminal Judge of the Specialized Circuit of Neiva). These alleged irregularities included failing to take necessary measures to preserve evidence at the crime scene; refusing to provide protection to some witnesses who did not want to testify out of fear; not taking statements from

⁸³ Attachment 27. Supreme Court of Justice. Criminal Cassation Division. Case No 30689. April 1, 2009. Attachment to the petitioner’s communication of May 13, 2009.

⁸⁴ Attachment 27. Supreme Court of Justice. Criminal Cassation Division. Case No 30689. April 1, 2009. Attachment to the petitioner’s communication of May 13, 2009.

⁸⁵ Attachment 27. Supreme Court of Justice. Criminal Cassation Division. Case No 30689. April 1, 2009. Attachment to the petitioner’s communication of May 13, 2009.

⁸⁶ Attachment 27. Supreme Court of Justice. Criminal Cassation Division. Case No 30689. April 1, 2009. Attachment to the petitioner’s communication of May 13, 2009.

⁸⁷ Attachment 26. Office of the Prosecutor General. Prosecutor 101 of the National Human Rights and International Humanitarian Law Unit. July 23, 2013. Attachment to the petitioner’s communication dated August 12, 2013.

⁸⁸ Attachment 26. Office of the Prosecutor General. Prosecutor 101 of the National Human Rights and International Humanitarian Law Unit. July 23, 2013. Attachment to the petitioner’s communication dated August 12, 2013.

individuals who had knowledge of the events; failing to examine different theories on the motives for the crime, and allowing a breach of confidentiality by the attorneys involved in the investigation.⁸⁹

96. On December 7, 2007 the Huila District Office of the Judicial Council issued an order stating that the disciplinary action against the 22nd District Prosecutor of Pitalito and the Single Criminal Judge of the Specialized Circuit of Neiva for the alleged irregularities was barred by statute of limitations. It stated that more than five years had elapsed from the time the trial court's decision had become final, and therefore the disciplinary action was time-barred pursuant to Article 34 of Law 200 of 1995.⁹⁰

C. Threats to Nelson Carvajal Carvajal's relatives and witnesses in the case

97. The investigation and criminal proceedings following the journalist's murder were marked by a climate of fear among the residents of Pitalito and by threats and acts of intimidation directed at relatives of Nelson Carvajal Carvajal and witnesses.

98. Judith Carvajal stated that just days after Nelson Carvajal's death, she received a call at her home in Pitalito from someone who threatened her and warned that if she kept messing with "them" she would end up like her brother. Judith Carvajal attributed the call to the then-mayor of Pitalito, as she was familiar with the "tone of his voice from having received several work-related calls from him." On both occasions, Judith Carvajal also stated that during her brother's burial service on April 18, 1998, she gave a speech before the group of people assembled at the San Antonio Pitalito temple, saying, "We don't want the Fallas construction company for Pitalito." Ramiro Falla subsequently filed a complaint alleging criminal defamation on April 23, 1998. The proceedings in that case were terminated on April 14, 1999 due to the "nonexistence of the crime."⁹¹

99. According to Judith Carvajal, those implicated in her brother's murder case from the very beginning "intimidated the public" and those who cooperated in establishing the facts even though they were "afraid of the consequences." Similarly, one of the investigators responsible for intelligence work, investigations, interviews, and statements said that he had to "interview some people in Pitalito who, given the lack of protection, did not want to give their names because of the fear that exists in the area." He also indicated that the personnel from the Technical Investigations Unit who participated in the intelligence work in Pitalito did not sign any documents for security reasons.⁹²

100. The case file also reflects that this fear extended to the attorneys in the region. Nelson Carvajal's father, Mr. 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 the investigation of the murder. At that time, he was told that 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 in order to act as civil plaintiffs in the criminal proceedings, to ensure that the crime would not go unpunished. He stated that, nevertheless, several attorneys "were fearful, and refused to work for the family [...] [and that] given this circumstance, they tried to take part using an attorney who did offer [them] his services, but his

⁸⁹ *Attachment 28*. Huila District Office of the Judicial Council. Disciplinary Chamber. File 2007-376-00. December 7, 2007. p. 1-2. Attachment to the petitioner's communication of May 13, 2009.

⁹⁰ *Attachment 28*. Huila District Office of the Judicial Council. Disciplinary Chamber. File 2007-376-00. December 7, 2007. p. 4. Attachment to the petitioner's communication of May 13, 2009.

⁹¹ *Attachment 7*. Document from Judith Carvajal Carvajal to the National Human Rights Unit of the Office of the Prosecutor General. Attachment A: National Human Rights Unit. Office of the Prosecutor General. Statement of Judith Carvajal Carvajal. File No. 582 HRU. October 15, 1999. Attachment to the petitioner's communication of August 25, 2005; *Attachment 2*. Office of the Prosecutor General. Technical Investigations Unit. Regional Crimes Group. Supplemental Affidavit provided by Judith Carvajal Carvajal in Case File No. 33.744. July 29, 1999. Attachment to the petitioner's communication of August 25, 2005.

⁹² *Attachment 5*. Office of the Prosecutor General. Technical Investigations Unit. National Investigation Division. Investigation Section. Regional Crimes Group. Record of Judicial Proceeding. File No. 33.744. Work Mission No. 1169/99. Bogotá D.C. April 27, 1999. Attachment to the petitioner's communication of August 25, 2005.

fees were very high because he said his life would be in danger.”⁹³ He stated that Miriam Carvajal, a sister of the alleged victim, contacted two attorneys who were willing to accept the family’s power of attorney to represent them as civil plaintiffs in the criminal case. However, he stated that because of the death threats to Nelson’s wife Luz Stella Bolaños Rodríguez, and to Judith Carvajal, the alleged victim’s sister, the family decided to give up their right. He indicated that they were “warned verbally and telephonically that if they continue[d] to go after the perpetrators there would be more deaths in the family.”⁹⁴

101. According to Judith Carvajal, after January 5, 1999, the date on which the Office of the Prosecutor General arrested the alleged masterminds and direct perpetrators of Nelson Carvajal’s murder, the threats increased. She stated that the calls intensified, both to her house and to the *Radio Sur* radio station, where she had a Sunday program.⁹⁵ She further indicated that in March 1999, a man approached her at the exit of the María Auxiliadora of Pitalito Clinic and said that she was “the one who was being a pain in the ass, that she was the chip that had to be knocked down in order to win the business,” and that he said to some other men who were with him, “that’s her.”⁹⁶ Judith Carvajal further stated that on April 3, 1999, Mr. Luis Ortiz personally told her that he had a direct order from the men involved in Nelson Carvajal’s murder to kill her. This person reportedly told Judith Carvajal that the order had been given to his accomplices, who were in Pitalito at the time, via cell phone from the La Picota prison in Bogotá, where the defendants were being held. She stated that if she or anyone else in her family were killed, she would place the blame directly on the individuals charged with masterminding her brother’s murder. She also stated that her “family had no other trouble with anyone else. The only trouble we have now is because of this investigation, and therefore, anything that happens to my family is the result of this case.”⁹⁷

102. Judith Carvajal additionally stated that on the afternoon of April 14, 1999, there was a man outside her house for a lengthy period of time. She stated that her son told her not to leave the house because the man “had a weapon and had been standing there for a long time, paying close attention to who entered and left the house.” Later, Judith Carvajal stated that she left the house “together with several people and [saw] that the guy got onto a motorcycle, saying ‘brother it couldn’t be done today, it will have to be another day.’”⁹⁸

103. In view of this situation, Judith Carvajal decided to leave Pitalito for another part of the country, and she informed the Office of the Prosecutor General of this situation in order for the appropriate investigations to be conducted.⁹⁹ There is no information in the case file before the IACHR about the outcome of these investigations. Judith Carvajal reportedly went into the Victim and Witness Protection Program of the

⁹³ *Attachment 6*. First Notary Public of Pitalito. Department of Huila. Certificate Number 683. September 18, 2003. Attachment to the petitioner’s communication of September 22, 2003

⁹⁴ *Attachment 6*. First Notary Public of Pitalito. Department of Huila. Certificate Number 683. September 18, 2003. Attachment to the petitioner’s communication of September 22, 2003

⁹⁵ *Attachment 7*. Document from Judith Carvajal Carvajal to the National Human Rights Unit of the Office of the Prosecutor General. Attachment A: National Human Rights Unit. Office of the Prosecutor General. Statement of Judith Carvajal Carvajal. File No. 582 HRU. October 15, 1999. Attachment to the petitioner’s communication of August 25, 2005.

⁹⁶ *Attachment 7*. Document from Judith Carvajal Carvajal to the National Human Rights Unit of the Office of the Prosecutor General. Attachment A: National Human Rights Unit. Office of the Prosecutor General. Statement of Judith Carvajal Carvajal. File No. 582 HRU. October 15, 1999. Attachment to the petitioner’s communication of August 25, 2005.

⁹⁷ *Attachment 2*. Office of the Prosecutor General. Technical Investigations Unit. Regional Crimes Group. Supplemental Affidavit provided by Judith Carvajal Carvajal in Case File No. 33.744. July 29, 1999, p. 4, Attachment to the petitioner’s communication of August 25, 2005.

⁹⁸ *Attachment 7*. Document from Judith Carvajal Carvajal to the National Human Rights Unit of the Office of the Prosecutor General. Attachment A: National Human Rights Unit. Office of the Prosecutor General. Statement of Judith Carvajal Carvajal. File No. 582 HRU. October 15, 1999. Attachment to the petitioner’s communication of August 25, 2005.

⁹⁹ *Attachment 7*. Document from Judith Carvajal Carvajal to the National Human Rights Unit of the Office of the Prosecutor General. Attachment A: National Human Rights Unit. Office of the Prosecutor General. Statement of Judith Carvajal Carvajal. File No. 582 HRU. October 15, 1999. Attachment to the petitioner’s communication of August 25, 2005.

Office of the Prosecutor General at the beginning of 1999.¹⁰⁰ The file does not say what type of protection she may have received.

104. On March 1, 1999, Judith Carvajal Carvajal sent a complaint to the Regional Office of the Public Prosecutor alleging that the defense attorneys in her brother's case had violated the confidentiality of the pretrial phase of the criminal proceeding by turning over copies of some of the proceedings conducted during that phase to various individuals in Pitalito who were not defendants in the case. She indicated that this seriously jeopardized the confidentiality of the identity of witnesses and key individuals in the investigation. She also maintained that the order determining the legal status of the defendants began to circulate "as if it were some kind of public press release" and that it was "used to create anxiety and panic among the witnesses and the general public so they would retract their statements or decline to cooperate with the justice system in the development of the case."¹⁰¹ For example, Mr. Fernando Manrique, who provided a statement in the case, said that he feared for his physical safety because of his statement, since "it is clear that Mr. Fernando Bermúdez was the mastermind." Additionally, he "maintain[ed] that if anything were to happen [to him] or to his family, the only person responsible for it is the person implicated in the case, Mr. Fernando Bermúdez."¹⁰² On July 29, 1999, Judith Carvajal Carvajal indicated in a supplemental statement that she advised Mr. Fernando Manrique to give a confidential statement because "he had several things to say, or that he wanted to say, but he was afraid because of the pressure he might be under if he said them." She added that when copies of the investigation circulated publicly, "an individual—I don't know who it was—sought out Fernando Manrique to tell him to tone down what he had said when he was called back to give a supplemental statement. Fernando was scared because he said that the case was already public knowledge."¹⁰³

105. On October 15, 1999, Judith Carvajal informed the Human Rights Unit of the Office of the Prosecutor General of her "imminent departure from the country because of the threats" she was receiving from "persons implicated in the investigation of the death" of her brother Nelson Carvajal Carvajal. Moreover, she stated that on that date she was writing to the Prosecutor General of Colombia about her concern for her entire family that remained in Pitalito, since they were receiving threats. She additionally asked "the Prosecutor's Office for protection for [her] family, which is in the process of leaving Pitalito for fear that something might happen to them." She also sought protection for Luis Ortiz, the person who was on a cassette recording that was submitted as part of the case (*supra* para. 101).¹⁰⁴

106. There is no information in the case file before the IACHR about any kind of protection offered or granted to the Carvajal family or to Luis Ortiz. According to the information received subsequently by the IACHR in 2006 and 2010, nine (9) relatives of Nelson Carvajal's had reportedly left the country for safety reasons: Paola Andrea Carvajal Bolaños and María Alejandra Carvajal Bolaños (daughters); Luz Stella Bolaños Rodríguez (spouse); Judith Carvajal Carvajal, Gloria Mercedes Carvajal Carvajal, and Ruth Dary Carvajal Carvajal (sisters); Fernando Augusto Carvajal Carvajal (brother); and Cristhian Camilo Motta Carvajal and César Augusto Meneses Carvajal (Nelson's nephews, sons of Judith and Ruth Dary,

¹⁰⁰ Attachment 6. First Notary Public of Pitalito. Department of Huila. Certificate Number 683. September 18, 2003. Attachment to the petitioner's communication of September 22, 2003.

¹⁰¹ Attachment 15. Complaint filed by Judith Carvajal Carvajal with the Regional Office of the Public Prosecutor regarding risks faced by witnesses. March 1, 1999. Received by the Regional Prosecutor's Office on March 3, 1999. Attachment to the petitioner's communication of August 25, 2005.

¹⁰² Attachment 1. Office of the Prosecutor General. Regional Office of the Public Prosecutor Special Terrorism Unit. Case 33.744. COD. -210-209. Santafé de Bogotá D.C. January 18, 1999. para. 53. Attachment to the petitioner's communication of August 25, 2005.

¹⁰³ Attachment 2. Office of the Prosecutor General. Technical Investigations Unit. Regional Crimes Group. Supplemental Affidavit provided by Judith Carvajal Carvajal in Case File No. 33.744. July 29, 1999. Pp. 1-2. Attachment to the petitioner's communication of August 25, 2005.

¹⁰⁴ Attachment 8. Office of the Prosecutor General. National Human Rights Unit. Statement given by Judith Carvajal Carvajal. File No. 582 HRU. October 15, 1999. Attachment to the petitioner's communication of August 25, 2005.

respectively).¹⁰⁵ The departure of these individuals from Colombia coincides with the initiation of proceedings to continue the investigation (*supra* para. 87-94).

107. According to information that is public knowledge, cited by the petitioner and not disputed by the State, a key prosecution witness and demobilized FARC combatant was murdered in May 2007.¹⁰⁶ Pablo Emilio Bonilla Betancurt provided statements to a Special Prosecutor on March 29, and October 11 and 12, 2006, in Pitalito, Huila. In those statements he implicated the former mayor of Pitalito, and the local businessman previously acquitted as the masterminds of Nelson Carvajal Carvajal's murder. Based on his statements, the II Criminal Court Representative filed a motion for reconsideration of the judgments of the Single Criminal Court of the Specialized Circuit of Neiva and the Superior Court for the Judicial District of Neiva before the Supreme Court of Justice.¹⁰⁷ The State did not provide any information regarding the investigations conducted following Pablo Emilio Bonilla Betancurt's murder, or about the possible connection between his death and his participation as a witness in this case.

108. In August 2008 the Office of the Prosecutor General requested that the Ministry of the Interior and Justice and the Administrative Security Department (DAS) provide protection to petitioner's representative Diana Calderón. According to the information provided by the petitioner and not contested by the State, Calderón had received a piece of paper depicting a skull and a gravestone with Nelson's name on it. The paper also depicted five more graves, each one alluding to a relative of Nelson Carvajal's, and the message "keep investigating and you too will rest."¹⁰⁸

D. The practice of journalism in the context of the internal armed conflict in Colombia

109. In the 2005 report entitled *Impunity, Self-Censorship and Armed Internal Conflict : An Analysis of the State of Freedom of Expression in Colombia*, the IACHR and its Office of the Special Rapporteur found that "The exercise of the right to freedom of expression in Colombia has been gravely affected in recent decades by the internal armed conflict."¹⁰⁹ In this context, "Colombian society has suffered the grave consequences of a violence designed to silence the exercise of freedom of expression, among other freedoms."¹¹⁰ The report indicated that crimes against journalists have a dual impact on the status of freedom of expression in Colombia. "On one side, the violence looks to eliminate those who attempt to investigate abuses and irregularities and to ensure that their investigations do not come to light. But on the other side, the violence is designed to be a tool of intimidation directed at those conducting these types of investigations."¹¹¹ In the report, the IACHR also observed with concern the particular vulnerability of journalists in outlying regions, as well as the persistent display of impunity with respect to the murders of journalists that took place in Colombia from 1998 to 2005 and the paucity of concrete results in the investigations of those crimes. It emphasized that "the fact that so many cases have gone unpunished have undoubtedly amplified the sense of intimidation fostered by the commission of these killings and threats."¹¹²

¹⁰⁵ Attachment 29. Petitioner's communication dated August 12, 2013, forwarded to the State on August 22, 2013.

¹⁰⁶ El Tiempo. May 5, 2007. Asesinan a testigo en procesos judiciales; Petitioner's communication of May 13, 2009, forwarded to the Colombian State on May 14, 2009.

¹⁰⁷ Attachment 27. Supreme Court of Justice. Criminal Cassation Division. Case No 30689. April 1, 2009. Attachment to the petitioner's communication of May 13, 2009.

¹⁰⁸ Communication of the petitioner dated May 13, 2009.

¹⁰⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Impunity, Self-Censorship and Armed Internal Conflict : An Analysis of the State of Freedom of Expression in Colombia. OEA/Ser.L/V/II Doc.51, August 25, 2005. Para. 5.

¹¹⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. Impunity, Self-Censorship and Armed Internal Conflict : An Analysis of the State of Freedom of Expression in Colombia. OEA/Ser.L/V/II Doc.51, August 25, 2005. Para. 42.

¹¹¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Impunity, Self-Censorship and Armed Internal Conflict : An Analysis of the State of Freedom of Expression in Colombia. OEA/Ser.L/V/II Doc.51, August 25, 2005. Para. 53.

¹¹² IACHR. Office of the Special Rapporteur for Freedom of Expression. Impunity, Self-Censorship and Armed Internal Conflict : An Analysis of the State of Freedom of Expression in Colombia. OEA/Ser.L/V/II Doc.51, August 25, 2005. Para. 78.

V. EXAMINATION OF THE MERITS

A. Examination of the alleged violation of the rights to life (Article 4),¹¹³ freedom of thought and expression (Article 13),¹¹⁴ a fair trial (Article 8),¹¹⁵ and judicial protection (Article 25),¹¹⁶ as well as the general obligation to respect rights (Article 1(1))¹¹⁷ of the American Convention

110. As the Inter-American Court and the Commission have repeatedly held,¹¹⁸ the American Convention imposes upon the States special duties of prevention, protection, and the administration of justice for all acts of violence against journalists or media workers perpetrated with the intent to silence them. Indeed, the bodies of the inter-American system have held that, given the significance of the social role they play, violence against journalists creates a profoundly negative effect on the exercise of freedom of expression of those who practice the profession of journalism and on the right of society in general to freely and peacefully seek and receive all kinds of information.¹¹⁹ As the Inter-American Court has observed, “journalism can only be [practiced] freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment.”¹²⁰

111. In this respect, the Inter-American Court has held that “it is essential that journalists who work in the media should enjoy the necessary protection and independence to exercise their functions to the fullest, because it is they who keep society informed, an indispensable requirement to enable society to enjoy full freedom and for public discourse to become stronger.”¹²¹

¹¹³ Article 4 of the Convention establishes that “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.[...]”

¹¹⁴ Article 13(1) of the American Convention provides that “Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.”

¹¹⁵ Article 8(1) of the American Convention states that “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(1) of the Convention establishes that “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.”

¹¹⁷ Article 1(1) of the Convention states that “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”

¹¹⁸ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 194; IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58.

¹¹⁹ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 194; IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58.

¹²⁰ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 209.

¹²¹ I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74. Para. 150; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107. Para. 119

112. The Inter-American Commission has recognized that the murder of journalists or media workers for the practice of their profession is the most extreme form of censorship.¹²²

113. It is an undisputed fact in this case that on April 16, 1998, journalist Nelson Carvajal Carvajal was murdered in the city of Pitalito and that, as of the date of issue of this report—sixteen years later—the circumstances of the crime have not been established by a court of law and the perpetrators have not been convicted. During those years, the national authorities have weighed different theories regarding the masterminding of Nelson Carvajal Carvajal's murder, implicating the mayor of Pitalito, local businessmen, members of the departmental legislature of Huila, the guerrillas, , and gangs of common criminals.

114. The Commission notes that the petitioner did not allege in this case that the authorities knew or should have known that Nelson Carvajal Carvajal's life was in particular danger and therefore failed to meet its duty to protect the journalist's life.¹²³ Rather, the petitioner's argument focuses on state responsibility for the violation of Nelson Carvajal Carvajal's rights to life and freedom of expression, as well as the rights to a fair trial and judicial protection of the journalist's relatives, because of the lack of due diligence in the investigation and prosecution of the perpetrators of the alleged victim's murder which, according to the petitioner, was based on the practice of his profession.

115. The State, for its part, maintained that Carvajal Carvajal's murder was committed not by state agents but by private individuals, and asserted that it had taken all necessary measures to investigate the facts. Colombia further asserted that the violent death of a journalist does not "automatically entail the violation of the right to freedom of thought and expression," and that, in any case, the domestic legal proceedings did not provide "certainty with respect to whether Mr. Carvajal's death was directly related to his journalistic work." Therefore, it contested the alleged international responsibility of the State for the acts at issue in this case.

116. The Commission must examine then whether the State's actions constitute a violation of the rights to life and freedom of expression with respect to Nelson Carvajal Carvajal, and of the rights to a fair trial and judicial protection with respect to his relatives.

1. Standards on the duty to investigate crimes committed against journalists on account of the exercise of their right to freedom of expression

117. The Inter-American Court has established that in cases of extrajudicial, unlawful, arbitrary, or summary executions, a State's authorities must open, *ex officio* and without delay, a serious, impartial, and effective investigation, once they have knowledge of the act,¹²⁴ regardless of whether it was committed by State agents or by private individuals. In cases of violent death, carrying out an effective investigation is "a fundamental element essential for the protection of the rights that are affected in these situations."¹²⁵

¹²² IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 1; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons That May Be Related to Their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Presentation; IACHR. Report No. 37/10. March 17, 2010. Case 12.308. Manoel Leal de Oliveira (Brazil). Para. 97; United Nations General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 21.

¹²³ In this case, the Commission notes that Nelson Carvajal Carvajal's personal safety and life were at risk prior to his murder; nevertheless, there is nothing in the case file to indicate that the State had knowledge of this situation or that it should have known about this risk due to special circumstances.

¹²⁴ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140. para. 143; *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124. para. 145.

¹²⁵ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196. Para. 75.

118. The Inter-American Court has noted that the obligation to investigate persists, “irrespective of the agent to whom the violation may be eventually attributed, even individuals, since if the events are not investigated in depth, they would be, in some way, assisted by public authorities, which would entail international responsibility for the State.”¹²⁶ In its judgment on the merits in the case of *Velásquez Rodríguez v. Honduras*, the Court underscored that, according to the duty to guarantee rights:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.¹²⁷

119. Similarly, in the context of the duty to open an effective government investigation when individuals have lost their lives, the European Court of Human Rights has been held that “this obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is it decisive whether members of the deceased’s family or others have lodged a formal complaint about the killing with the relevant investigatory authority.”¹²⁸

120. In cases of violence against journalists and media workers, both the Court and the Inter-American Commission have found that the failure to comply with the obligation to investigate acts of violence against a journalist may also entail a breach of the duty to guarantee the right to freedom of thought and expression.¹²⁹ Indeed, in the reports on the merits issued in the cases of Héctor Félix Miranda (Mexico) and Víctor Manuel Oropeza (Mexico), the Commission addressed the violation of the right to freedom of expression with respect to the murder of journalists, even though it was not possible to establish the responsibility of State agents for the violation of the right to life.¹³⁰ In these opinions, the IACHR established that the failure to conduct an exhaustive investigation that leads to criminal penalties against all persons responsible for the murder of a journalist is also a violation of the right to freedom of expression, because of the chilling effect impunity has on all of society.

121. The IACHR affirmed that this chilling effect can only be prevented “by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law.”¹³¹ In that respect, it concluded that the murder of journalists was “an aggression against all citizens inclined to denounce arbitrary acts and abuses to society, aggravated by the impunity of [its] perpetrators.”¹³²

¹²⁶ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140. para.145; I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196. Para. 78.

¹²⁷ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4. para. 176. I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196. Para. 76.

¹²⁸ *Cfr.* ECHR, *Ergi v. Turkey*, Judgment of 28.07.1998, Reports of Judgments, n. 81, paras. 85-86, ECHR, *Akkoç v. Turkey*, Judgment of 10 October 2000, paras. 77 to 99; ECHR, *Kiliç v. Turkey*, Judgment of 28 March 2000, paras. 78 to 83.

¹²⁹ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 215.

¹³⁰ IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58.

¹³¹ IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58. *See also*, IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family (Colombia). October 23, 2010. Para. 136; IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 716. *See also*, I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 211.

¹³² Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 61.

122. The failure to punish these types of acts encourages the repetition of similar violent acts and can result in the silencing and self-censorship of journalists.¹³³ Impunity has a strong chilling effect on the exercise of freedom of expression, and the consequences for democracy—which depends upon the free, open, and dynamic exchange of information—are particularly serious.¹³⁴

123. The Inter-American Court has also referred to the chilling effect that crimes against journalists have on other media professionals as well as on the citizens who want to report abuses of power or unlawful acts of any kind.¹³⁵

124. The bodies of the Inter-American system have recognized that the duty to investigate, prosecute, and, if appropriate, punish the perpetrators of a human rights violation is an obligation of means, not of ends. This means that the State does not incur international responsibility “merely because the investigation does not produce a satisfactory result.”¹³⁶ Nevertheless, they have reiterated that this obligation must be met in accordance with the principles derived from the American Convention.

125. In meeting its obligation to investigate, prosecute, and, if appropriate, punish the perpetrators of acts of violence committed against journalists on account of the exercise of their right to freedom of expression, the States must emphasize certain specific obligations, including: (i) the obligation to adopt an adequate institutional framework that allows it to effectively investigate, prosecute, and punish acts of violence against journalists; (ii) the obligation to act with due diligence and exhaust lines of investigation related to the victim’s practice of journalism; (iii) the obligation to conduct investigations within a reasonable period of time; and (iv) the obligation to facilitate the participation of victims in the investigations.¹³⁷

2. Analysis of the case

126. The Commission considers that for purposes of examining the merits of this individual petition, there is sufficient and consistent prosecution evidence in this case—evidence held by the very government bodies responsible for the investigation and the criminal case—to conclude that Nelson Carvajal Carvajal’s murder was connected to his work as a journalist and to his public exposés of local crime and corruption. This link to his work is relevant to analyze the State’s response to the facts.

127. As is clear from the body of evidence, a significant number of the witness statements given during the investigation into the murder of journalist Nelson Carvajal Carvajal link the crime to his work as an “exposé journalist”. At the same time, it is noted that all of the logical theories of masterminding examined by the authorities in charge of the investigation establish Nelson Carvajal’s journalistic work as the motive for

¹³³ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons That May Be Related to Their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 129.

¹³⁴ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 70; IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 2.

¹³⁵ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 148; IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58. See also, IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 716.

¹³⁶ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4. Para.177.

¹³⁷ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 175 *et seq.*

the crime. Indeed, the lead Prosecutor in the preliminary investigation concluded based on the evidence gathered that, “the murder of journalist and educator Nelson Carvajal Carvajal was because of, or for reasons relating to, his profession, especially given the type of exposé reporting he did”. For this reason, he ordered the transfer of the investigation to the regional justice system. The Single Criminal Court of the Specialized Circuit of Neiva likewise affirmed that, “it is concluded from the testimony of numerous witnesses at trial that the violent death of the aforementioned individual was on account of his work as a journalist, as his ‘exposé’ journalism earned him the animosity of those who felt that they were adversely affected by his radio programs—to the point that there were many who filed criminal actions against him for alleged acts against moral integrity.” The case file also shows that, prior to his death, the journalist had been the victim of repeated threats on account of his work.

128. Notwithstanding the State’s argument that there is no judicial “certainty” with respect to the motive for the crime, the Commission observes that there is nothing in the case file that points to the existence of any other theory effectively considered by the national authorities during the investigations and criminal case pursued at the domestic level. What is clear and irrefutable in this case is that the journalist investigated issues of significant public interest to the local community and directly and consistently denounced head-on the authorities and businessmen of his city and the existence of a network that laundered the proceeds of drug trafficking in the area; that he was threatened, and that he was later brutally murdered.

129. As described below, in these types of cases the American Convention demands that positive measures be taken to ensure the investigation, prosecution, and, if appropriate, punishment of the perpetrators, in order to prevent impunity and its negative effects on freedom of expression.

130. The Inter-American Court has established that in order to determine whether the obligation to guarantee the rights of a murdered person has been fully met through a serious investigation of the events, the Court “must examine the different measures taken by the State after the bodies were found, as well as the domestic procedures to elucidate what occurred and to identify those responsible for the violations perpetrated against the victims.” In this respect, the Court has emphasized that “clarification of whether the State has violated its international obligations owing to the actions of its judicial bodies can lead the Court to examine the corresponding domestic proceedings. Hence, according to the circumstances of the case, the Court may have to examine the procedures that are followed in order to establish the grounds for judicial proceedings, particularly the investigative measures on which the opening and evolution of such proceedings depend.”¹³⁸

131. Accordingly, it is incumbent upon the IACHR to determine whether the authorities acted with due diligence during the investigation and criminal proceedings conducted after the murder of journalist Nelson Carvajal Carvajal, and it will examine the alleged irregularities concerning: (a) the lack of protection, given the threats, intimidation, and pressures to which relatives and witnesses were subjected; (b) the lack of due diligence in the gathering of evidence; (c) lines of investigation and identification of perpetrators; (d) the undue delay and absence of substantial progress in the investigations; and (e) obstacles to the participation of the murdered journalist’s relatives in the proceedings. All of this will be examined in light of the international standards developed *supra* with respect to the general and specific obligations of States to investigate, prosecute, and, if appropriate, punish the perpetrators in cases involving the murder of journalists on account the exercise of their right to freedom of expression.

a. Protection of the relatives of journalist Nelson Carvajal Carvajal and witnesses in the case from threats and acts of intimidation

132. The IACHR has indicated that the existence of an adequate institutional framework is crucial for the State to meet its obligation to investigate, prosecute, and punish crimes against journalists. To that

¹³⁸ *Cfr.* I/A Court H.R., *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. Series C No. 203, para. 120; I/A Court H.R., *Case of Barrios Family v. Venezuela*. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237, para. 181.

end, States have the obligation to ensure that the institutional frameworks are not designed in such a way that they lead to or encourage impunity when such crimes occur.¹³⁹ In addition, States must ensure that the bodies responsible for investigating, prosecuting, and punishing the perpetrators of those crimes have the necessary conditions to do their work properly.¹⁴⁰

133. Accordingly, States must assign the responsibility for investigating and prosecuting these crimes to the authorities that are in the best position to adjudicate them and that have the autonomy and independence to act. In this respect, not only must they ensure the hierarchical and institutional independence of the authorities charged with conducting the investigations and the judicial proceedings but they must also be able to practically verify that independence in the specific case.¹⁴¹ States must ensure that the judges and prosecutors with jurisdiction over cases of violence against journalists can operate without being subjected to the influence of the government official or criminal organization allegedly involved in the crime, in view of evidence of their participation in the act of violence. In the event that the investigative and prosecutorial bodies function within this sphere of influence, the State has the duty to provide them with sufficient capacity to resist that influence.¹⁴²

134. Additionally, the IACHR has observed that it is important for States to clearly define the procedural jurisdiction of the authorities in charge of investigating and prosecuting these crimes. This is especially essential in determining who has the authority to take over an investigation, in those cases in which the domestic legal framework allows for federal authorities or authorities from a jurisdiction other than the one in which the crime was committed to do so.¹⁴³

135. The obligation to adopt an adequate institutional framework also includes the duty to take all necessary measures to protect judges, prosecutors, witnesses, and other individuals involved in criminal investigations from outside pressures such as threats, attacks, and other forms of intimidation.¹⁴⁴ States thus

¹³⁹ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 175; United Nations General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 57. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/137/87/PDF/G1213787.pdf?OpenElement>

¹⁴⁰ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 175.

¹⁴¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons That May Be Related to Their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 58, citing IACHR. *Case of Baldeón García v. Peru. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147. Para. 95; The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. Joint Declaration on Crimes against Freedom of Expression; European Court of Human Rights. *Case of Adali v. Turkey*. Application no. 38187/97. Judgment. 31 March 2005. Para. 222. "This means not only a lack of hierarchical or institutional connection but also a practical independence (see, for example, *Ergi v. Turkey*, judgment of 28 July 1998, Reports 1998-IV, §§ 83-84, where the public prosecutor investigating the death of a girl during an alleged clash showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident)."

¹⁴² IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 176; The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. Joint Declaration on Crimes against Freedom of Expression; United Nations General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 113.

¹⁴³ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 183.

¹⁴⁴ IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Paras. 383 & 385; IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter [continues ...]

have the obligation to guarantee the safety of the authorities in charge of the investigations and to implement the measures or mechanisms necessary to prevent the obstruction of investigations, as well as to offer safety to witnesses, victims, relatives, and other judicial representatives from threats, acts of intimidation, or assaults that seek to hinder the proceedings.¹⁴⁵ Similarly, the Inter-American Court has stated that “in order to comply with the obligation to investigate within the framework of the guarantees of due process, the State must take all necessary measures to protect judicial officers, investigators, witnesses and the victims’ next of kin from harassment and threats” intended to obstruct the proceedings, preclude the establishment of the facts, and prevent the identification of the perpetrators.¹⁴⁶

136. In addition, for investigations into crimes against freedom of expression to be successful, the investigators must receive sufficient human, financial, logistical, and scientific resources to gather, secure, and evaluate the evidence and perform other necessary tasks to determine responsibility.¹⁴⁷

137. The IACHR has held that in cases involving a violent death in which State agents and/or powerful criminal groups are under investigation for their participation, States must ensure that the responsibility to investigate and prosecute human rights violations is assigned to the authorities that are in the best position to adjudicate them effectively, autonomously, and independently. In this respect, States must establish safeguards so that the competent authorities can operate without being subject to the influence of the government official or criminal organization allegedly involved in the crime. At the same time, they must guarantee that the witnesses and relatives of the victim are able to participate in the proceedings without fear of retaliation. These safeguards may entail, for example, removing the investigation from the jurisdiction of the local authorities, or changing the venues of criminal proceedings.

138. Indeed, as the Inter-American Court has acknowledged, due diligence in the investigation of such matters means taking account of the patterns of action of the state or criminal power structures that can guarantee impunity in the case, through outside pressures, attacks, threats, and other forms of intimidation directed at judges, prosecutors, witnesses, and other persons involved in criminal investigations. In this respect, the Inter-American Court has held that threats and intimidation suffered by judges, witnesses, and relatives “cannot be examined in isolation, but should be analyzed in the context of obstructions to the investigation of the case. Consequently, such acts become another means of perpetuating impunity and preventing the truth of what happened from being known.”¹⁴⁸

[... continuation]

III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 186.

¹⁴⁵ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 186; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons That May Be Related to Their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 58.

¹⁴⁶ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163. Para. 171.

¹⁴⁷ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 188; IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 733 y 821; United Nations General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 102. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/137/87/PDF/G1213787.pdf?OpenElement>; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons That May Be Related to Their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 58, citing I/A Court H.R., *Case of Carpio Nicolle et al. v. Guatemala*. Merits, Reparations and Costs. Judgment of November 22, 2004. Series C No. 117. Para. 135; United Nations General Assembly. Human Rights Council. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. A/HRC/21/L.6. September 21, 2012. Para. 8.

¹⁴⁸ I/A Court H. R., *Case of Gutiérrez and Family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271. Para. 119.

139. The investigation of Carvajal Carvajal's murder pointed to individuals who wielded power in the region, such as the head of the local government, local businessmen with alleged ties to drug trafficking and money laundering, the guerrillas, and gangs of common criminals. As stated in the case file, the investigation took place amidst a climate of serious fear among the residents of Pitalito and among those who cooperated to establish the facts of the case. It bears emphasizing that at the time the crime was committed the Colombian people who lived in regions like Pitalito were subjected to patterns of violence linked to the armed conflict, as well as to drug trafficking and abuses of government power, among other things.

140. In view of the above, and as provided by law, the investigation was transferred from the local prosecutor's office to the Regional Prosecutor's Office in Bogotá. Later, the Office of the Prosecutor General of Colombia ordered the reassignment of the investigation to the National Unit of Human Rights Prosecutors headquartered in Bogotá. While this measure was meant to encourage the independence of the bodies in charge of the investigation, it was insufficient to protect the witnesses and other individuals involved in the investigation in view of the threats and other forms of intimidation, and thus it failed to prevent the obstruction of the investigation in this particular case.

141. It is clear from the established facts that there were serious and repeated threats and acts of intimidation against the residents of Pitalito, witnesses, and relatives of the journalist Nelson Carvajal's during the investigation. The State learned of these threats and had the obligation to take all necessary protection and investigation measures to guarantee the full effectiveness of the proceedings.

142. The case file also shows that the investigating authorities observed that, "given the lack of protection," several individuals in Pitalito did not want to give their names when they gave statements, "because of the fear that exists in the area." This fear also affected the personnel in charge of intelligence work in Pitalito who, according to the regional authorities, "did not sign any documents for security reasons".

143. During the pretrial phase of the criminal proceeding, because of her actions pushing for the investigation, the victim's sister Judith Carvajal was the victim of a criminal complaint filed by the government official implicated in the murder. The complaint alleged criminal defamation [*calumnia e injuria*], and was pending for a year, even though it lacked clear grounds. Furthermore, the record reflects that she received death threats on several occasions and was subject to surveillance by unidentified men who approached her person and her home with extremely intimidating messages. These threats increased upon the arrest in 1999 of the individuals accused of the masterminding the crime. Her statements indicate that on one occasion she was personally told that there was a direct order from the men implicated in Nelson Carvajal's murder to kill her. Judith Carvajal reported these threats to the authorities.

144. Judith Carvajal reportedly went into the Victim and Witness Protection Program of the Office of the Prosecutor General in early 1999. Nevertheless, there is no proof in the case file that she did in fact receive protection. In spite of her entry into the Protection Program, given the absence of concrete and effective measures of protection, Judith Carvajal had to leave Pitalito and reside temporarily in another part of the country, which she also reported to the Office of the Prosecutor General in order for it to conduct the respective investigations.

145. In October 1999, Judith Carvajal left the country because of the threats she was receiving from "persons implicated in the investigation" of her brother Nelson Carvajal Carvajal's death. Judith Carvajal informed the authorities of her departure and of the risks her family was facing. The petitioner indicated—and the State did not dispute the fact—that she asked "the Prosecutor's Office for protection for [her] family, which is in the process of leaving Pitalito for fear that something might happen to them."

146. The Commission notes that the State did not provide evidence of having taken any measures to protect the relatives who were threatened during the investigation. In particular, it notes that there is nothing in the case file to indicate that any kind of investigation was conducted to determine the origin of the reported threats and to punish those responsible for them, which exacerbates the context of intimidation and defenselessness and encourages the concealment of the facts.

147. Against this backdrop, it concerns the IACHR that the threats persisted throughout the investigation, and that nine (9) relatives of Nelson Carvajal have consequently had to leave the country in 2006 and 2010 (*supra* para. 106).

148. The body of evidence shows that the threats and intimidation also affected key witnesses. Although the State implemented some measures permitted by the domestic laws at the time of the events—such as keeping the identity of the witnesses confidential—they were neither suitable nor sufficient. The case file reflects that Judith Carvajal Carvajal reported the breach of confidentiality in the investigation and the fact that copies of some of the proceedings conducted during the pretrial phase of the criminal proceeding had been turned over to different people in Pitalito with the intent to reveal the identity of the witnesses and frighten them into recanting or refusing to cooperate with the justice system in the case. At least two key witnesses received threats in this context.

149. The IACHR notes that although in 1999 the Regional Prosecutor's Office ordered the investigation of the alleged breach of confidentiality reported by Judith Carvajal, there is no indication that it took concrete steps to address the matter or that any results were obtained. On the contrary, the IACHR notes that, given the lack of progress, an investigator from the IAPA refiled the complaint before the Disciplinary Chamber of the Judicial Council in 2006, but it was ruled that the statute of limitations had expired with regard to the acts alleged in the complaint.

150. The Commission also observes with concern that a key prosecution witness was murdered during the investigation after giving a statement that would be used by the Prosecutor's Office to examine the possibility of filing a motion for the reconsideration of the acquittal of Fernando Bermúdez and others and the reopening of the investigation against them. The witness, Pablo Emilio Bonilla Betancurt, was a demobilized FARC combatant. The IACHR has no evidence with which to determine the reasons for his murder, but notes that according to the petitioner's allegations, which the State does not dispute, the Witness Protection Office had reportedly denied his request for protection measures. The IACHR further observes that the State has not provided information concerning any investigations into the possible connection between his death and his participation as a witness in this case. This undoubtedly contributed to the threatening climate that surrounded this investigation.

151. In its *Third Report on the Human Rights Situation in Colombia*, issued following its on-site visit in December 1997, the Commission indicated that, "The legitimate fear of public authorities involved in the administration of justice, as well as witnesses, also contributes to the ineffectiveness of criminal proceedings in human rights cases processed in the civilian justice system. Those responsible for human rights abuses sometimes ensure their impunity by threatening or attacking those who might contribute to a sanction against them." Indeed, it reiterated that the fear of being a victim of some kind of retaliation has affected judges, attorneys, judicial police officers, and "witnesses who are key in determining the authorship of the facts under investigation and whose testimony can shed light on the facts and convict the guilty parties."¹⁴⁹

152. In view of the foregoing, the Inter-American Commission finds that the repeated threats and harassment of witnesses and relatives of the victim, in addition to the absence of protection measures and guarantees for an independent investigation, had an intimidating and chilling effect that discouraged the participation of complainants in the case and hampered the investigations and the criminal cases. In addition, the witnesses and relatives remained unprotected for a long period of time, which contributed to the failure to investigate, arrest, prosecute, and punish the perpetrators and to the maintenance of the barriers found when the relatives tried to participate in the processing of the case. Indeed, the IACHR observes with concern that during the processing of this case before the Inter-American system the petitioner has reported that the victim's relatives are still fearful as a consequence of the events, and that most of them have left Colombia.

¹⁴⁹ IACHR. *Third Report on the Human Rights Situation in Colombia*. Chapter V (Administration of Justice and Rule of Law). OEA/Ser.L/V/II.102. Doc. 9 rev. 1. February 26, 1999.

b. Due diligence in the gathering of evidence

153. The IACHR reiterates that the violations perpetrated in this case should have been investigated with the strictest adherence to due diligence, given the seriousness of the crime and the nature of the rights violated—the rights to life and freedom of expression—which sent out a clearly intimidating message to those who practice journalism in the area.

154. This includes the obligation to diligently implement measures for obtaining and preserving evidence. According to the United Nations Principles on the effective prevention and investigation of Extra-Legal, Arbitrary and Summary Executions (“United Nations Principles”), as well as the Model Protocol for a legal investigation of Extra-legal, Arbitrary and Summary Executions (“Minnesota Protocol”), the state authorities that carry out an investigation of this type must, at a minimum, attempt to, *inter alia*: (a) identify the victim; (b) recover and preserve evidence pertaining to the death for purposes of assisting in any potential criminal investigation of the perpetrators; (c) identify potential witness and obtain their statements regarding the death under investigation; (d) determine the cause, manner, place, and time of death, as well as any pattern or practice that might have caused the death, and (e) distinguish among natural death, accidental death, suicide, and homicide. Additionally, it is necessary for the crime scene to be thoroughly investigated, and for autopsies and analyses of human remains to be rigorously performed, by competent professionals and through the most appropriate procedures.¹⁵⁰

155. In the case of violence against journalists, criminal investigations must also exhaust the lines of investigation related to the practice of journalism. The Inter-American Court has held that, in complying with its obligations of investigation and protection, the State must take account of the reasonable connection between the attack motivated by the exercise of freedom of expression and the subsequent acts of violence perpetrated.¹⁵¹

156. Under these principles, the State is also required to investigate, and if appropriate, punish all perpetrators of crimes, including direct perpetrators, masterminds, accomplices, collaborators, and accessories to human rights violations. Moreover, it must investigate the structures through which the crimes are committed and the criminal organizations to which the perpetrators belong. As previously explained, “due diligence” demands that the investigations conducted by the State take account of “the complexity of the facts, the context in which they occurred, and the systematic patterns that explain why the events occurred,” ensuring that there are no “omissions in gathering evidence or in the development of logical lines of investigation.”¹⁵² This obligation is especially relevant in cases of violence against journalists, which oftentimes are committed by criminal networks that act with the tolerance or acquiescence of State agents, and in which the direct perpetrator of the crime is merely carrying out orders.

157. With regard to the collection and preservation of evidence, Inter-American Commission reiterates that in cases in which the unlawful, arbitrary, or summary of an individual is suspected, the collection and analysis of the physical evidence and the taking of statements from potential witnesses is essential in order to guarantee an effective investigation, according to the above-mentioned United Nations and Minnesota Model Protocol.

¹⁵⁰ United Nations Principles on the effective prevention and investigation of Extra-Legal, Arbitrary and Summary Executions, Resolution 1989/65 Economic and Social Council, May 24, 1989; Model Protocol for a legal investigation of Extra-legal, Arbitrary and Summary Executions, UN Doc. E/ST/CSDHA/.12 (1991), Part III. See also, CIDH. Report nº 92/05. Case 12.418. Merits. Michael Gayle. Jamaica. October 24, 2005, para. 88-86; Report No. 10/95, Case No. 10.580, Manuel Stalin Bolaños Quiñones, Ecuador, September 12, 1995, para. 32-34.

¹⁵¹ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 211.

¹⁵² I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163. Para. 158; I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213. Para. 106-110 & 167.

158. The IACHR observes, first, that it is evident that the witness testimony was neither obtained nor preserved with due diligence, because of the lack of adequate protection for witnesses in light of the threats they received to discourage them from cooperating in the search for the truth, and given the reported breach of confidentiality in the investigation. The Commission also observes that the State showed no evidence of having made efforts to conduct disciplinary investigations into this type of negligence in the procedural advancement of the investigations.

159. Additionally, from the information submitted, the IACHR notes that the authorities in charge of the investigation in this case failed to follow procedures that were in keeping with international standards when they inspected the body and the crime scene. In the corpse inspection certificate there is no indication that the scene of the crime was examined to collect evidence of criminal interest. For example, there are no comments about the articles found on Nelson Carvajal and their position in relation to the corpse, and there is no indication that they examined the site to collect and preserve all of the blood, hair, fiber and thread, or fingerprint samples. Nor is there any indication that a detailed crime scene sketch drawn to scale was made to record the location of the corpse, the vehicles, surrounding buildings, and items found at the scene. Corpse inspection certificate No. 042 contains no record of the vehicles located in the area, or if the area was protected for this purpose.

160. The Commission also notes that from the crime scene the authorities collected “1 bullet nose and 6 shell casings around the body” of Nelson Carvajal Carvajal. This material was not submitted for ballistic testing, according to the report drafted in February 2000 by the TIU, which states that “no type of shell casings were received for ballistic analysis.” There is no indication in the file as to whether these casings were lost or where the evidence was taken.

161. The abovementioned defects and omissions demonstrate a lack of due diligence on the part of the State in the recovery and preservation of evidence. The IACHR finds that this could have contributed to the difficulty in determining the truth of the events and identifying and, if appropriate, punishing the perpetrators.

c. Lines of investigation and the identification of the perpetrators

162. In complying with their duty to investigate and prosecute all perpetrators of violence against journalists, States must act with due diligence and exhaust the lines of inquiry related to the victim’s practice of journalism. In this respect, the Inter-American Court has underscored that the due diligence requirement means that the criminal investigations must exhaust all logical lines of investigation. In particular, “due diligence” demands that the investigations conducted by the State take account of “the complexity of the facts, the context in which they occurred, and the systematic patterns that explain why the events occurred,” ensuring that there are no “omissions in gathering evidence or in the development of logical lines of investigation.”¹⁵³

163. Indeed, the obligation to conduct the investigation with due diligence and exhaust all logical lines of investigation is particularly relevant in cases involving violence against journalists, given that an investigation that fails to consider the context, including the professional activity of the journalist, will be less likely to obtain results and will probably raise doubts about the authorities’ willingness to solve the crime.¹⁵⁴ In this regard, the Inter-American Court has stressed the importance of exhausting the logical lines of investigation relating to the professional practice of journalists who have been the victims of violence.¹⁵⁵

¹⁵³ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163. Para. 158; I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213. Para. 106-110 & 167.

¹⁵⁴ IACHR. 2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 203.

¹⁵⁵ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 211.

164. With respect to this duty to exhaust the lines of investigation related to the practice of journalism, the IACHR acknowledges that, from the beginning of the investigation, the State took steps to investigate the relationship between Nelson Carvajal Carvajal's murder and his work. As discussed previously, the Prosecutor's Office worked this line of investigation as the sole logical theory for the journalist's murder and, in accordance with the law, transferred the investigation to the Regional Prosecutor's Office in Bogotá.

165. It bears repeating that when it is suspected that the act may be attributable to criminal organizations operating with the tolerance or sponsorship of State authorities, or when persons in government or related to government have attempted to obstruct the murder investigation, due diligence in the investigations necessarily entails taking account of the patterns of conduct of these power structures, which, in order to guarantee impunity, generally use outside pressures, attacks, threats, and other forms of intimidations against judges, prosecutors, witnesses, and other persons involved in criminal investigations.

166. The Commission underscores that it is clear from the statements provided and the characteristics of the crime that several persons were involved, not only as direct perpetrators and masterminds but also as accessories after the fact, through the perpetration of serious threats on relatives of the victim, witnesses or other persons involved in the quest of finding the truth of the facts. Even more, there is information regarding the murder of a witness – Pablo Emilio Bonilla Betancurt – that could be related to his participation in the reopening of the investigation of the killing of Nelson Carvajal Carvajal. In this respect, the IACHR notes that the State has 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 perpetrators of the crime. There is also no indication that, for purposes of identifying all of the perpetrators, the potential connection has been explored between the violent death of witness Pablo Emilio Bonilla Betancurt—which occurred after he provided statements in the case for the reconsideration of the acquittals—and the murder of journalist Carvajal. Similarly, there is no indication that the authorities have followed up on the body of evidence that pointed to the involvement of the mayor of Pitalito as mastermind or accessory to the crime. The State made no observations with respect to the matter.

167. The IACHR further notes that the petitioner complained that the courts disregarded key witnesses who corroborated the defendants' guilt and received fraudulent statements to divert the investigations toward the potential responsibility of the FARC. One defense witness who maintained that the FARC masterminded the crime was allegedly an occasional informant of the "Magdalena" Infantry Battalion No. 27 and was facing four cases of abuse of process, criminal deception, and public and private document fraud.

168. Similarly, and as evident from the case file, the Prosecutor's Office itself called the theory implicating the FARC in the murder of journalist Carvajal Carvajal inconsistent and a "setup" meant to clear the defendants of criminal wrongdoing and allow for their acquittal in the case. This information was provided to the authorities, however, there is no indication that it has been investigated. On November 29, 2000, the Special Prosecutor handling the Nelson Carvajal Carvajal case stated at trial before the Criminal Court of the Specialized Circuit of Neiva¹⁵⁶ that this theory was unfounded, asserting that: "we have gotten used to blaming the guerrillas for everything." She stated that, in Colombia, "they are accused of any act in order for the perpetrator to remain innocent, and one more crime goes unpunished."

169. The IACHR observes that, in spite of these complaints, the authorities responsible for the pretrial phase of the criminal proceeding have continued the investigation into the alleged responsibility of the FARC guerrillas; to date, two members of the guerrilla, alias "El Corcho" and alias "Oswaldo Patiño," reportedly remain implicated in the case without any specific outcome after more than a decade of

¹⁵⁶ Attachment 18. Criminal Court of the Specialized Circuit of Neiva, Huila. Public trial proceedings in Case No. 2000-0090. Prosecution of Fernando Bermúdez Ardila, Víctor Félix Trujillo, and Alfaro Quintero Alvarado, for the offense of murder. Hearing No. 047. November 29, 2000, pp. 23-24. Attachment to the petitioner's communication of August 25, 2005.

investigations and 6 years after they were implicated in the case. In the opinion of this Commission, this has functioned as a mechanism for these acts to go unpunished, in light of the criminal statutes of limitation applicable in this case.

170. According to the information available, the Commission observes that line of investigation does not appear to be corroborated by any evidence, and is clearly contradicted by the conclusions drawn from the threats and the majority of the witness accounts. What's more, there are no indications in the case file of a serious investigation into whether, as alleged, some of the defense witnesses gave false testimony at trial in this case to divert the investigation, clear the defendants of criminal wrongdoing, and enable their acquittal. It is an extremely serious accusation, which warrants a serious and timely investigation.

171. Accordingly, the IACHR considers that the measures taken to further the investigation have not been adequate and sufficient to satisfy the obligation of the State to conduct an exhaustive and diligent investigation, given the seriousness of the crime and the perverse effects that impunity has on society in these types of cases.

d. Undue delay and the lack of substantial progress in the investigations

172. In compliance with its duty to pursue justice for acts of violence against journalists, States have the obligation to ensure that the investigations and criminal proceedings are conducted within a reasonable period of time. In this regard, the Inter-American Court has established that excessive delay in the investigation of acts of violence can *per se* be a violation of the right to a fair trial.¹⁵⁷ The authorities responsible for the investigation must conduct the proceedings expeditiously, preventing improper delays or obstacles that lead to impunity and violate the proper judicial protection of the right.¹⁵⁸

173. According to the inter-American case law, the reasonable time period established in Article 8(1) of the American Convention "This is not an easy concept to define"; rather, it must be interpreted in light of the complexity of the case, the judicial activity of the interested party, and the conduct of the judicial authorities,¹⁵⁹ and the impairment to the legal situation of the person involved in the proceedings.¹⁶⁰

174. In this regard, the Inter-American Court has established that the authorities responsible for an investigation must conduct the proceedings expeditiously, preventing improper delays or obstacles that lead to impunity and violate the proper judicial protection of the right.¹⁶¹ Accordingly, the IACHR has held that "as a general rule, a criminal investigation must be carried out promptly to protect the interest of the victims, preserve evidence and even to safeguard the rights of any person that is considered a suspect in the investigation."¹⁶²

¹⁵⁷ I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136. Para. 85; I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124. Para. 160.

¹⁵⁸ I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136. Para. 85.

¹⁵⁹ I/A Court H.R., *Case of Genie Lacayo v. Nicaragua*. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30. Para. 77; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 30.

¹⁶⁰ *Cfr.* I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196. Para. 112; *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192. Para. 155.

¹⁶¹ I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136. Para. 85.

¹⁶² IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons That May Be Related to Their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008, para. 60.

175. The case file shows that on April 16, 1998, following the murder of journalist Nelson Carvajal Carvajal in the city of Pitalito, the local authorities opened an investigation and that as of the date of issue of this report—more than sixteen years later—the circumstances of the crime have not been established by a court of law and the perpetrators have not been convicted. Notwithstanding the above, the IACHR observes that in the four-year period after the journalist's murder (1998 to 2001), the authorities completed an investigation, brought criminal charges against three individuals, held a trial that resulted in the defendants' acquittal, and adjudicated an appeal affirming the trial court's decision.

176. Nevertheless, from 2001, the investigation has gone on for more than thirteen years, with long periods of inactivity and few results. The State maintained that this delay is not attributable to the conduct of the authorities, but rather to the complexity of the matter. In particular, it stated that the reasons for the complexity of the case lie in "the threats that have plagued this case, which have been directed against witnesses and relatives who might be able to contribute valuable information for the successful development of the investigation. This fear has hindered the investigative work of the Prosecutor's Office, which has repeatedly had to reschedule court proceedings in view of the impossibility of obtaining information from witnesses because of the threats they have received."

177. The Commission observes that the complexity resulting from the climate of threats acknowledged by the State itself is the responsibility of the Colombian authorities, who have the obligation to take all necessary measures to protect the witnesses and to investigate the facts of this case without undue delay. The IACHR has already established the lack of concrete measures taken to ensure said protection or due investigation of these events.

178. Given the seriousness of the events, the insufficiency of the means employed and the results obtained are still not justified by the complexity of the matter. Indeed, even though there was a 2001 order to continue the investigations, it took the Prosecutor's Office until February 2003—nearly two years—to take over the case and order investigative procedures. The IACHR has no record of any steps taken over the next three years. In December 2005, the investigation was assigned to the National Human Rights Unit and IHL, which ordered the examination of new evidence. Three years later, in August of 2008, the Prosecutor's Office proceeded to implicate some individuals as perpetrators of the crime and requested to study the possibility of filing a motion for the reconsideration of the defendants' acquittals. The Supreme Court denied the motion for reconsideration in April 2009, and in 2010 the Prosecutor General once again reassigned the case to another prosecutor. According to the information provided by the State, three years later, in 2013, "three reports had reportedly been received from the Judicial Police". The long periods without procedural activity show that delays in the investigation are the consequence of the conduct of the authorities.

179. The IACHR cannot fail to note, as it has in other cases involving the murder of journalists, that the events that are the subject of this report are part of a situation in which high levels of impunity are prevalent. This is of special concern given that, according to the petitioner, the statute of limitations applicable to the crime against Nelson Carvajal Carvajal will expire 20 after its commission—that is, in 2018. In this regard, the Commission observes that one of the most worrisome effects of the inaction and prolonged delay in the investigation of cases involving the murder of journalists is the expiration of criminal statutes of limitation.

180. In view of the above considerations, the IACHR concludes that the investigation into the crime committed against journalist Nelson Carvajal Carvajal had not been conducted within a reasonable period of time, nor has it been an effective remedy to guarantee the rights of his relatives.

e. Obstacles to the participation of Nelson Carvajal's relatives in the investigations

181. In fulfilling their duty to investigate and prosecute all perpetrators responsible for acts of violence against journalists, States have the obligation to guarantee that the victims of human rights violations or their relatives have full access and the ability to act at all phases and levels of the investigation

and the respective trial, in accordance with domestic law and the provisions of the American Convention.¹⁶³ This includes broad opportunities to participate and to be heard, both in the establishment of the facts and the punishment of the perpetrators, as well as in seeking compensation.¹⁶⁴ In this regard, the Commission observes that encouraging the participation of victims in the criminal proceedings also requires providing them with adequate protection in view of threats or attacks intended to prevent such participation.¹⁶⁵

182. The IACHR reiterates that impunity in these types of crimes encourages self-censorship, and thus undermines democratic debate.¹⁶⁶ In its judgment in case of *Vélez Restrepo v. Colombia*, the Inter-American Court held that impunity in these types of cases creates the reasonable “fear that this type of human rights violation might be repeated, and this could lead to [the] self-censorship of [journalists’] work, for example, as regards the type of news covered, the way the information is obtained, and the decision to disseminate it.”¹⁶⁷

183. It has been established that the relatives limited their participation in the investigation and in the criminal case because of the threats warning them that if they continued “to go after the perpetrators there would be more deaths in the family,” and because attorneys in the area were afraid to represent them. The IACHR notes that there is nothing in the case file to indicate that the State took special measures designed to protect the lives and safety of the alleged victim’s relatives and to ensure their participation in the case. Nor is there any evidence that the threats were ever investigated. When the State fails to ensure the protection of the victim’s relatives, it helps perpetuate the acts of violence and intimidation against them and prevent the establishment of the facts.¹⁶⁸

184. Accordingly, the IACHR considers it proven that there was a lack of due diligence in the official investigation, which has given rise to impunity in this case. This lack of due diligence is evident in the failure to take the necessary protection measures in view of the threats that were made during the investigations, the ineffectiveness in identifying all of the perpetrators, the undue delay and lack of substantial progress in the investigations, and the obstacles to the participation of Nelson Carvajal’s relatives in the investigations.

185. The Commission is of the opinion that the State failed to act with due diligence to investigate, prosecute, and punish those responsible for the murder of journalist Nelson Carvajal Carvajal. To date, the crime has gone unpunished; Mr. Carvajal Carvajal’s relatives have not had access to truth and justice, and the journalists in the region have suffered the consequences of having a crime intended to silence them go

¹⁶³ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons That May Be Related to Their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 41.

¹⁶⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons That May Be Related to Their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 41.

¹⁶⁵ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163. Para. 171; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons That May Be Related to Their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 58; I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 203-204; I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213. Para. 194-195.

¹⁶⁶ IACHR. 2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 179; IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II. 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011.

¹⁶⁷ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. para. 212.

¹⁶⁸ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163. Para. 175; I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006 Series C No. 148, para. 322.

unpunished. The IACHR underscores that the impunity that plagues these types of cases has devastating effects on the local practice of journalism and on freedom of expression. More than sixteen years after his death, the absence of concrete actions sends a strong message of inhibition and self-censorship to any other journalist who confronts regional political and economic power. In the end, this deprives an entire community of information and opportunities for the oversight of government administration, preventing it from exercising its right to seek, receive, and disseminate ideas and information.

186. For all of the above reasons, the IACHR concludes that the State has violated the rights to a fair trial and to judicial protection established in Articles 8 and 25 of the American Convention, in conjunction with Articles 1(1) and 13 thereof, with respect to the relatives of the victim. Based on the case file, the Commission finds that those relatives are: Jairo Carvajal Cabrera, Ana Francisca Carvajal de Carvajal (father and mother); Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños, Yaneth Cristina Carvajal Ardila (daughters); Luz Stella Bolaños Rodríguez (spouse); Judith Carvajal Carvajal, Gloria Mercedes Carvajal Carvajal, Ruth Dary Carvajal Carvajal, Luz Eny Carvajal Carvajal, Miriam Carvajal Carvajal, Fernando Augusto Carvajal Carvajal, Saúl Carvajal Carvajal (siblings); Cristhian Camilo Motta Carvajal, César Augusto Meneses Carvajal (nephews).

187. With respect to Nelson Carvajal Carvajal's right to life and freedom of expression, the IACHR observes that, more than 16 years after his murder, the investigations and criminal proceedings undertaken at the national level have not resulted in the identification of the individual perpetrators. However, in the case file, there is circumstantial evidence that supports the involvement of state agents in the events. Indeed, since the occurrence of the events and according to the evidence gathered, it was clear that the murder of Nelson Carvajal Carvajal was perpetrated to silence his work in revealing illicit acts by public officials.

188. Since the beginning of the investigation, witnesses noted the responsibility of local government officials and former officials as potential masterminds of the murder of Nelson Carvajal Carvajal. Evidence shows that Carvajal planned to make a statement the day after his death, at the Municipal Attorney Office about facts alleged in his radio program on municipal corruption linking the mayor of Pitalito and a coalition of the City Council. Witnesses said that before his death the journalist Nelson Carvajal received death threats by a former council member of Pitalito. Similarly, as is clear from the record, after the crime actions to hinder the administration of justice through threats against witnesses and other acts to divert the investigation took place, creating a climate of fear in the population of Pitalito that persisted during development of trials and increased with the taking of new evidence. Specifically, a witness demobilized from the FARC was killed after saying to a specialized prosecutor that among those responsible for the murder of Nelson Carvajal Carvajal were local officials and former local officials. Several people connected to the case as witnesses or threatened relatives reported that officers and former officers linked with the government as responsible for the threats. Due to the lack of specific and effective protection and investigation measures against these threats and intimidation, nine relatives of Nelson Carvajal Carvajal were forced to leave the country.

189. Given the strong evidence also handled by state authorities responsible for the investigation, the IACHR considers that the State's response has been inadequate to investigate and to protect witnesses and relatives of Nelson Carvajal Carvajal in their quest for justice. It is because of these deficiencies that it has not been possible to judicially established the facts and the respective criminal responsibilities. The Commission considers that all these circumstantial evidence regarding the involvement and tolerance of state authorities in the murder of Nelson Carvajal Carvajal are sufficient in the context of this case to establish a violation of the right to life, under article 4(1) of the American Convention.¹⁶⁹

190. As the Inter-American Court has held, to conclude otherwise would mean allowing the State to avail itself of the negligence and ineffectiveness of the criminal investigation in order to avoid its

¹⁶⁹ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196. Para. 97.

responsibility for the violation of Article 4(1) of the Convention.¹⁷⁰

191. Accordingly, the Commission concludes that the State is responsible for the violation of Nelson Carvajal Carvajal's right to life and freedom of expression, in relation to Article 1(1) of the Convention.

B. Examination of the violation of the right to humane treatment (Article 5(1))¹⁷¹ and the right to freedom of movement and residence (Article 22(1))¹⁷² in relation to the general obligation to respect rights (Article 1(1)) of the American Convention

192. The Inter-American Court has held repeatedly that the relatives of victims of certain types of human rights violations can, in turn, be victims.¹⁷³ Specifically, the Court has indicated that the mental and emotional welfare of victims' relatives can be affected by the particular circumstances suffered by their loved ones, and by the subsequent acts or omissions of the domestic authorities in light of those events.¹⁷⁴ The Inter-American Court has additionally established that "the obligation to investigate human rights violations is among the positive measures that the State must adopt to guarantee the rights established in the Convention. Additionally, the State must, if possible, try to reestablish a right that has been violated and, if applicable, repair the damage produced by human rights violations."¹⁷⁵ In relation thereto, the Inter-American Court has established that the absence of effective remedies is an additional source of suffering and distress for the relatives of victims.

193. The Court has also established in several cases that the right to freedom of movement and residence, protected under 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 individual who are in a State lawfully to circulate freely within it and to choose their place of residence. This right can be violated by laws or by *de facto* restrictions when the State has not established the conditions or provided the means for its exercise. Such *de facto* violations can occur when a person is the victim of threats or harassment and the State fails to provide the necessary guarantees so that he or she can travel and reside freely within the territory in question.¹⁷⁶ The Court has similarly held that the lack of an effective investigation into violent acts can cause or perpetuate exile or forced displacement.¹⁷⁷

¹⁷⁰ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196. Para. 97.

¹⁷¹ "Article 5. Right to Humane Treatment. 1. Every person has the right to have his physical, mental, and moral integrity respected."

¹⁷² "Article 22. Freedom of Movement and Residence. 1. 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."

¹⁷³ I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. Para. 112; I/A Court H.R., *Case of Bueno Alves v. Argentina*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164. Para. 102.

¹⁷⁴ I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. Para. 112; I/A Court H.R., *Case of Vargas Areco v. Paraguay*. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155. Para. 96.

¹⁷⁵ I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192. Para. 98; I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4. Para. 166; I/A Court H.R., *Case of Heliodoro-Portugal v. Panama*. Judgment of August 12, 2008. Series C No. 186. Para. 142; I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Judgment of November 20, 2007. Series C No. 168. Para. 99.

¹⁷⁶ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. para. 220; ¹⁷⁶ I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192. Paras. 140-144; I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213.

¹⁷⁷ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. para. 220.

194. Thus, for example, in the case of *Vélez Restrepo et al. v. Colombia*, the Inter-American Court found that photographer Vélez Restrepo and his family were subject to *de facto* restrictions to their right of freedom of movement and residence, “because the State’s omission to guarantee the right to personal integrity of Mr. Vélez Restrepo and his family, by the investigation together with opportune measures of protection or prevention [...], gave rise to great insecurity and their well-founded fear that their life and personal integrity were at risk of being violated if they remained in Colombia, which led to their exile.”¹⁷⁸ Similarly, in the case of *Valle Jaramillo et al. v. Colombia*, the Court found a violation of Article 22(1) of the Convention with respect to several individuals who were forced to go into exile, “without being able or wanting to return home owing to a well-founded fear of persecution.”¹⁷⁹ In the case of *Manuel Cepeda Vargas v. Colombia*, the Court ruled that the temporary exile of the victim’s relatives on account of threats they received in connection to their search for justice was a violation of Article 22 of the Convention.

195. In light of those judgments and in the application of the principle of *iura novit curia*, the IACHR finds that it is warranted in this case to examine the infringement of the right to humane treatment and the right to freedom of movement and residence established in Articles 5(1) and 22(1) of the American Convention. In making this assertion, the IACHR observes that although its admissibility report did not address the alleged violation of Articles 5(1) and 22(1), the facts supporting these violations are an integral and essential part of the case and, moreover, they arise from the information and documents provided by the parties over the course of the proceedings before the IACHR.

196. With respect to the violation of the right to humane treatment of the relatives of Nelson Carvajal Carvajal, the Commission observes, as previously stated, that the State is responsible for failing to investigate Nelson Carvajal Carvajal’s murder with due diligence. It finds that the absence of a diligent investigation has adversely affected the mental and emotional welfare of the relatives identified in this case, in addition to the suffering and distress caused by the fact that, more than sixteen years after the events, they have neither obtained justice nor been able to learn the truth of what happened. In addition, as mentioned previously, Nelson Carvajal’s relatives suffered repeated threats and harassment, compounded by the lack of protection measures and guarantees of an independent investigation, which had an intimidating and chilling effect on them. Similarly, the lack of protection for the relatives went on for a lengthy period of time, which contributed to their suffering and distress over the State’s failure to investigate, arrest, trial, and punish the perpetrators. This pattern of threats was, in the opinion of the Commission, a serious violation of the right to humane treatment of the relatives of Nelson Carvajal Carvajal. In this sense, the IACHR concludes that the State violated the right enshrined in Article 5(1) of the Convention, in relation to Article 1(1) thereof, with respect to the relatives of Nelson Carvajal Carvajal (*supra* para. 41).

197. With regard to the violation of the right to freedom of movement and residence, the petitioner indicated that 9 relatives of Carvajal’s were granted refugee status and the right to asylum, although it stated that they wanted to keep the respective asylum decisions confidential for security reasons. The petitioner stated that Judith Carvajal Carvajal (sister), Cristhian Camilo Motta Carvajal (nephew), and Fernando Augusto Carvajal Carvajal (brother) requested asylum on November 3, 1999, and were granted refugee status on August 2, 2000. It also indicated that the Office of the Prosecutor General of Colombia acknowledged the persecution and threats against Judith Carvajal Carvajal and Fernando Augusto Carvajal Carvajal. According to the petitioner, the Prosecutor’s Office considered the risk posed to Judith Carvajal Carvajal and her nuclear family was serious.

198. The IAPA stated that Gloria Mercedes Carvajal Carvajal (sister), Luz Stella Bolaños Rodríguez (spouse), Paola Andrea Carvajal Bolaños, and María Alejandra Carvajal Bolaños (daughters) requested asylum on August 10, 2006, and were granted refugee status on September 15, 2009. It asserted that the Office of the Prosecutor General of Colombia made a note in Nelson Carvajal’s case file of the death threats received by

¹⁷⁸ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. para. 221.

¹⁷⁹ I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192. Paras. 140-144.

Gloria Mercedes Carvajal and the journalist's daughters Paola Andrea Carvajal Bolaños and María Alejandra Carvajal Bolaños. Finally, it stated that Ruth Dary Carvajal Carvajal (sister) and César Augusto Meneses Carvajal (nephew) requested asylum on March 12, 2010, and were granted refugee status on January 18, 2011. It indicated that the Office of the Prosecutor General made a note in the case file of the threats against Ruth Dary Carvajal Carvajal, and requested that the National Police provide security measures to the members of the family.

199. The State questioned the inclusion in this international proceeding of information related to the departure of Nelson Carvajal Carvajal's relatives from Colombia as refugees, considering that the petitioner had not submitted the respective asylum decisions. The State was of the opinion that this information had been submitted "for information purposes only, with no further observations being admissible, given that the decisions [granting asylum] were not presented."¹⁸⁰

200. In this case, the IACHR has found that Nelson Carvajal's relatives have been victims of threats and harassment subsequent to his murder, that the authorities knew of these threats, and that the State failed to implement effective measures to protect them and also failed to conduct an investigation to establish the facts and punish the perpetrators of those threats. The Colombian State acknowledged this situation, confirming that Nelson Carvajal's case was plagued by threats to the journalist relatives.¹⁸¹ In the case of Judith Carvajal, although she was included in the Office of the Prosecutor General's Protection Program for Victims and Witnesses, as stated in the case file, that measure was not effective and she was forced to leave the country.

201. The Commission finds that, in this context, the information provided by the petitioner and the evidence contained in the case file are sufficiently consistent and accurate to establish that Carvajal Carvajal's relatives were in fact forced to leave Colombia due to well-founded fears for their safety. The State did not provide any evidence to demonstrate that it took actions to protect the members of this family, prevent their displacement, or facilitate their return, and the IACHR has no evidence leading to any conclusion other than what the petitioner has reported with respect to the matter. Indeed, the IACHR finds that their departure from the country is one of the foreseeable consequences of the threats received, the lack of State protection, and the impunity that has characterized this case, all attributable to the State.

202. Accordingly, the IACHR finds in this case that Nelson Carvajal Carvajal's relatives were subject to *de facto* restrictions to their right to freedom of movement and residence, because the State's failure to guarantee their right to humane treatment, through an investigation and timely protection or prevention measures, created serious insecurity and a well-founded fear in them that their lives and personal safety were in danger of being violated if they remained in Colombia, which led to their departure from the country.

203. The IACHR concludes that the State violated the rights enshrined in Article 22(1) of the Convention, in relation to Article 1(1) thereof, with respect to the relatives of Nelson Carvajal Carvajal, to wit: Paola Andrea Carvajal Bolaños, María Alejandra Carvajal Bolaños (daughters); Luz Stella Bolaños Rodríguez (spouse); Judith Carvajal Carvajal, Gloria Mercedes Carvajal Carvajal, Ruth Dary Carvajal Carvajal, Fernando Augusto Carvajal Carvajal (siblings); Cristhian Camilo Motta Carvajal, César Augusto Meneses Carvajal (nephews).

¹⁸⁰ "The State finds that that information was provided by the petitioner for information purposes only, with no further observations being admissible, given that the aforementioned decisions were not presented. The argument of the representatives concerning the 'confidentiality' of those documents is understandable; however, and with a view to the transparency of the proceedings before the Honorable Commission, it would be important for them to be disclosed, not only in order to present the appropriate observations but also because in the opinion of the State it is essential that the IACHR should have access to them—without including that information in the international proceedings—as has been done in other cases and/or petitions." Communication from the Colombian State dated November 18, 2013. MPC/OEA No. 1538/2013. Forwarding note 20135010027201-GDI dated November 13, 2013. Received by the IACHR on November 19, 2013.

¹⁸¹ Communication from the Colombian State dated July 15, 2009. DDH.GOI. No. 37793/1905. P. 29. Received by the IACHR on July 16, 2009.

VI. CONCLUSIONS

204. Based on the factual and legal considerations set forth, the Inter-American Commission concludes that the Colombian State is responsible for:

- The violation of the rights to a fair trial and judicial protection, enshrined in Articles 8 and 25 of the American Convention, in connection with Articles 1(1) and 13 thereto, with respect to the relatives of Nelson Carvajal Carvajal.
- The violation of the rights to life and freedom of expression, enshrined in Articles 4(1) and 13 of the American Convention, in connection with 1(1) thereto, with respect to Nelson Carvajal Carvajal.
- The violation of the rights to humane treatment and to freedom of movement and residence enshrined in Article 5(1) and 22(1) of the American Convention, in connection with Article 1(1) thereto, with respect to the relatives of Nelson Carvajal Carvajal.

VII. RECOMMENDATIONS

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF COLOMBIA:

1. Conduct a thorough, impartial, and effective investigation, within a reasonable period of time, to shed light on the circumstances of Nelson Carvajal Carvajal's murder and to identify the perpetrators, including where such undertaking involves reopening closed investigations or reexamining cases 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 the relatives of Nelson Carvajal Carvajal by the departure from their country.

Done and signed in the city of Washington, D.C., on the 26th days of March, 2015 (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez, Second Vice President; Felipe González and Tracy Robinson, Commissioners.